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COLLEGE OF LAW AND GOVERNANCE STUDIES

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Consumer Protection under Ethiopia's E-commerce law

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Acronyms

ADR - Alternative Dispute Resolution

Art. - Article

B2B - Business-to-Business

B2C- Business-to-Consumer

C2C - Consumer-to-Consumer

CRD - EU Consumer Rights Directive

CRPD - Convention on the Right of Persons with Disability

ECA - Ethiopian Communications Authority

E-commerce - Electronic Commerce

E-communication - Electronic Communication

E-consumer - Electronic Consumer

EDI - Electronic Data Interchange

E-market - Electronic Market

E-payment - Electronic Payment

E-signature - Electronic Signature

ETP - Electronic Transaction Proclamation

E-traders - Electronic Traders

E-transaction - Electronic Transaction

EU - European Union

E-vendor - Electronic Vendor

FCP - Financial Consumers Protection Directive

GTCCPL - General Consumer Protection Law

ICC - International Chamber of Commerce

ICT - Information Communication Technology

MIInT - Ministry of Innovation and Technology

NBE - National Bank of Ethiopia

NPS - National Payment System

OECD - Organization for Cooperation and Economic Development

ODR - online dispute resolution

SAECETA - South African Electronic Communications and Electronic Transactions Act

Sec. - Section

UCPD - The EU Unfair Commercial Practices Directive

UN - United Nations

UNCITRAL - United Nations Commission on International Trade Law

WTO - World Trade Organization

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Abstract

In this work, the consumer protection scheme under Ethiopian e-commerce law is examined to determine whether it requires improvements to enhance e-consumers' protection. In doing so, apart from consulting electronic libraries, the ETP and related laws and preparatory documents for the laws as well as secondary sources, the EU, OECD and SAECETA models are reviewed in context. Accordingly, the finding reveals that Ethiopia's e-commerce law demands improvements in terms of protection mechanisms ranging from defining the nature, scope and effects of consumer transactions and parties to e-consumer contracts through forms of protection to enforcement of e-consumer rights.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

In the newly emerging digital economy, electronic commerce (e-commerce) has been a major phenomenon since its inception around 1990s.¹ Along with the mushrooming information technology, e-commerce has been steadily increasing, both in terms of coverage and number of users.² Recently, it has been reported that COVID-19 has accelerated the growth in e-commerce.³ Electronic consumer purchases are regarded as the main drivers for the increase of e-commerce.⁴ The benefits of electronic purchase of goods or services, through providing wider choices and lower prices for consumers, further promote the participation of consumers in e-commerce.⁵ This is mainly facilitated through the instrumentality of Internet networking.⁶ The Internet helps consumers quickly and efficiently shop online at any time and from everywhere, regardless of physical borders.⁷ This emanates from “unboundedness, virtuality and multiplicity” of information over the World Wide Web.⁸

There are, however, a range of electronic consumer (e-consumer)-specific problems, inherent to electronic commercial communications.⁹ The anonymity of persons and non-physical communications in virtual relations threaten consumers’ security of their transactions and create related privacy issues.¹⁰ The ubiquitous information network infrastructure, particularly the Internet, also creates challenges in determining the applicable law and jurisdiction.¹¹

¹ OECD, ‘Toolkit for Protecting Digital Consumers: A resource for G 20 policy makers’, (2018), 5.

² Naoshi Takasugi, 'E-Commerce Law and the Prospects for Uniform E-Commerce Rules on the Privacy and Security of Electronic Communications' (2016) 33 *Ariz J Int'l & Comp L* 257, 257 .

³ United Nations Conference on Trade and Development, ‘Impact on Businesses and Policy Responses: COVID 19 and E-commerce, (2020), 8.

⁴ OECD, n 1.

⁵ Salvatore Mancuso, 'Consumer Protection in E-Commerce Transactions: A First Comparison between European Law and Islamic Law' (2007) 2 *J Int'l Com L & Tech* 1, 1.

⁶ Juwenie, Ahmadi Miru, Juajir Sumardi and Hasbir Paserangi, 'Consumer Protection in E-Commerce Transactions in Indonesia' (2016) 47 *JL Pol'y & Globalization* 131, 131.

⁷ Rajiv Khare and Gargi Rajvanshi, 'E-Commerce and Consumer Protection: A Critical Analysis of Legal Regulations' (2013) 1 *IJCLP* 55, 56.

⁸ *Ibid.*

⁹ Anne Salaiin, consumer protection issues, in Ian Walden and Julia Hornle, *E-Commerce Law and the Practice in Europe*, 2001, (Woodhead Publishing), 1.

¹⁰ Wenette Jacobs, 'The Electronic Communications and Transactions Act: Consumer Protection and Internet Contracts' (2004) 16 *S Afr Mercantile LJ* 556, 556.

¹¹ Faye Fangfei Wang, *Law of Electronic Commercial Transactions*, (2ndedn, Routledge, 2014), 32.

Additionally, the changes in technology expose vulnerable consumers to various risks due to their age, disability, minority and other recognizable disadvantageous positions.¹²

In response to these challenges, national and international policy initiatives came up with rules governing e-consumer protection issues. The model laws on e-commerce and electronic signature (e-signature) and the 2000 European Union (EU) E-commerce Directive contain some consumer protection rules.¹³ The United Nations (UN) Guidelines on Consumer Protection¹⁴ and the Organization for Cooperation and Economic Development (OECD) Recommendations for Consumer Protection in E-commerce¹⁵ are international legislative initiatives, which are commonly referred particularly on protection of e-consumers. The UN Guidelines were revised in 2015 to include e-consumers.¹⁶ In contrast, the OECD Recommendations for Protection in E-commerce have comprehensive rules on e-consumer rights, such as rights to information, protection against misleading business practices, confirmation processes and access to effective dispute resolution mechanisms.¹⁷ It also addresses, among others, protection of consumers in non-monetary transactions, purchase of digital content products and business practices facilitating consumer-to-consumer (C2C) transactions.¹⁸

The exponential growth of e-commerce has forced countries to issue national laws to protect e-consumers. Ethiopia initially attempted to address the challenges in legal recognition of electronic communications (e-communications) under some area-specific legislations, such as the NPS Proclamation and the Customs Proclamation that gave legal effects to electronic payments (e-payments) and electronic customs procedures.¹⁹ The Explanatory Notes on the E-signature Proclamation also recognized this lacuna in prior legislations, hence, state that it is crucial to adopt the e-signature law to promote e-communications.²⁰ Except for a mention of

¹² Mary O'Hara, 'Forward' in Christine Riefa and Séverine Saintier, *Vulnerable Consumers and the Law*, (Routledge, 2021), 1, xiv.

