

2015 EU-Taiwan Consumer Protection Seminar on Online Transactions Event Report

Date & Time: 09:30-17:00, 30 October 2015

Venue: Tsai Lecture and Conference Hall, College of Law, National Taiwan University

The EU-Taiwan Consumer Protection Seminar on Online Transactions was jointly organized by the European Economic and Trade Office (EETO), under the framework of the European Business and Regulatory Cooperation Programme (EBRC) and the Department of Consumer Protection (DCP) of the Executive Yuan. The seminar, the first event of its kind arranged under the EBRC framework, was attended by representatives from European and Taiwan government, industry and academia. It hosted a field of distinguished experts to share insights in three sessions covering the following areas: consumer protection laws and regulations on online transactions; the management and practice of online transactions and resolving consumer disputes arising from online transactions. Each session was concluded with a lively panel discussion featuring all of the sessions' speakers and active audience participation. Dr Chang San-Cheng (張善政), Vice Premier of the Executive Yuan and Ms Madeleine Majorenko, Head of the EETO delivered opening remarks. At the conclusion of the seminar, Ms Tsai Yu-Ling, Minister without portfolio delivered closing remarks.

Guests of honour

Dr Chang San-Cheng (張善政), Vice Premier, Executive Yuan (EY)

Ms Madeleine Majorenko, Head, European Economic and Trade Office

Ms Tsai Yu-ling (蔡玉玲), Minister without portfolio, EY

Moderators

Dr Jan Sheng-lin (詹森林), Commissioner, Committee of Consumer Protection, EY & Professor & Dean, College of Law, National Taiwan University

Professor Stefaan Voet, Associate Professor, University of Leuven, Belgium

Professor Wu Jiin-Yu (吳瑾瑜), Commissioner, Committee of Consumer Protection, Department of Consumer Protection (DCP), EY & Professor, National Chengchi University

Speakers

Dr Stefaan Voet, Associate Professor, University of Leuven, Belgium

Dr Evelyne Terryn, Professor, University of Leuven, Belgium

Ms Guna Dirveika, Senior Legal Consultant, Financial and Capital Market Commission, Latvia

Mr Daver Lau, General Manager, Amadeus Taiwan Limited

Mr Chen Hsing-Hung (陳星宏), Senior Secretary, DCP, EY

Dr Chang Feng-Yuan (張峯源), Senior Executive Officer, Department of Commerce, Ministry of Economic Affairs (MoEA)

Ms Wang Shu-Hui (王淑慧), Senior Executive Officer, DCP, EY

Dr Chiu Ying-Hsi (邱映曦), Director, Institute for Information Industry (III)

Mr Bill Lin (林坤正), General Manager, PAYEASY Digital Integration Company Limited

Mr Wang Te-Ming (王德明), Senior Consumer Ombudsman, DCP, EY

Dr Jimmy Yu (余啟民), Associate Professor, Soochow University

Opening remarks

In his remarks Vice Premier Chang highlighted the importance of e-commerce to boosting international trade. He pointed out that mobile payments and third party payment services are changing financial

services. All players are coming up with new ideas and providing new services and, in this environment, it is important that the rights of consumers are protected, especially since online transactions involve issues of storing and processing personal information and privacy protection. Chang noted that there are too many instances of fraud related to online purchases while consumers sometimes encounter problems such as not receiving goods or services even after making payments, thus resulting in consumer disputes. He emphasised that we have to find better ways to prevent fraudsters from getting access to important data and that this is the responsibility of all players. Important issues have to be dealt with including how to safeguard privacy, return policies if the goods are not up to standard and rules for who should pay for return shipping costs. The enactment of laws, self-regulation of industries, academic research and the comments and suggestions from consumer protection groups are an important foundation for building consumer confidence in online transactions, and will further stimulate the development of relative industries. In addition to personal information protection, proper resolution of cross-border disputes is also challenging governments and business operators. To address this, all nations need to work together. He made the point that the aim of the seminar is to enhance the importance of online transaction issues and to brainstorm how to improve the current system in order to meet the needs of the new consumer environment. In this regard the vice premier said that he hoped that Taiwan could learn from the experience in Europe.

In her remarks Ms Majorenko said that the European Commission has always put consumers at the heart of the single market and making consumers key players in the digital era is a priority. This means that consumer rights, health and safety rules should be respected and vulnerable consumers must be protected.

While online trading brings great benefits, consumers' rights need to be protected. However, consumers, especially young people, are not always aware of some of their key rights under the EU's consumer laws. This is why, since last May the Commission has been running an awareness campaign about consumer rights in Member States.

Given that e-commerce is an important part of the EU economy with the potential to become the motor for economic growth in the EU by creating up to €415 billion in additional growth, the European Commission (EC) is sensitive to the dangers of over-regulation. Instead the EC is committed to modernizing and simplifying rules for online purchases while reforming data protection rules, which the Commission aims to finalise this year. In addition, consumers in the EU do not feel confident buying across the borders. If consumers could choose from the full range of EU goods and services when shopping on-line they could save an estimated €11.7 billion each year. The set of initiatives adopted in May in the Digital Single Market strategy are aimed at improving the implementation and enforcement of European consumer legislation. Moreover, many consumers give up too easily and don't stand up for their rights. New rules on alternative dispute resolution methods can help parties to reach a compromise in an easy, fast and inexpensive way without having to go to court. Filing complains and getting effective redress across the EU can help reinforce consumers' confidence in the online market. She concluded by stating that the seminar aims to find the ideas, solutions and policies to protect consumers when conducting online transactions.