¹³ Paul Todd, *E-Commerce Law*, (1 edn, Cavendish Publishing Limited, 2014), 180-228, 180.

¹⁴ General Assembly, 'United Nations Guidelines for Consumer Protection', (UNCTAD/DITC/CPLP/MISC/2016/1), (2015).

¹⁵ OECD Recommendations for Protection of consumers in E-commerce (2016).

¹⁶ Nandini CP, 'B2C E-Commerce and Consumer Protection with Special Reference to India - ADR a Best Possible Solution' (2018) 6 *IJCLP* 74, 77.

¹⁷ OECD, n 1.

¹⁸ OECD Recommendations, *N 15*, the Preamble.

¹⁹ NPS Proclamation and the Customs Proclamation; Gebrehiwot Entehawu Desta, 'Enforceability of electronic contracts in light of the Ethiopian General Contract Law: appraising the issues', (2019) *Information and Communication Technology Law*, 28:1, 46.

²⁰ 'Explanatory Notes on the Electronic Signature Proclamation', (House of Peoples Representatives, (2018), 5.

consumers under the NPS Proclamation,²¹ neither the e-signature law nor other prior laws have specific rules on protection of e-consumers. The National Bank of Ethiopia (NBE) and the Ethiopian Communications Authority (ECA) have also respectively developed the Financial Consumers Protection Directive (FCP)²² and the Telecommunications Consumer Rights and Protection Directive with some e-consumer provisions.²³

However, Ethiopia's legislative intervention through the Electronic Transaction Proclamation (ETP)²⁴ for the regulation of e-commerce in general and consumer protection in particular is an important measure that resolves the ambivalence that pre-existed its promulgation. The Proclamation, inter alia, deals with the applicability of the law in e-commerce,²⁵ the functional equivalence of electronic transactions (e-transactions) to paper-based transactions,²⁶ the rules governing e-communications,²⁷ the extent of liability of intermediaries,²⁸ the rules on consumer protection,²⁹ the duties of e-commerce operators, e-commerce platform operators and e-commerce intra-platform operators, and the dispute settlement mechanisms to be adopted in e-commerce.³⁰ Therefore, it is within this general framework of the law and special emphasis on the consumer protection provisions that this paper examines the adequacy of e-consumer protection.

1.2 Statement of the Problem

Defining e-consumers is central to the application of consumer legislation. Consumers are typically regarded as average and vulnerable customers for effective consumer protection purposes.³¹ In this respect, the general understanding of e-consumers in the ETP is not clear. It does not also explicitly put its boundary with other consumer laws in their respective areas, such as the financial laws, communication service laws etc. This easily becomes a source of potential conflicts.

²¹NPS Proclamation; Simret Zewdie Kebede, *Electronic Funds Transfer and the Case for Consumer Protection in Ethiopia*, (LLM Thesis, University of Oslo, 2013), 10.

²² The FCP directive, 2020, NBE, Directive no. 001.

²³ Communications Services Directive, 2021, ECA, Directive No. 832.

²⁴ ETP, 2020, neg., gaz., Proclamation no. 1205, year 26 No. 57.

²⁵Ibid., Art.3/1(b)

²⁶Ibid., Arts.7-18

²⁷Ibid., Arts.19-22

²⁸Ibid., Arts.23-27

²⁹Ibid., Arts. 28-34

³⁰Ibid., Arts.41-42

³¹Tesfaye Neway, *Aspects of Law and Economics in Competition and Consumer Protection*, (Addis Ababa, 2013), 240.

Consumers in the ETP can withdraw from e-consumer contracts within seven days without reason or within fourteen days for non-compliance of suppliers with information disclosure rules.³² For practical and policy reasons, laws, including the South African Electronic Communications and Electronic Transactions Act (SAECETA),³³ from which Ethiopia's e-consumer protection provisions are directly copied (as can be comprehended from a simple comparison of the two), exclude certain services and goods, such as financial services and goods made on consumer specification, from the scope of withdrawal rights. In exercise of withdrawal rights, the ETP has many issues for consideration and vague rules for clarification. The Proclamation is also silent on its impact on protection of e-consumers in their non-monetary transactions and forms of consumer remedies. It does not also seem to have clear and adequate information disclosure rules.

Apart from the Ministry of Innovation and Technology (MInT)'s general mandate to issue a directive on consumer protection and receive complaints from consumers,³⁴ the Proclamation is vague in indicating its specific competence over consumer disputes, its power of applying the ETP in regions and city administrations, and its relations with other concerned bodies for enforcement of consumer rights, which require clarity. The implications and rules of private international law,³⁵ are not well-tailored. In terms of understanding e-consumers, forms of protection accorded to them and the legal and institutional framework for enforcement of e-consumer rights, this work, thus, attempts to explore whether the Ethiopian e-commerce law requires improvements in order to better protect e-consumers.

1.3 Research Question

This research mainly aims at answering the following research question:

- i. Does the Ethiopian e-commerce law require improvement to enhance consumer protection?

1.4 Objectives of the Research

This research has the following objectives:

- i. to evaluate the notion of e-consumers and scope of consumer transactions;
- ii. to examine the adequacy of protective, remedial and security measures for protection of e-consumers;

³²ETP, n 24, Art.29

³³ SAECETA, No. 25, (2002), Sections: 42-49.

³⁴ETP, n 24, Art.5/2(d), 34.

³⁵Ibid., Art.32

- iii. to assess the role of the institutional framework in enforcement of e-consumer rights; and
- iv. ultimately, to identify areas of the Ethiopian e-commerce law that may require improvement to enhance consumer protection.

1.5 Significance of the Research

According to Gebre-hiwot Entehawu, the general contracts law in the Ethiopian Civil Code does not sufficiently recognize electronic contracts.³⁶ The Code also does not address many issues of consumer protection in e-commerce. Yohannes Mebrate also argues for the reorientation of Ethiopian laws to some noble anti-competitive conducts in ecommerce in relation to “control of data, net neutrality, free offer of products and disruptive innovations.”³⁷ In the opinion of this researcher, these can harm the welfare of e-consumers.