Session 1: Consumer protection laws and regulations on online transactions

Moderator: Dr Jan Sheng-Lin, Commissioner, Committee of Consumer Protection, Department of Consumer Protection, Executive Yuan & Professor & Dean, College of Law, National Taiwan University

Topic: Status of e-commerce and the Consumer Protection Law in Taiwan

Speaker: Mr Chen Hsing-hung, Senior Secretary, Department of Consumer Protection, Executive Yuan

Mr Chen began by referring to a special message to congress on the subject of protecting consumer interests made by former US President John F Kennedy. While there was no internet at the time, Chen said that the same four principles outlined at that time are just as relevant today: 1) The right to safety (safe consumer products); 2) The right to be informed (transparent information for consumers); 3) The right to choose (fair provisions in consumer contracts) and 4) The right to be heard (participation in consumer protection policymaking and a good consumer dispute resolution system).

There are good arguments for self-regulation. Too much regulation would hinder development, especially given that online commerce develops so rapidly. According to this line of thinking, businesses should organize self-regulating groups, reach consensus with consumers with governments assistance. In the event of disputes, legal action could be a last resort.

Taiwan has in place (since 2002) guidelines for consumer protection in the context of electronic commerce and the Consumer Protection Act, which has recently been amended to cover standard contracts and distance sales (including internet contracts), aimed at harmonization of rules and providing maximum protection to consumers. In addition, there are statutory orders providing guidelines on the application of reasonable exceptions to the right of rescission of “distance sales”, mandatory and prohibitory provisions governing standard contracts online.

Consumer protection legislation in Taiwan follows the basic principles of equality and reciprocity and contracts that do not follow these principles are regarded as invalid. Standard contracts are usually prepared in advance unilaterally by traders, are often not properly read or understood by consumers and often contain provisions that violate contractual justice by putting additional burdens and obligations on the consumer while reducing the traders’ obligations, limiting or stripping away the consumer’s exercise of his or her rights, improperly shifting the burden of proof or causing the consumer to assume unreasonable or unfair risk. It is therefore extremely important to regulate standard contracts. That is why there is a clause in Taiwan’s regulations that balances the rights of traders and consumers. In order to prevent consumer disputes, protect consumer interests and promote fairness in the use of standard contracts, authorities may set mandatory or prohibitory provisions for standard contracts.

Prohibitory provisions which would render contracts invalid may include: Traders’ retention of the right of interpretation and modification of contract provisions and periods; limitation or waivers of traders’ liability or obligations; restrictions or deprivation of consumers’ exercise of their rights, or other matters obviously unfair to consumers.

Competent authorities may periodically dispatch personnel to examine traders on the use of standard contracts whenever necessary. Contractors violating the provisions and failing to take corrective action will face administrative fines ranging from NT\$30,000-300,000, and fines will increase to NT\$50,000-500,000 if they fail to take remedial action after receiving warnings from authorities.

Information on transaction webpages constitutes a part of the contract. This includes the product name, price, content, specifications, model and other relevant information presented on the webpage where the product is traded. Traders are required to list the cost of shipping the product and the means of cost sharing; if this is not listed, the cost of shipping shall be considered the liability of the business operator. Consumers do not have to pay shipping for returned goods within 7 days without obligations.

Taiwan has set out clear areas of transparency applied to traders when they enter into contracts with consumers: The name of the traders, representatives, firms or places of business, phone numbers or e-mail

and contact information that consumers can use to obtain rapid and effective communication; the contents of the goods or service, the payment dates, payment methods, delivery dates and method of delivery; The period and procedure for consumers to exercise the right to rescind and the consumer complaint handling procedure. In sales made via the internet, the consumer shall be provided with recoverable and savable information in electronic format.

Taiwan provides exceptions to the 7-day return period for the following 6 instances (compared to 13 in the EU):

1) Goods that easily deteriorate, have a relatively short preservation period, or for which the time of rescission is nearly past the expiry date; 2) Goods that are tailored to meet the consumer's demands; 3) Newspapers, journals, or magazines; 4) Audiovisual products or computer software whose seals have been taken off by the consumer; 5) Digital content that is not provided through tangible media, applied software, or online services that are provided "at one go", which the consumer had earlier agreed to purchase, and which the consumer understood that he or she would thus lose the right of rescission; 6) Unsealed personal sanitation products.

Mr Chen said that authorities may expand the scope to other items, such as air tickets, but will study international examples in this regard.

Taiwan follows 10 basic principles, based on OECD guidelines, for consumer protection in e-commerce including transparency and effective protection, fair commerce, advertising, marketing activities, protection of privacy rights and transactional security.

Traders are obliged to take steps to make sure consumers understand their rights and obligations. Business operators should provide the opportunity for reconfirmation and ensure that consumers understand that this is the final procedure for confirming willingness to purchase, so that the consumer has the chance to cancel the transaction before the purchasing procedure begins. Traders are also obliged to use secure and easy-to-use payment mechanisms. Financial institutions should do their utmost to adopt appropriate measures to help consumers resolve disputes that arise with traders due to the failure of products to arrive, transactions that occur without the consumers' consent, or other defective transactions. Consumers do not need to assume liability when a transaction occurs without their consent, except in cases of deliberate or gross error. Traders should immediately refund payments if consumers return the goods within the grace period or rescind the contract.

Topic: Consumer protection & e-commerce in the EU: Key regulatory and institutional aspects
Speaker: Dr Evelyne Terryn, Professor, University of Leuven, Belgium

According to Dr Terryn, e-commerce is not meeting its true potential in the EU. Only 7% of SMEs sell cross-border. This is partly because doing business in another country requires having to learn the laws and adapt to doing business in other countries and partly owing to a lack of confidence on the part of consumers to purchasing goods outside of their own countries.

Important parts of legislation governing e-commerce are already harmonized across the EU but not all. At the EU level, in certain areas, there is a minimum level of regulation but national governments can go beyond this. The consumer rights directive is now fully harmonized but there are still some issues of divergence in the Member States (eg the rules on consumer sales). There was an alternative proposal for regulation on a common European sales law which traders could voluntarily agree to (an opt in instrument) but there is not enough support in the European Council to reach an agreement on this yet. It is therefore off the agenda. However, there are plans for further harmonization in other areas, especially in the field of sales law, since it is acknowledged that differences in the implementation of consumer law is a barrier to e-commerce.

The EU will introduce legislative proposals for simple and effective cross-border contract rules for consumers and businesses for sales contracts and digital content this year and review the Regulation on Consumer Protection Cooperation in 2016. Regulations on online software are not yet regulated or harmonized. Digital content harmonization is also on the agenda. The EU also plans to address geoblocking, the process of limiting access or offering different pricing of the same services in different countries. Addressing discrimination based on one's residential area is also on the agenda.

The EU has a number of consumer protection instruments that are harmonized throughout the EU. For example, Directive 2005/29/EC on Unfair Commercial Practices and Directive 2006/114/EU on Misleading and Comparative Advertising provides protection against unfair commercial practices and misleading advertising is not allowed all across Europe. Under Directive 99/44 on Consumer Guarantees, a 2-year legal guarantee is the minimum requirement that is mandatory across the EU for all consumer goods. Directive 93/13/EEC on Unfair Contract Terms protects consumers from unfair contract terms. Directive 2011/83/EU on Consumer Rights mandates default delivery within 30 days. Directive 95/46/EC covers data protection while there is a proposal for a General Data Protection Regulation COM (2012)11. There are also regulations against spam and provision for a 14-day right of withdrawal without reason. While there is full harmonization of certain consumer rights, sanctions are not harmonized – Member States decide their own sanctions.

In terms of information requirements, traders must provide information before the conclusion of a contract so that consumers can give their informed consent. In addition, traders must confirm this information on a durable medium. The trader must provide the main characteristics of the goods or services, the identity of the trader, the total price, the arrangements for payment, delivery, performance, legal guarantee of conformity or commercial guarantees; the functionality and interoperability of digital content; steps in the booking process; the existence of the right of withdrawal and modalities. In addition, a model withdrawal form must be provided so that consumers can exercise their rights to return goods or cancel the contract within 14 days.

During the contractual process, a summary needs to be provided before confirmation of the order and a button needs to be provided that warns consumers that confirmation will oblige them to pay for the product or service. If the button is not provided, the consumer will not be bound by the contract.

There are complicated rules for digital content. Consumers have to be informed that they will lose their right to withdrawal once they have started downloading a song, video or software, but this must be clearly stated. The 14-day withdrawal period applies to services but consumers have to pay for the part of the service that has been completed.

EU level regulations provide that refunds must be made within 14 days (although this can be postponed until after the goods have been received). Refunds cannot be in the form of a voucher. There are also rules relating to diminished value. For example, the customer will be liable for the handling of the goods other than what is necessary to "establish the nature, characteristics and functioning of the goods". For example, consumers may try on clothes or test goods such as a television bought online but they may not wear the clothes or use the TV for several days. There are still some grey areas to be worked out. For example, what type and period of use constitutes a fair testing of a bed before a customer can return it without liability? The EU provides a list of 13 exceptions to the right to rescind (compared to 6 in Taiwan) in order to balance the rights of traders and consumers, including perishable goods and goods made to order.

Customers must receive goods within 30 days (although there are some exceptions and this is also a default rule). The trader is liable and responsible for risks until the goods are delivered. In the EU, the shipping costs of returning goods in case of withdrawal are the responsibility of the consumer.

Besides the obligation to disclose the full costs of the goods or services (no hidden items are allowed), contracts may not make extra services, such as additional insurance for an air ticket that require additional charges, to be the default option using a pre-ticked box. Only opt-in or informed consent options are allowed for additional charges.

The EU Sweep is a new kind of enforcement action. It takes the form a systematic check carried out simultaneously in different Member States to investigate breaches of consumer protection law. It is coordinated by the European Commission under the Consumer Protection Co-operation Regulation which came into force at the end of 2006. It has been used for example in the airline industry and has been effective in reducing issues of non-compliance.

While the EU has a lot of effective mechanisms in place to protect consumer rights, there are still some challenges remaining, including fragmentation of the legal framework and enforcement of existing consumer protection provisions. For example, most complaints are because goods are not even delivered, indicating the need for more enforcement. In addition, the current legal framework for digital content is inadequate. Dr Terryyn concluded that it is the objective of the Digital Single Market Strategy to address these issues.

Topic: Progress on the personal information protection of ecommerce in Taiwan

Speaker: Dr Chang Feng-Yuan, Senior Executive Officer, Department of Commerce, Ministry of Economic Affairs

According to eMarketer, the Asia Pacific region is the largest e-commerce market, accounting for 48% of total global e-commerce sales of US\$1.34 trillion in 2014, compared to 24% from North America and 20% in Europe. The group expects global sales to more than double to US\$2.99 trillion by 2018 and for the Asia Pacific region's share to rise to 62% of the total. Taiwan's e-commerce market has been growing by around 13% annually since 2008, both consumer-to-consumer (C2C, which accounts for about 39% of the market) and business-to-consumer (B2C, which accounts for 61%).

Taiwan's Criminal Investigation Bureau (CIB) monitors and investigates fraud on the internet and has set up a hotline (with the number 165) for people to report suspected fraudulent scams. According to the CIB, the most common online scams are e-commerce ATM transfer scams (33% of all fraudulent schemes) and fake online auction transactions caused by phishing or fraudulent shopping scams (23% of the total) (Other types of fraud not related to e-commerce accounts for 42% of the total).

E-commerce websites with a lot of personal information have become the targets of hackers. Scammers are able to get complete order details including names, telephone numbers, lists of purchased items, prices and the time of purchase. Mr Chang pointed out that criminals use this information to call their victims, usually outside of normal office hours when merchants are off-duty, which makes it difficult to verify that they are not authentic merchants.