This research explores the e-commerce law and assesses whether the law requires improvement to enhance the protection of e-consumers. Accordingly, it informs policymakers, legislators, consumer advocacy groups, consumer associations and other concerned bodies of these findings to play their respective roles on improvements to the law. Besides, it is believed that the findings can modestly be sources of information for future researchers, students, judges and anyone who seeks knowledge in this field of study.

1.6 Scope of the Research

This research focuses on issues and discussions pertaining to the consumer protection scheme under Ethiopia’s e-commerce law. The term ‘e-commerce law’ covers mainly the part of the ETP that deals with e-commerce. Provisions referred from other laws, such as the NPS Proclamation, the E-signature Proclamation and Ethiopian financial laws, would also be regarded as part of e-commerce law, as they are relevant for the subject-matter.

1.7 Methodology of the Research

This research is mainly doctrinal. Both primary and secondary sources are used for data collection and analysis. Digital libraries and collections of various offices, including the collection in the House of Peoples’ Representative, were electronically and physically visited to collect materials. The research systematically explores the consumer protection scheme from the

³⁶Gebrehiwot, n 19.

³⁷Yohannes Mebrate, ‘The regulation of the future e-commerce and competition, in Kinfe Michael Yilma (The Internet and Policy Responses in Ethiopia, vol. 3, 2020), 123.

e-commerce law's point view. The research employs the following techniques for analysis and interpretation of the data.

a) Documentary Analysis

It explores laws, official notes and the relevant works in the literature. It analyses documents and attempts to draw inferences.

b) Interviews

This research also benefits from interview with MInT personnel. It tries to examine the practice in enforcing the consumer protection regime in its existing form. It also attempts to find out the intention in drafting the consumer protection provisions in the ETP.

c) Comparative Experiences

Depending on the influence they have and the best practices that this researcher thinks should be adopted to have an effective e-consumer protection regime in Ethiopia, the research also reviews three models: the South African, the EU and the OECD models. The UN Guidelines for Consumer Protection, under Guideline 65, provide that members can adopt the OECD Recommendations for protection of consumers in e-commerce in their national laws. In addition to the contemporary issues it covers, the OECD model is selected for its relevance that Ethiopia, as a member of the UN, may use it to enhance consumer protection in its domestic laws. The EU model is also advanced in every aspect of consumer protection. It has a number of directives on specific consumer protection issues in a detailed and comprehensive manner. This work refers to the best practices of this model whenever it is relevant. Finally, a simple comparison of the SAECETA and the ETP reveals that the former has heavily influenced the latter, which necessitated comparison of Ethiopia's e-commerce law with the SAECETA for better analysis of issues.

1.8 Organization of the Research

The paper has four chapters in which various discussions in plenty of sections are made. The first chapter deals with introductory remarks. It covers, among others, the background of the research, statement of the problem, the research question, the objectives and methodology of the research. The second chapter marks the opening of discussions in the main body of the research in light of the existing literature. Accordingly, it provides the background for understanding e-commerce and consumers. It also deals with forms of protection of consumers and the rationales

for consumer protection in e-commerce. It refers to the EU, OECD and SAECETA models for their legislative responses to forms of consumer protection.

The third chapter takes up the discussion into Ethiopia's e-commerce law, with a special emphasis on the consumer protection regime in place. It analyzes Ethiopia's e-commerce law under the ETP, particularly its consumer protection section, and in light of other relevant laws. Finally, conclusion, findings and recommendations are provided in the fourth chapter.

1.9 Limitation of the Research

This research has limitations, as the few existing materials in Amharic were inaccessible for proper exploitation with the help of screen readers. However, it appropriately utilized other available resources.

CHAPTER TWO

CONSUMER PROTECTION IN E-COMMERCE

2.1 What is E-commerce?

In history, it is documented that formation of contracts through telegraph and telephone around the mid-1800s has marked the emergence of e-commerce.³⁸ Business-to-Business (B2B) communications with a closed system of Electronic Data Interchange (EDI) technology and the practice of electronic fund transfers under protocolled and closed private networks commonly known as “VPNS” took this root in the 1970s.³⁹ The existing Internet-leveraged commercial e-commerce volume is an extension of these developments.⁴⁰ E-commerce also covers telex, fax, SMS, LAN, and any communication of connected computers.⁴¹ The changes in Information Communication Technology (ICT) do not affect it to the extent it is electronic.⁴²

There is no universally-accepted definition for the term “e-commerce”.⁴³ The World Trade Organization (WTO), the United Nations Commission on International Trade Law (UNCITRAL), the OECD and the International Chamber of Commerce (ICC) are some of the international organizations that defined e-commerce.⁴⁴ These institutions generally view any commercial transaction that involves all or some electronic media as e-commerce.⁴⁵ Poltad narrowly defines e-commerce as any commercial transaction conducted through digital communications.⁴⁶

Currently, the Internet, which is an open network, is central to e-commerce.⁴⁷ It enables consumers to virtually and instantaneously exchange information to optimize their electronic market (e-market) demands.⁴⁸ Facebook, Google, Pinterest, Alibaba Group and Amazon are lucrative within this e-marketplace.⁴⁹ The electronic facilities in this market include, but not

³⁸ Alan Davidson, *the Law of Electronic Commerce*, (Cambridge University Press, 2009), 1.

³⁹ Chris Reed, ‘Electronic Commerce’ in Chris Reed (ed) *Computer Law* (Seventh Edition, Oxford University Press, 2012), 267.

⁴⁰Ibid.

⁴¹Poltad, n 13, ,59

⁴²Ibid.

⁴³ Alan, n 38.

⁴⁴Ibid., 4.

⁴⁵Poltad, n 13, 41.

⁴⁶Ibid 59.

⁴⁷Ibid., 60.

⁴⁸Cristina Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, (1stedn, Markets and the Law, Geraint Howells (ed), Routledge), 38.

⁴⁹Efraim Turban, David King Jae Kyu Lee, Ting-Peng Lian G and Deborah C. Turban, *Electronic Commerce: A Managerial and Social Networks Perspective*, (8thedn, Springer International Publishing Switzerland, 2015), 10.

limited to, e-mail, listserv, telnet, internet relay chat, Usenet news groups, FTP, gopher and the web.⁵⁰ It is within this general framework of e-commerce that this chapter explores the essence of consumer protection and the legal response.