Mr Chang listed several examples of common scams. In one case, a man bought clothing for NT\$600 online. He then received a telephone call informing him that his online transaction payment was incomplete and that he was required to transfer NT\$180,000 from his account via an ATM. In another case, a man bought a book for NT\$270 and the fraudster, posing as an employee of the e-commerce merchant, told the victim to cooperate with another fraudster who was posing as an employee of his bank, and requiring him to transfer NT\$160,000 to another account.

An example of online scams is when fraudsters use fake login pages, which have URLs virtually identical to the authentic site, to steal passwords, accounts and credit card numbers.

Mr Chang then outlined what authorities are doing to help vendors. There are three main ways:

Visits: This involves providing technical or operational advice to merchants to help them improve their systems such as using secure and encrypted technology.

Diagnosis: Providing technical or operational help to improve information security.

Inspections: Taking a series of measures to require managerial level staff to pay attention and commit to making improvements.

Mr Chang outlined the process. When a complaint is made to the 165 hotline, merchants are contacted by authorities and required to explain and provide formal documents and make improvements within a certain time. An administrative inspection is then conducted. If the problem is not solved, the merchant will be given advice and time to make improvements. Failure to make improvements within three months could result in fines. According to Mr Chang, the system is working well. He cited two cases where, upon being the subject of complaints and inspections, companies had made significant improvements, which resulted in a sharp drop in complaints.

Mr Chang concluded that as long as technology progresses, there will always be scams but the key to making improvements is awareness and commitment on the part of senior management to take responsibility and action.

Session 1 panel discussion

On the subject of consumer dispute resolution in Taiwan, Dr Chen said a mechanism is available for traditional and e-commerce cases. The first option is to deal with cases through local government agencies. The next option is to use a consumer ombudsman. The third mechanism is a mediating committee. If the case still cannot be resolved, it goes to court. He noted that alternative dispute resolution is not mature in Taiwan but that Taiwan hopes to learn from Europe's experience.

A question from the floor asked about protection for online gamers, who sometimes invest millions in their games but operators often force gamers to accept conditions without their informed consent and also modify terms and conditions without notice. Taking action is difficult if the operator is located outside Taiwan. In response Dr Chen said that there is a standard contract for online games. Gaming companies must fully disclose rules and be transparent. If gamers accept the rules, they have to accept the consequences. However, another problem is that there is always the risk that hackers can steal information. Consumers should protect their identities and report crimes to consumer protection agencies. For cross-border disputes, negotiations can be done with the local distributors but authorities also need the cooperation of online gaming companies.

Dr Terry noted that similar problems with gaming also occur in Europe, such as gamers giving consent for one thing but getting charged for other services. However gaming companies are subject to the same rules as other online service providers. For example, if a game is advertised as being free, it must really be free. Otherwise, the operator will be liable for misleading advertising. In addition, operators are required to get gamers' explicit consent for each payment.

On a question about bloggers getting paid for posting content (such as reviews), which is advertising that looks like independent content, the problem is recognized but the EU currently does not yet have a solution. While EU law requires vendors to remove false reports or reviews or face liability, there is not yet a good solution for advertising posing as independent content.

On a question of raising awareness of consumer rights, Taiwan authorities have various campaigns including working with the Ministry of Education to promote consumer protection awareness in schools through plays as well as awareness campaigns for the elderly.

On the subject of consumer rights on social media sites, Dr Terryn noted that while there have been discussions about the way social media sites use data, the same consumer rights do not apply to free services, although social media sites are subject to the same rules regarding unfair contract terms.

The EU is looking into regulations for C2C businesses such as Airbnb. Dr Chen expressed the view that consumer protection is needed for all kinds of e-commerce, including the sharing economy.

Session 2: Online transactions - Management and practice

Moderator: Stefaan Voet, Associate Professor, University of Leuven, Belgium

Topic: EU management of online payments

Speaker: Ms Guna Dirveika, Senior Legal Consultant, Financial and Capital Market Commission, Latvia

Ms Dirveika gave an overview on EU's legal framework for online payments which draw on the Payment Services Directive (2007/64/EC, PSD), the Electronic Money Directive (2009/110/EC, EMD), the European Central Bank's (ECB) recommendations for the security of mobile payments (2013), the European Banking Authority's (EBA) Guidelines on internet payments security (2014) and the Revised Payment Services Directive (PSD2) (2015), the latest rules to be adopted.

Payment services regulations are transposed in national legislation so there is not much room for differences. PSD2 updated some definitions that were already 10 years old and difficult to apply to new services. While the basic requirements are the same in all Member States, rules are stricter in Eurozone countries. It also included a re-evaluation of security requirements for internet and mobile payments.

Not all payments are covered under the directive, which focuses on intra-EU payments. For payments going outside or coming into the EU, there may be different rules.

PSD2 also covers platforms that just initiate payments and don't deal with money such as third party payment service providers or payment initiation service (overlay service), a mechanism enabling customers of online shops to initiate quick payments. While many intermediaries may be involved in processing payments which consumers don't usually know about, the new rules make it the responsibility of the payment service providers to handle any problems. The consumer only needs to contact her payment service provider (usually a bank), which is then obliged to follow up with intermediaries.

New players like third party payment service providers that do not deal directly with money, such as facilitators (payment initiators) or data managers are still subject to the regulations and must protect and provide security for personal data. There are now greater security requirements for payment service providers. Third party payment service providers may not keep sensitive data and must receive consent from consumers and banks for permission to transfer customer credentials to each other. In the past, banks did not always know about intermediaries that could pose as customers. New rules make it compulsory to disclose this. Any account information service providers will be regulated and subject to same security requirements as other providers given that they are handling personal data as well as customer financial information.

Mobile payments are already subject to the same rules across the EU. All electronic (including mobile) payments are covered. Currently the European Banking Authority's (EBA) security guidelines contain strong customer authorization but do not cover mobile payments. Stronger security requirements for mobile will follow later that will aim to balance the need to protect data without stifling the development of mobile commerce. There are strong security requirements in the new rules. So guidance has been given to the EBA to take into consideration that requirements for mobile payments should be proportionately easier so as not to stifle trade. Ms Dirveika noted that the EU already has data protection rules, which, among other things also apply to mobile commerce. The main point of future rules will be to make sure clients' money is safe.

Supervision will become stronger and more complex because Member States will also have to supervise cross-border information transparency and liability issues. It will be underscored by common EBA standards for incident reporting and monitoring, and other technical standards. Supervisors are advised to take a risk-based approach.

On the subject of unexpected payments, such as the practice of blocking funds on credit cards, a new provision holds that the payment service provider has to make sure that the customer is informed beforehand and the customer has to give their consent. Moreover, the amount has to be unblocked as soon as the final receipt is received by the customer and its bank. New rules also make customer authentication stronger with two or three levels of protection required. Service providers must also ensure a 'one-stop process' for customer queries and complaints, which the service provider is obliged to follow up on.

Consumers have an unconditional refund right to for direct debit transfers in euros. There is also an immediate refund obligation for payment service providers if customer did not authorize the transaction. The service provider has to pay back and investigate any unauthorised transactions. There are also provisions for the complaint procedure, which require service providers to always inform the client, provide contact details and an indication of how long it will take to investigate the complaint.

Topic: The administration of online transactions in Taiwan

Speaker: Ms Wang Shu-hui, Senior Executive Officer, Department of Consumer Protection, Executive Yuan

Ms Wang gave an analysis of consumer complaints about online transactions conducted in 2014. 46% of complaints related to groceries and other commodities while the next highest category was clothing, leather products and shoes (20%) followed by consumer electronics goods (16%). The most common problem (reported by 19% of consumers) was a rejection of products being returned. The next largest category was problems with refunds (16%) followed by commodity defects (16%). 41% of complaints came from online auction sites while 11% were from online stores. There were also many international cases, such as those related to mobile Apps. A common complaint related to the marketing and selling of low-priced Apps targeting children.

Taiwan has mechanisms to prevent disputes. Complaints are initially handled by traders, consumer advocacy groups, or consumer service centres or their branch offices. If not dealt with satisfactorily, the second avenue of dealing with complaints is local government consumer ombudsmen. The next avenue is mediation and, failing that, consumer litigation.

Ms Wang listed several examples of administrative instruction and supervision. For example, after reviewing and discussing the case of free or low-priced Apps that lure children using in-App purchases (IAP), the National Communications Commission (NCC) is now required to supervise telecommunication operators to strengthen their online "trading safety control", "risk control", and "dispute settlement"

regarding their management of the App market and all kinds of value-added services. Every platform operator is required to examine the Apps in their stores to ensure that their IAP information includes items and prices are clearly revealed on their platforms.

In response to a complaint about keyword searches for home appliance workshops being directed to alternative workshops not related to the brand, website platform operators are now required to strengthen the reviewing of the advertisers' keyword search projects, to avoid publishing misguided advertisements.

In response to complaints of internet searches that result in misleading price information on used cars, platform operators are now required to clearly mark the price columns of total price and down-payments and remove misleading advertising.

In terms of trading safety protection, the Ministry of Economic Affairs is required to provide initiation standards for internet platform operators to build their online trading safety checking and controlling measures.

In response to online transaction fraud caused by personal information breaches, competent authorities at every level are required to research and put in place relative standards according to Article 27 of the Personal Information Protection Act to safeguard consumers' personal information. Vendors are asked to inform consumers if their data has been hacked.

According to Ms Wang, 7.46% of fraud is related to online transactions. Starting from March this year the Ministry of Interior has announced and listed on the 165 website which platforms pose a high risk to consumers. Fines will be imposed on parties if they fail to make improvements.

On the subject of certain low cost airlines using a checked box as a default setting to get customers to pay for optional extra services, the Civil Aeronautics Administration (CAA) has been instructed to refer to the EU's measures to cancel this practice. The CAA has already held meetings to coordinate with traders to improve the way their websites reveal information about pre-booking and booking procedures as well as their consumer protection measures. Airlines have to disclose if there is a default setting and how to change it.

Present channels can be employed to resolve consumer disputes in Taiwan, including cross-border transactions. In mainland China, the Straits Exchange Foundation and Association for Relations Across the Taiwan Straits may assist while consumers can seek help from overseas organisations and advocacy groups. However, according to laws and regulations in Taiwan (which do not apply to overseas traders), it is difficult to assist with and settle transnational complaints.

Ms Wang concluded by noting that Alibaba's Taobao C2C portal based in China has more than 800,000 registered members in Taiwan, who collectively trade goods worth more than NT\$70 billion annually. However, the platform for cross-Straits consumer protection has not been built and the relative conditions and agreements of consumer rights protection are not yet finished.

Topic: Latest developments in the Personal Information and Protection Act (PIPA) and the achievements of the Taiwan Personal Information Protection and Administration System (TPIPAS)
Speaker: Ms Chiu Ying-Hsi, Director, Science and Technology Law Institute, Technology Application Law Centre, Institute of Information Industry (III)

The Personal Information and Protection Act (PIPA) was first introduced in 2010 but has only been effective since 1 October 2012. There are different requirements depending on the industry. According to Article 27 of the PIPA, non-governmental organisations (NGOs) which keep personal information files

should adopt proper security measures to prevent them from being stolen, altered, damaged, destroyed or disclosed. Enforcement rules are set out under Article 12 of the PIPA. The act requires government agencies and NGOs to take appropriate technical or organizational measures to prevent personal information from being stolen, altered, damaged, destroyed or disclosed. There are 11 subsections outlining proper security measures provided by the Ministry of Justice in its Enforcement Rules including establishing mechanisms to prevent, give notice of, and respond to incidents, build in risk assessment and management of information and security and train staff on PIPA rules.