2.2 Who are E-consumers?

There is no uniform definition of e-consumers applicable across all jurisdictions.⁵¹ It is customary for laws to define a “consumer” as a person who engages in purchase of goods and services for private consumption or in non-commercial capacity.⁵² In matters under its coverage, the EU Directive on Consumer Rights recognizes natural persons acting out of their trade, business, craft or profession, or those engaging partially within and partially out of their trade and trade purposes as consumers.⁵³ Similarly, the SAECETA defines a consumer as “any natural person who enters or intends entering into an e-transaction with a supplier as the end user of the goods or services.”⁵⁴

The term consumer in the UN Guidelines also refers to natural persons of any nationality, acting primarily for personal and household purposes.⁵⁵ Member countries are, however, allowed to adopt different definitions to meet domestic needs.⁵⁶ As seemingly implication of this discretion, Australia regards any customer of financial services worth less than forty thousands of AUD as a financial consumer.⁵⁷ If the financial service involves transaction of more than forty thousand AUD, the Australian law extends the definition of consumer upon customers who ordinarily obtain the services for personal or domestic or household uses, or consumption and small businesses acquiring such services for business use and/or consumption.⁵⁸ In most contemporary legal systems, small businesses, due to their weak positions, are increasingly being considered as consumers.⁵⁹

E-consumers can still be understood as average and vulnerable consumers.⁶⁰ The traditional neo-classical economic theory claims that consumers are rational to make decisions depending on the

⁵⁰ Cristina, n 48, 27.

⁵¹Ibid.

⁵²Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union*, (Routledge, 2011), 10.

⁵³ CRD, Directive No 83, (2011), recital 17.

⁵⁴ SAECETA, n, 33, Sec. 1(2).

⁵⁵UN Guidelines, n 14, Article II (3).

⁵⁶ Ibid.

⁵⁷ Andrew D. Schmulow1 and James O’Hara, ‘Protection of Financial Consumers in Australia’, in Tsai-Jyh Chen (ed), *An International Comparison of Financial Consumer Protection* (Springer, 2018), 31.

⁵⁸Ibid.

⁵⁹ Christina, n 48, 45.

⁶⁰Tesfaye, n 31.

presence of all relevant information in the market.⁶¹ Regulatory intervention through consumer laws is needed to fill market failures in the provision of information and consumers whose information barrier is avoided through disclosure rules are average consumers.⁶²

According to the school of behavioral economics, some consumers do not, however, behave rationally.⁶³ These groups of consumers are considered more vulnerable than their counter average consumers for flaws in their cognitive capacity and personal situations.⁶⁴ Vulnerable consumers are those whose decision-making power is compromised as a result of discrimination, disability and other reasons.⁶⁵ The UN Guidelines,⁶⁶ the EU Unfair Commercial Practices Directive (UCPD),⁶⁷ and the OECD Recommendations on Consumer Protection in E-commerce⁶⁸ recognize vulnerable consumers for special considerations.

2.3 Rationales for Consumer Protection in E-Commerce

Consumer confidence is at the core of success in e-commerce.⁶⁹ E-marketplace is unable to keep this core value intact for its failure to discipline the noble risks to e-consumers.⁷⁰ This proves the imperfection of the e-market, which necessitates regulatory interventions.⁷¹ This section explores the unique issues in e-commerce as rationales for protection of e-consumers.

a) Loss of trust in e-transactions

E-transactions are carried out between parties who do not exactly know each other.⁷² The substitution of physical contacts with electronic take-turns puts consumers in positions in which they cannot touch and feel goods sold online and gauge voices, feelings and other forms of

⁶¹Christine Riefa and Harriet Gamper, '*Economic theory and consumer vulnerability: Exploring an uneasy relationship*', in Christine Riefa and Séverine Saintier(Vulnerable Consumers and the Law, Markets and the Law Series, (Routledge, 2021), 52.

⁶²Ibid, 54

⁶³Ibid.

⁶⁴ Christine Riefa and Séverine Saintier, '*In search of (access to) justice for vulnerable consumers*', in Christine Riefa and Séverine Saintier(Vulnerable Consumers and the Law, Markets and the Law Series, (Routledge, 2021), 31.

⁶⁵ Robin Simpson, '*A universal perspective on vulnerability: International definitions and targets*', in Christine Riefa and Séverine Saintier(Vulnerable Consumers and the Law, Markets and the Law Series, (Routledge, 2021), 82.

⁶⁶ UN Guidelines, n 14.

⁶⁷ UCPD, No. 29 (2005), Art.5.

⁶⁸OECD Recommendations, n 15.

⁶⁹ Thomas T Reith II, 'Consumer Confidence: The Key to Successful E-Commerce in the Global Marketplace' (2001) 24 Suffolk Trans Nat'l L Rev 467, 475.

⁷⁰ Cristina, n 48, 64-65.

⁷¹Ibid., 67.

⁷² Rana Tassabehji, *Applying E-Commerce in Business*, (SAGE Publications Ltd, 2003), 37.

human reactions.⁷³ It is this feature of the electronic environment that creates a sense of insecurity.

i. Virtual Organization of E-Market Actors

Websites help to easily reach millions of internet users without having physical presence within the jurisdiction of a country where the e-consumers reside, or with a server located out of such jurisdiction.⁷⁴ E-communications facilitate instantaneous communications and efficient computations as between virtual vendors, e-platform operators, e-consumers and other actors.⁷⁵ This creates a favorable condition for e-consumers to actively participate in e-transactions.⁷⁶ A report that Ebay issued revealed that consumers from India had used its platform to import goods from 141 countries.⁷⁷ For the reasons that e-sellers can make changes on their web-pages any time,⁷⁸ or misrepresent or conceal their real identity,⁷⁹ it is difficult for e-consumers to identify dishonest electronic vendors (e-vendors) from the genuine ones.⁸⁰

ii. Privacy Issues

Innovations in formation of big data are reported for their role in the dwindling privacy of consumers.⁸¹ Billions of websites are indexed through search engines of Google such as: spiders, robots and wanderers, to manage trillions of inquiries.⁸² Individuals may find their 'digital persona' on the web if they make searches to their names using these search engines.⁸³ Without any prior consent from data subjects, consumer preferences, purchases, interests and other related data are tracked down for various subsequent functions.⁸⁴ Electronic traders (e-traders) are nowadays deepening their pockets through collecting consumers' personal data in

⁷³Ibid.

⁷⁴ Cristina, n 48, 77.

⁷⁵Jorg Binding and Kai Purnhagen, 'Regulations on E-Commerce Consumer Protection Rules in China and Europe Compared - Same but Different' (2011) 2 J Intell Prop Info Tech & Elec Com L 186, 189.

⁷⁶ Ashok R Patil and Pratima Narayan, 'Protection of Consumers in Cross-Border Electronic Commerce' (2014) 2 IJCLP 59.

⁷⁷ Ibid.

⁷⁸ Cristina, n 48.

⁷⁹ James P Nehf, 'Borderless Trade and the Consumer Interest: Protecting the Consumer in the Age of E-Commerce' (1999) 38 Colum J Transnat'l L 457, p. 462

⁸⁰Ibid.

⁸¹ Rita S Heimes, 'Privacy and Innovation: Information as Property and the Impact on Data Subjects' (2015) 49 New Eng L Rev 649, 657.

⁸² Alan Davidson, *Social Media and Electronic Commerce Law*, (2ndedn, Cambridge University Press, 2016), 94.

⁸³Ibid.

⁸⁴ Ida MadiehaAzmi, 'E-Commerce and Privacy Issues: An Analysis of the Personal Data Protection Bill' (2002) 16 Int'l Rev L Computers & Tech, 317, 318.

explicit and implicit ways.⁸⁵ Explicit methods of personal data collection involve consumers' engagement in registration at e-commerce platforms through provision of personal information, filling forms of similar functions and through taking part in online contests while information tracking instruments, such as cookies and web bugs, are implicitly employed to collect personal information of consumers.⁸⁶ Both cookies and web bugs are designed in a way they can surreptitiously record various appearances of users on the web.⁸⁷

Predictive analytics may also be made by virtual merchants using the personal preferences of consumers.⁸⁸ In fact, it is not individual preferences of consumers, but a combination of many customers' previous history, which may be amassed and analyzed to prepare the predictive analytics model.⁸⁹ This model helps businesses sell personal data of customers for future commercial gains.⁹⁰ A fierce competition between e-businesses is created, which is what Shoshana Zuboff calls "surveillance capitalism", which is a new economic order that vows human experience as free raw material for translation into behavioral data that can be transformed into proprietary behavioral surplus.⁹¹

iii. E-Payment Issues

E-consumers use digital wallets, new payment systems, crypto-currencies and unregulated financial institutions in their purchases.⁹² They demand sufficient guarantee to confidently engage in such transactions.⁹³ Their confidence is mainly built upon the existence of secured payment system, affordable e-payment instruments and adequate mechanism of ensuring e-payment system and neutralizing e-payment risks backed by legal provisions.⁹⁴

⁸⁵Jehirul Islam, 'Consumers' Data Privacy in E-Commerce: Concerns, Legal Issues and Challenges' (2020) 10 GNLU JL Dev & Pol 77, 80.

⁸⁶Ibid.

⁸⁷Alen, n 82, 99

⁸⁸ Spencer, S. B., Privacy and predictive analytics in e-commerce, 631

⁸⁹Ibid.

⁹⁰Ibid.

⁹¹ Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, (Hachette Book Group, 2019), 14.

⁹²Mark E. Budnitz, 'Principles and Programs to Protect Consumers from the Deleterious Effects of Technological Innovation', in Dan Wei, James P. Nehf, and Claudia Lima Marques (eds) *Innovation and the Transformation of Consumer Law: National and International Perspectives*, (1stedn, Social Sciences Academic Press, 2020), 13.

⁹³Ibid.

⁹⁴ Cristina, n 48, 91

The security of e-payment systems might be endangered with human intervention or technological default.⁹⁵ Through interception of payment card details,⁹⁶ hackers make unauthorized payments for their own purchases.⁹⁷

Fraudulent e-vendors could also engage in legitimate business practices, such as businesses facilitating online auctions, to collect money from consumers and disappear without delivering the merchandise.⁹⁸ On the other hand, payment card details are collected by sham websites not to directly settle in the accounts of consumers.⁹⁹ A sham trader in the course of its transactions with legitimate traders makes use of the stolen credit card details but effects purchases from its account.¹⁰⁰ The credit details of consumers simply enable bogus businesses to compete as genuine as they are with reputable business operating on websites of similar functions.¹⁰¹ Besides, it is equally important to raise accessibility challenges of e-payment methods to vulnerable consumers.¹⁰²

b) Information Asymmetry

Information asymmetry exists when there is a knowledge divide between a consumer and trader over a product or service on which the trader has control.¹⁰³ It is more practiced in e-commerce.¹⁰⁴ Information is central to informed choice and decision making by consumers in light of their social, ethical, health, environmental and economic realities.¹⁰⁵ Frustration of e-consumers begins with loss of trust in their transactions with e-vendors for reasons of privacy, payment, and other technical issues.¹⁰⁶ This can be seen as one aspect of information asymmetry. Mostly,

⁹⁵Ibid.

⁹⁶Poltad, n 13, 205.

⁹⁷Ibid.

⁹⁸Ibid.

⁹⁹Ibid, 206.

¹⁰⁰Ibid.

¹⁰¹Ibid.

¹⁰² Sabrina Rochemont, '*Payments Revolution Toward Financial Exclusion or Inclusion?*', in Cătălin-Gabriel Stănescu and Asress Adimi Gikay (eds) *Discrimination, Vulnerable Consumers and Financial Inclusion: Fair Access to Financial Services and the Law*, Routledge Research in Finance and Banking Law Series, 2021), 116.

¹⁰³ Cristina, n 48, 116

¹⁰⁴ United Nations Conference on Trade and Development, Trade and Development Board, Trade and Development Commission, 'Intergovernmental Group of Experts on Consumer Protection Law and Policy Second session', (Geneva, 3-4 July 2017), 4

¹⁰⁵ Alina Popescu, 'The Evolution of the Right to Information of the Consumer: References to European Policies and Legislation with Effects on Internal Law' (2018) 4 JL & Pub Admin 77, 81.