According to Ms Chiu, the MoEA completed requirements for online retailers to protect consumer information in 2015. Given the increased costs associated with compliance with the new rules, some companies such as call centre businesses, which used to buy name lists for marketing purposes, have ceased doing this as a result of the inconvenience associated with performing the “duty of notification”.

Medical history is now classified as sensitive data but there are exceptions to protecting this data in cases such as promoting the “public interest” or if the written consent of the parties is obtained. There is also no criminal liability if the perpetrator discloses information with no intention of making a profit.

The new Taiwan Personal Information Protection and Administration System (TPIPAS) draws on the practices of several countries for its personal information protection and management standards including the European Union. It was set up to assist enterprises, companies and other organizations to comply with the PIPA.

A Data Privacy Protection Mark (dp.mark) has been introduced and is being promoted as way for companies and NGOs to demonstrate their data protection competence and compliance.

III is assisting enterprises in training and educating information management professionals. Over 850 qualified professionals have been trained since 2011 through TPIPAS internal management specialist training programmes. III also helps industry players to set up systems and conduct preliminary examinations. Nine firms and institutes have been registered and can provide assistance and aid while 17 companies and organisations have received dp certification.

Topic: Dialogue on comparison tools

Speaker: Mr Daver Lau, General Manager, Amadeus Taiwan

Mr Lau made the point that because there are more than 1,000 airlines worldwide, the system of booking and selling tickets is now very complicated. The key issues for travelers when searching for an booking online are:

Transparency: Is the listed airfare the real price or are there hidden extra costs?

Neutrality: Are search results neutral? Does it include all airlines flying the route? Why do different results for the same flight have different prices?

Quality/integrity: Is the fare and schedule still valid? Are there still seats available?

EU regulations on transparency and neutrality have had a positive effect on the travel distribution market. For example, airlines are now required to publish fares that are inclusive of all taxes, charges and fees which are unavoidable. In addition, search results must be really neutral to all participating carriers.

Computerised Reservation Systems (CRS) provide efficient distribution platforms that safeguard the interests of travellers and address the key concerns of transparency, neutrality and quality/integrity by providing the widest range and transparent comparison of fares, availability and schedules amongst airlines, hotels and railway companies, which includes fares and ancillary prices whenever content is

provided by travel providers in a neutral and transparent manner that is also always up-to-date in terms of pricing and availability.

With a CRS, what you see is what you get including a full fare plus a breakdown of various parts. The system is also able to recommend a combination of air and rail options. Schedules and availability dates are updated very often so the chances of there being no vacancies are very low.

Things are changing fast in the travel distribution industry. For example, there are new distribution platforms and a growing trend of unbundling of travel inventories. This model, adopted by Low Cost Carriers (LCCs), is likely to be followed by full service airlines to some extent. The practice of unbundling products makes it very difficult to compare travel services. In addition, new technologies are changing consumer behaviour while review sites are becoming more important to users. This is affecting how consumers interact with offerings and providers. This has both positive and negative effects. The positive effect is a greater variety of products and services. On the negative side, new players and new business models/commercial practices are affecting transparency and neutrality. Unbundling will require greater transparency.

Mr Lau concluded that EU regulations set a good basis to protect consumers but enforcement needs to be significantly enhanced to improve transparency, neutrality and fair competition. In this regard CRS can play a critical role in facilitating a transparent, neutral and comprehensive online distribution of travel products and services. Finally, new technologies are making mass customization possible but this raises the next challenge as to how to protect transparency and neutrality.

Topic: Experience sharing on Taiwan's e-commerce practice

Speaker: Mr Bill Lin, General Manager, PayEasy Digital Integration

Mr Lin introduced his company's experience in doing business in the current regulatory environment.

He expressed the view that Taiwan's PIPA is as strict as Japan's rules but in practice it does not work very well because criminals are very creative in finding new ways to cheat consumers. For example, fraudsters just need to hack into one or two databases to get access to personal and transaction data. He recommended that consumers exercise more vigilance and be more proactive in security arrangements such as changing their pin numbers frequently. While vendors do not want to disclose information about security breaches, Mr Lin expressed the view that the government should force disclosure of these incidents.

There are a number of areas of consumer protection that still need to be worked out. For example, what happens when a company which has issued coupons to customers goes out of business? While it is easier to enforce a company's legal obligations in the case of large companies such as department stores, many small stores will not abide by regulations. Taiwan also maintains a number of restrictions, for example on the sale of alcohol and tobacco products.

While third party payment providers have been successful because they act as intermediaries and thereby solve the problem of contracting parties not knowing each other, they also have unwanted side effects, such as criminal activity. In Mr Lin's view Taiwan is lagging behind in third party payment services given very tough regulations which make doing business difficult for them. He recommended that government officials go through the actual experience of buying items online so that they can gain first-hand experience of the problems involved so that they can make the necessary reforms to the regulatory system that would allow vendors to improve their services.

Panel discussion

On a question as to how to protect one's data online, Mr Lin said that one should always assume that any information uploaded to or sent to someone over the internet will be disclosed. He therefore recommended never putting anything you don't want to be disclosed on the internet.

On a question of crowd funding, the EU does not have harmonized regulations. Only the UK and Estonia have specific regulations while other Member States are still discussing the issue. At the moment, the EC does not regard it as necessary to have common regulations on crowd funding since it is related to credit and investment and not third party payments.