¹⁰⁶ Cristina, n 48, 138.

information asymmetry is, however, created in the forms of non-disclosure of information, misleading online advertisements and spams.¹⁰⁷

i. Non-disclosure of Information

The failure of e-traders to place the required information on their e-communication tools refers to the notion of non-disclosure.¹⁰⁸ Information may be deemed undisclosed when: (1) it is not granted to e-consumers or is not communicated at all, and (2) an improper way is used to disclose the information.¹⁰⁹ In the first scenario, e-vendors are required to make a reasonable list of information which may, among others, include the identity of the e-vendors, the characteristics of goods or services, the terms and conditions of the transactions and many other important details.¹¹⁰ This aspect of disclosure mainly involves what to disclose.

In the second scenario, non-disclosure is associated with the way information is presented.¹¹¹ E-consumers may face challenges from the medium in which information is stored,¹¹² the technical and legalese nature of the language.¹¹³ Generally, information asymmetry may happen if the information is not presented in an accessible, conspicuous, clear and intelligible manner.

ii. Misleading Online Advertisements and Spams

The role of advertising in shaping the behavior of e-consumers and their preferences towards goods and services is not subject to debate.¹¹⁴ Nowadays, countless Internet users are easily reached through online advertisements.¹¹⁵ Advertisers target consumers through social media platforms, search engines, pop-up ads, visual and banner ads.¹¹⁶

The obscurity of a message in online advertisement is central in analysis of information asymmetry.¹¹⁷ An information asymmetry comes to picture if the online advertisement contains

¹⁰⁷Ibid., 124-160.

¹⁰⁸Ibid.

¹⁰⁹Ibid.

¹¹⁰ David Waite, 'Consumer Protection Issues in Internet Commerce' (1999) 32 Can Bus LJ 132, 135

¹¹¹ Cristina, n 48, 125

¹¹²Ibid.

¹¹³Mark, n 92.

¹¹⁴ Jan W. Wiktor and Katarzyna Sanak-Kosmowska, *Information Asymmetry in Online Advertising*, (Routledge Studies in Marketing, Routledge, 2022.), 543.

¹¹⁵Kanchana Kariyawasam & Shaun Wigley (Online shopping, misleading advertising and consumer protection, 2017), information and communication technology law, 3.

¹¹⁶Ibid.

¹¹⁷ Jan and Katarzyna, 114, 66.

inaccurate, ambiguous and incomplete commercial information about the goods or services, it promotes.¹¹⁸ Besides, spams may be used to reach e-consumers in a misleading way.¹¹⁹

c) Unequal Bargaining Power

The notion of unequal bargaining power is traditionally recognized as a discrete rationale for consumer protection.¹²⁰ The new electronic environment has transposed the usual powerless position of consumers into more powerless situation.¹²¹ The concept of unequal bargaining power is described in terms of unfair online standard contracts and ineffective online dispute resolution (ODR) redress packages.¹²²

i. Unfair Online Standard Contracts

Online standard contracts do not grant e-consumers a latitude to negotiate on the terms.¹²³ They are mass contracts addressed to e-consumers of anywhere, regardless of national legal systems.¹²⁴ It is of practical necessity or no choice for e-consumers to adhere to such unilaterally designed terms and conditions on a 'take or leave it' basis.¹²⁵ shrink-wrap, click-wrap and browse-up agreements epitomize online mass contracts.¹²⁶

E-vendors approach consumers to adhere to wrap contracts, the terms of which may appear in a scroll box or behind a hyper link, on several pages or all on one page.¹²⁷ Consumers may also be requested to click on 'accept button' to show assent or their continued use may be deemed as acceptance.¹²⁸ In case, online contracts founded on early objectives of software companies to combat unauthorized copies of their software sales through wrap licenses are nowadays used to check e-mails, purchase products, download music and join social networking sites.¹²⁹

¹¹⁸Ibid.

¹¹⁹ Cristina, n 48, 141.

¹²⁰Ibid.

¹²¹ Ajar Rab, 'Smart Contracts & Block chain: The Panacea to the Unequal Bargaining Power of Consumers?' (2020) 8 IJCLP 40, 42

¹²² Cristina, n 48, 45.

¹²³ Aonghus McClafferty, 'Effective Protection for the E-Consumer in Light of the Consumer Rights Directive' (2012) 11 Hibernian LJ 85, 118

¹²⁴ Immaculada Barral, 'Consumers and New Technologies: Information Requirements in E-Commerce and New Contracting Practices in the Internet' (2009) 27 Penn St Int'l L Rev 609, 621

¹²⁵ Ajar, n 121, 45.

¹²⁶ Roy J. Girasa, 'Click-Wrap, Shrink-Wrap, and Browse-Wrap Agreements: Judicial Collision with Consumer Expectations' (2002) 10 Ne J Legal Stud 102, 103-116

¹²⁷ Nancy S. Kim, '*Wrap contracting and the online environment: Causes and cures*', in John A. Rothchild (ed) Research Handbooks in Information Law Series, (Edward Elgar Publishing Limited, 2016), 11

¹²⁸Ibid.

¹²⁹Ibid.

Shrink-wrap agreements represent binding terms and conditions of a purchase enclosed in a container of the product unless the consumer objects to it before using or accessing the product.¹³⁰ Browse-wrap agreements are in most cases placed at the bottom of the website under which use of the site presumes consent to the agreements.¹³¹ Click-wrap agreements are formed on the basis of user-consent to click on 'I agree' boxes or click on an acceptance icon.¹³² In click-wrap agreements, it is hardly for users to access goods and services without compliance with 'click on' prescriptions.¹³³ Despite validity controversies, business-to-consumer (B2C) and C2C transactions are reported to mainly depend on these models.¹³⁴

Contemporary developments of e-commerce, however, depict that the standardization of online contracts has gone far from 'point and click' to the era of 'go and touch' and probably to a period of 'touch and talk'. Whereby computer brains autonomously function to form and enforce electronic contracts.¹³⁵ It has now been custom of the electronic community under which e-consumers and e-vendors entrust their respective tasks to electronic agents to initiate commercial transactions.¹³⁶ Some cyber scholars call this tradition of e-contracting through electronic agents as smart contract,¹³⁷ which is not center of detailed analysis in this research, but is probably best suggested technological solution to avoid unequal narratives between consumers and businesses.¹³⁸ In fact, smart contracts or electronic agent-mediated contracts are neither considered as standard form contracts nor are contracts at all by some other writers.¹³⁹ They are rather understood as computer programs written and coded with predefined interests of traders and consumers to facilitate sales and purchases.¹⁴⁰ Nevertheless, automated commercial communications have still continued to challenge the bargaining power of e-consumers for many

¹³⁰Batya Goodman, 'Honey, I Shrink-Wrapped the Consumer: The Shrink-Wrap Agreement as an Adhesion Contract' (1999) 21 *Cardozo L Rev* 319, 32.

¹³¹ Ian Rambarran & Robert Hunt, 'Are Browse-Wrap Agreements All They Are Wrapped up to Be' (2007) 9 *Tul J Tech & Intell Prop* 173, 174.

¹³²Roy J. Girasa n, 126, 109.

¹³³*Ibid.*

¹³⁴ Nancy, n 127, 10.

¹³⁵ Christiana N. Markou, *Consumer Protection, Automated Shopping Platforms and EU Law*, (Routledge, 2020), 73.

¹³⁶ Cristina, n 48, 160.

¹³⁷Mateja Durovic & Franciszek Lech, 'The Enforceability of Smart Contracts' (2019) 5 *Italian LJ* 493, 495.

¹³⁸ Ajar Rab, n 121, 46-49

¹³⁹Mateja & Franciszek, n 137.

¹⁴⁰ Zach Smolinski, 'Smart Contracts' (2021) 17 *NYU JL & Bus* 704, 706-708

reasons attributable to technological defects of purchase machines, reduced technical capacities of consumers and their knowhow as regards vending machines.¹⁴¹

ii. Ineffective Redress Mechanism

The traditional consumer litigation practice is blameworthy for its failure to provide an effective redress scheme.¹⁴² Ordinary consumers without legal expertise and knowhow of the complex court procedures are not psychologically and economically interested to confront businesses of huge economic power for low-value claims in lengthy process and costly dispute resolution facilities.¹⁴³ A common understanding is reached as between consumer law scholars that consumers do not use the regular litigation channel.¹⁴⁴

Alternative schemes, including administrative measures and direct negotiations¹⁴⁵ and alternative dispute resolution (ADR) services in online platforms, are best advocated for resolution of e-consumer disputes.¹⁴⁶ Nevertheless, the faceless communication as an impediment to effective communication, language barriers, the asymmetry in comprehension and use of technologies still remain to be challenges to ODR processes.¹⁴⁷ The knowledge divide in utilization of the technology especially puts consumers in risky position in which wealthy e-businesses capitalize on the gaps to exploit business inexperience of e-consumers.¹⁴⁸

2.4 Forms of Protection

Cyber scholars who recognize Internet users as ‘netizens’(citizens of the Internet world) and advocate ‘netiquettes’ (self-imposed rules) applicable to them in disregard of state regulation, contend that e-consumers should compete in the information super highway to help themselves unless the Internet community designs technical and technological solutions in their favor.¹⁴⁹ In fact, it is undeniable that encryption and digital signature, as boons of technology, have long been source of confidence as between e-contracting parties.¹⁵⁰

¹⁴¹ Cristina, n 48, 70.

¹⁴²Sutatip Yuthayotin, *Access to Justice in Transnational B2C E-Commerce*, (Springer, 2015), 37

¹⁴³*Ibid.*

¹⁴⁴*Ibid.*

¹⁴⁵*Ibid.*

¹⁴⁶Nandini CP, n 16, 85.

¹⁴⁷Pablo Cortés, n 52, 157.

¹⁴⁸ Amy J. Schmitz, Building trust in ecommerce through online dispute resolution, in John A. Rothchild (ed) *Research Handbooks in Information Law Series*, (Edward Elgar Publishing Limited, 2016), 308

¹⁴⁹ Cristina, n 48, 8.

¹⁵⁰Poltad, n 13, 111

These days, the international community is however working on the need for cooperation to issue an international internet law underpinning technical measures with a view to governing the cyberspace to which e-consumer protection laws are no exceptions.¹⁵¹ As preexisting efforts of this big project, countries are already in active role for legislative responses tailored to range of consumer problems in the e-marketplace.¹⁵² Accordingly, this section identifies common forms of protection in light of legislative responses.

2.4.1 Ex ante Measures

E-consumers should adequately be protected in all stages of their contractual relations with e-businesses.¹⁵³ Ex ante measures are protective measures of e-consumer laws at pre-contractual and contractual levels.¹⁵⁴

a) Information disclosure

Legislative prescription on information disclosure is a basic tool of e-consumer protection.¹⁵⁵ Information disclosure can be either substantive or formal. Substantive information disclosure in the OECD framework includes information about the business,¹⁵⁶ goods and services, digital content and services¹⁵⁷ and the transaction.¹⁵⁸ By formal information disclosure, the OECD framework mandates businesses to disclose information in a plain language, clear, accessible, accurate, and conspicuous manner in a way consumers can easily understand and retain the full record of the transaction.¹⁵⁹ Businesses are duty-bound not to engage in unfair commercial and contractual practices and not to disregard the special needs of vulnerable consumers.¹⁶⁰ Consumers should also be equipped with easy procedures to reject or accept spams.¹⁶¹

In respect of the EU e-consumer law, distant contracts in the previous directive with the meaning of e-communications¹⁶² are retained in the new EU Consumer Rights Directive (CRD).¹⁶³ The

¹⁵¹ Joanna Kulesza, *International Internet law*, (Magdalena Arent and Wojciech Wołoszyk – IURIDICO – Legal Consultancy & Translations, Routledge, 2012), 127

¹⁵² Poltad, n 13, 14

¹⁵³ Jorg and Kai n 75, 192.

¹⁵⁴ Ahmad Alhusban, *The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jordan*, (PhD in Law Thesis, 2014), 97.

¹⁵⁵ *Ibid.* . 98

¹⁵⁶ OECD Recommendations, n, 15, Principles 28-30

¹⁵⁷ *Ibid.*, principles 31-32

¹⁵⁸ *Ibid.*, principles 33-35.

¹⁵⁹ *Ibid.*, principle 25

¹⁶⁰ *Ibid.* principles 13-18.

¹⁶¹ *Ibid.* , principle 22

¹⁶² Anne, n9.