On a question of a case involving the Taipei City Government and Google, the conclusion was that traders need to provide full disclosure to consumers regarding payments for Apps or provide a free trial period given that informed disclosure and consent is compulsory and any violation may be subject to penalties.

Session 3: Resolving consumer disputes arising from online transactions

Moderator: Dr Wu Jiin-Yu, Commissioner, Committee of Consumer Protection, Department of Consumer Protection, Executive Yuan & Professor, College of Law, National Chengchi University

Topic: Settlement and analysis of cyberspace consumer dispute cases settlement

Speaker: Mr Wang De-Ming, Senior Consumer Ombudsman, Department of Consumer Protection, Executive Yuan

Mr Wang shared some case studies of dispute settlement in Taiwan. The Consumer Service Centre deals with disputes. When a complaint is filed with the Consumer Service Centre, the centre contacts the traders and asks them to properly settle the case. If there is no resolution within 15 days, a second complaint is filed and the local government and consumer ombudsmen invite the concerned consumer and trader to negotiate. If there is no result, the next stage is mediation where the Consumer Dispute Mediation Committee invites the concerned consumer and trader to mediate. If mediation does not work, the case may proceed to litigation.

Mr Wang spoke about the case of Groupon's Taiwan operations. Authorities became concerned when media reports indicated that the company was planning mass employee layoffs. Since Groupon is the biggest company of its kind in North America and also the second largest in Taiwan (with 800,000 members), its withdrawal from the Taiwan market would have a serious impact on its Taiwanese members' rights and interests. In addition, the company did not only provide a platform. It also sold physical products and vouchers. Authorities contacted the company to ask them to clarify how termination of its operation would affect consumer interests, information on how to exchange coupons or get refunds and to provide a contact window for the government and consumers. Mr Wang reported that the company's response set a good example of how to wind up a company's operations. The company sent emails to each member informing them of their rights, when the company would officially close its business in Taiwan, how long customers would be able to apply for refunds and that physical stores would accept commodities returned within 7 days of delivery to the consumer. They also set up a customer service contact e-mail and a hotline.

Given the prevalence and rapid growth in e-commerce, the volume of complaints in Taiwan is not that high. The highest proportion of online transaction complaints (41%) in Taiwan are related to online auction (bidding) sites. Of the two major online bidding companies in Taiwan, Yahoo and Ruten, complaints to Yahoo have been steadily decreasing but complaints regarding Ruten have seen a sharp rise. Complaints include payments being made and goods not delivered, defective products, or poor service regarding the 7-day return period.

In response to complaints, authorities now require traders to list a customer service hotline number and e-mail address on their official website homepage, establish a contact point with the government, hold a meeting once a quarter to review progress, announce news about consumer dispute cases related to their internet shopping platform (including internet fraud, if necessary).

In a case involving Mintyshop, many consumers who had used the site were charged membership fees without being notified and did not receive items they had purchased. In the settlement agreement, banks issuing credit cards are required to send messages to their customers to inform them when a membership fee charging requested has been sent by Mintyshop. According to Wang, Mintyshop has also responded positively to their request to resolve payment issues and the number of complaints has since dropped considerably.

In the case of LINE, the instant messaging App, there were a lot of complaints from customers of not being able to access paid tokens and stickers and, in instances of “improper behaviour” by users of LINE’s online games, users accounts would be suspended. In addition, when customers changed phones, the tokens they had paid for by credit card would totally disappear.

Following contact by the authorities the company responded positively. It set up a customer service platform (its first outside Japan) and service system that answers consumers within 48 hours. In addition, the company agreed that if customers’ accounts are deleted because of servers transferring or being hacked, it will compensate customers for the tokens and stickers they purchased. For purchases of tokens by minors without consent, the company agreed to refund the amount paid for the tokens.

Mr Wang outlined some common trading dispute areas. Many domestic internet auction website operators often use the excuse that they only provide trading platforms and are not vendors. Therefore they claim that they are not subject to the Consumer Protection Act. Moreover, operators are not proactive in designing fair trading methods and just let disputes happen.

In addition, since real names are often not used, it is sometimes not possible to contact the counterparty in a dispute. For overseas cases, most traders do not have domestic customer service personnel to settle dispute cases, so there are lots of unanswered complaint cases, and even the answered ones do not satisfy consumers. Moreover, overseas operators are only subject to laws in their jurisdictions, meaning that consumers need to sue and claim recourse in foreign countries.

In conclusion, Mr Wang offered several suggestions for consumers shopping online: Don’t trade with vendors privately, keep receipts after making payments, use third party payment services (cash on delivery) or pay by credit card if possible.

Topic: EU mechanisms for the resolution of (cross-border) consumer (online) disputes: The New ADR and ODR framework

Speaker: Dr Stefaan Voet, Associate Professor, University of Leuven, Belgium

According to the 2015 EU Consumer Scoreboard, 59% of business-to-consumer (B2C) companies are still not selling online while most retailers only sell to local consumers (only 12% of B2C sales are to other EU countries and 14% to non-EU countries). Moreover, while the percentage of the population who purchase goods online has been steadily rising, fewer than 15% of consumers ordered goods from sellers in other EU countries and fewer than 10% from outside the EU.

The underlying problem is a gap in confidence as 61% of consumers are confident about buying goods in their own country, but only 38% of people trust retailers in other countries. This is a missed opportunity

meant to be realized by the single market as consumers could enjoy an estimated saving of €11.7 billion if they could choose from the full range of goods available online within the EU. According to statistics quoted by Dr Voet, small online businesses wishing to trade in another EU country face €9,000 in extra costs from having to adapt to local laws. If the same rules for e-commerce were applied across the EU, it is estimated that 57% of them would either start or increase trade with other EU countries. It is one of the aims of the Digital Single Market to address this.

By creating an efficient mechanism to resolve consumer disputes, it is hoped that consumer confidence will be enhanced. For disputes involving small amounts it does not make sense to go to court. In 2013, the EC recommended common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution (ADR) for consumer disputes provides a harmonized basis to settle cases out of court. Regulation 524/2013/EU of the European Parliament and of the Council of 21 May 2013 on online dispute resolution (ODR) creates a pan-European Online Dispute Resolution platform. Both instruments will be the framework for the future.

The ADR Directive sets out procedures for the out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales or service contracts between an EU consumer and an EU trader through an ADR entity, proposing or imposing a solution or bringing parties together with the aim of facilitating an amicable solution. At present there is insufficient awareness of ADR, insufficient coverage (it is not available in every sector) and a lack of harmonization of quality standards for ADR entities and procedures (there are around 750 ADR schemes in Europe with different structures and names).

While the Directive sets overall goals and quality standards, Member States are free to implement as they see fit but there are binding quality standards for ADR-entities and procedures. For example, ADRs must be accessible via publicly-available websites and publish annual activity reports. Procedures should be easily accessible or free of charge and outcomes must be available within 90 days

Belgium has implemented the Directive and Dr Voet gave a brief overview of Belgium's ADR body, the Consumer Mediation Service. The board of the Service is composed of six existing ombudsmen. It provides a single access point (website), available in four languages. Filing a complaint is very simple. Users just need to visit the website and fill out an online form. The service will then forward the complaint to an existing ADR entity or, if one does not exist, deal with it directly. The service can only mediate disputes and try to reach a settlement. If not, it can issue a recommendation. It can also name and shame traders who are deemed to have behaved unfairly. Consumers can then take the case to court to obtain relief.

The ODR Regulation covers out-of-court resolutions of disputes concerning contractual obligations stemming from online sales or service contracts between an EU consumer and an EU trader through the intervention of an ADR entity listed in accordance with the ADR Directive. As the name implies it can only be used for online transactions. The whole process is to be conducted online. Only ADR entities will be able to use the ODR platform. The ODR platform is currently in the testing phase and is only set to be launched in 2017 as a single point of entry for consumers and traders seeking an out-of-court resolution of disputes. It will be accessible in all official European languages. A network of ODR contact points in Member States will exchange information with their counterparts in other states.

To use the system will require filling out an electronic complaint form. The information will be used to determine the competent ADR entity. The complaint will then be transmitted to the respondent party. Both parties have to agree on an ADR entity. Once this is done, the ADR entity takes over.

The form will be translated using an automated system. Dr Voet said that this is the biggest challenge now since the form needs to be sent to the counterparty in his/her own language.

Dr Voet went on to describe Belmed, a platform for out-of-court consumer dispute resolution employed by Belgium's Federal Public Service (FPS), which provides a service for consumers and business to reach resolutions of disputes with the help of an independent ADR body. Complaints can be filed by an individual or a company or on behalf of someone else (such as a legal representative). When the form is uploaded it is automatically sent to the competent ADR body. Contrary to the ODR Regulation, parties do not have to agree on an ADR body. The service has been welcomed by businesses.

Dr Voet concluded that it is good to have a platform but it is important to integrate ADR, ODR, regulatory enforcement and litigation systems in order to be effective in resolving disputes.

Topic: Recent developments and studies on cross-border dispute resolution mechanisms

Speaker: Dr Jimmy Yu, Associate Professor, Soochow University

A lot of changes have been made to laws governing e-commerce given its increasing share of trade and importance. This has also raised the need for dispute resolution mechanisms.

In Taiwan there are state, self and co-regulation dispute resolution mechanisms available. Self-regulation is used by the Net Consumer Association, the Secure Online Shopping Association and the Travel Assurance Association. Co-regulation is used by financial associations such as the Securities and Futures Investors Protection Centre.

Dr Yu concluded that it is challenging to amend current regulations and when establishing platforms for consumer protection and that learning from the experience of Belgium would be useful. How dispute resolution platforms are funded is important as is coordination across government agencies. Companies should be encouraged to set up their own mechanisms and online commerce players should be leaders in such initiatives since such platforms would serve as a kind of re-insurance for them. Once they are part of the process they can promote the good rather than focus on the bad and thereby help to minimize malpractices. The problem is that no one wants to take the first step.

Panel discussion

On a question of what happens if companies do not cooperate when asked to address consumer complaints, Mr Wang said that, according to the recently-amended Consumer Protection Law, fines can be imposed if companies do not take remedial action. Besides fines, the government discloses the number of disputes and comparative figures on a quarterly basis, which puts pressure on traders to take action.

On a question about ODR platforms, Dr Voet said that the EU's ODR platform can only be used by ADRs which fulfill the requirements of the ADR Directive. Member States' governments are responsible for checking if they fulfill the requirements. If there is a problem, entities could be removed from the list of qualified ADRs. He noted that in Belgium, there are a lot of sectors that do not have entities but, in response to this vacuum, many players, including retailers, are now creating their own entities because they don't want their disputes to be resolved by residual bodies.

Dr Yu pointed out that while setting up entities to deal with disputes in Taiwan is good, it is important to find ways to deal with disputes involving online companies based in China.

Closing remarks

In her closing remarks, Ms Tsai Yu-ling, Minister without portfolio, said that the government had high expectations for the seminar given the impact that the internet has on our lives and business. Standard contracts for the virtual world and internet transactions may need different provisions from other types of commerce. Disputes regarding small payments need to be resolved in an efficient way. Moreover, personal data protection is especially important in a borderless world. While the internet brings global business opportunities, it also presents global problems. She concluded that the seminar provided new ideas for new solutions and that the opinions and ideas expressed at the seminar would serve as an important reference for the government's future policies.