¹⁶³ CRD, Art.2(7)

CRD contains provisions on information disclosure both in terms of content and form that the OECD equally shares. It, however, excludes certain transactions for policy and pragmatic reasons.¹⁶⁴

b) The Withdrawal Mechanism

The withdrawal mechanism forms part of the protective measures of increased legislative interventions.¹⁶⁵ It grants consumers a relatively short cooling-off period to rethink of confirmed purchases and to withdraw, if they feel that their decision is wrong.¹⁶⁶ It is a legislative entitlement in the discretion of consumers to use and is meant for avoiding harms flowing from hastily made transactions.¹⁶⁷

What comes next to information disclosure effects and before exercise of withdrawal right is the process of confirmation which may be termed as the confirmation right of e-consumers.¹⁶⁸ The OECD Recommendations oblige businesses to give assurance as to the clarity and certainty of any step to be followed by e-consumers in completion of their transactions.¹⁶⁹ In process, e-consumers can take time to review their purchases, correct errors, make changes, discontinue the process or confirm the transaction.¹⁷⁰ It is an express consent of the e-consumers that initiates processing of the transaction.¹⁷¹

The culmination of this confirmation phase marks the opening of another venue for e-consumers to withdraw from e-transactions. In this respect, the OECD Recommendations do not put particulars in exercise of this right except its indication for mandatory inclusion of the right in the list of information to be provided for e-consumers if law provides so.¹⁷²

With all confirmation rules of the OECD framework, the CRD entitles e-consumers the right to withdraw from e-transactions without any reason or cost other than those legally recognized, within 14 days to be calculated on the basis determined by law.¹⁷³ It also provides that omission

¹⁶⁴Ibid., Art.3(3)

¹⁶⁵Gert Straetmans, "Introduction", in Gert Straetmans (ed) Information Obligations and Disinformation of Consumers, (Ius Comparatum - Global Studies in Comparative Law Series, Vol. 33, Springer Nature Switzerland AG, 2019), 17

¹⁶⁶Ahmad Alhusban, n 154, 100.

¹⁶⁷Ibid.

¹⁶⁸ Anne, n 9, 24.

¹⁶⁹OECD Recommendations, n, 15, principle36

¹⁷⁰Ibid., principle 37

¹⁷¹Ibid., principle38

¹⁷²Ibid., principle35(VI)

¹⁷³ CRD, Arts. 9, 13, 14

of information on the right of withdrawal extends the cooling off period to 12 months and lifts legally recognized costs to be paid to the traders by the consumers.¹⁷⁴

The right of withdrawal does not, however, apply to supply of newspaper, books, perishable goods, and other lists of goods and services of certain limitations.¹⁷⁵ In the CRD, the withdrawal measure terminates main and subsidiary contracts.¹⁷⁶

c) Enhancing Consumer Confidence through Other Measures

i. Privacy Protection

E-consumers need an effective legal and technological guarantee to secure their privacy.¹⁷⁷ Traders may use access control, information flow control filtering, authentication and encryption technologies to protect privacy of consumers.¹⁷⁸ It is important to complement these technologies through legislative intervention.¹⁷⁹

The OECD Guidelines for Protection of Privacy and Trans-Border Flows of Personal Data require members to adopt laws to effectively deal with and enforce privacy issues.¹⁸⁰ The OECD Recommendations also mandate businesses to adopt lawful, transparent, fair, consumer-participatory and safe practice for protection of consumer-data.¹⁸¹

ii. Making the e-payment system secured

In most cases, it is a matter of national laws to provide for particular rules on security of e-payment system.¹⁸² The OECD Recommendations empower governments and stakeholders to work on minimum levels of e-consumer protection across payment mechanisms and cooperate on responding to payment-related risks in various ways.¹⁸³ This could involve regulation of businesses to apply security measures against unauthorized access, or use of personal data, fraud and identity theft, use easy method of access, devise chargeback mechanisms or develop other innovative payment methods like escrow services.¹⁸⁴ Businesses are also duty-bound to take into

¹⁷⁴Ibid., Art. s10(1), 14(2)

¹⁷⁵Ibid., Art.16

¹⁷⁶Ibid., Art. s12, 15

¹⁷⁷Huancheng Liu Xiaolong Liu, The Protection of the Privacy Right in Electronic Commerce, 21Zhengzhou Institute of Aeronautical Industry Management, 695

¹⁷⁸Ibid.

¹⁷⁹Ibid.

¹⁸⁰Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013), guideline 19(B-C).

¹⁸¹OECD Recommendations, n, 15, principle48

¹⁸² Cristina, n 48, 54

¹⁸³OECD Recommendations, n, 15, principles40-41

¹⁸⁴Ibid.

account the needs of persons with disability while designing e-commerce platforms in general and online payment systems in particular.¹⁸⁵

iii. Consumer education

Consumer education helps e-consumers know any benefits and risks of e-commerce.¹⁸⁶ The OECD Recommendations require governments to educate officials, businesses and consumers on the desire for strong framework of e-consumer protection.¹⁸⁷ Governments are also required to devise effective mechanisms of awareness raising program and improve on digital competence of consumers.¹⁸⁸

2.4.2 Ex post measures

Ex post measures of e-consumer protection denote any form of dispute resolution mechanism directed at realization of effective consumer redress.¹⁸⁹ The notion of consumer redress ranges from general assumption of consumer-friendly justice system to specific award of compensation in e-commerce disputes.¹⁹⁰ In a varying degree of involvement and the nature of the measure, it is common for states to adopt criminal, administrative and private procedures to provide e-consumer redress systems.¹⁹¹

These days, public authorities, however, highly invest on ‘consumer ADR models’ principally embedded in ODR strategies.¹⁹² The term “ODR” refers to the synergy of ICT services and dispute settlement facilities for resolution of e-consumer disputes.¹⁹³ ODR takes form of internal and external mechanisms.¹⁹⁴ The process of internal ODR is controlled by the parties and a kind of this mechanism is labeled as the most popular and effective means of dispute resolution in B2C and C2C relations.¹⁹⁵ Direct negotiations, in-house customer satisfaction schemes and call centers are some of the effective internal complaint handling ODR products.¹⁹⁶ On the other hand, online arbitration, mediation, conciliation and technology assisted and third party

¹⁸⁵Ibid., principle 24

¹⁸⁶ Sue L.T. McGregor, Consumer education and the OECD electronic commerce consumer protection guidelines, (Mount Saint Vincent University), 176.

¹⁸⁷OECD Recommendations, n, 15, principle 50

¹⁸⁸Ibid., principles 51-52.

¹⁸⁹ Sutatepe, n 142, 121.

¹⁹⁰ Pablo Cortés, *The Law of Consumer Redress in an Evolving Digital Market: upgrading from alternative to online dispute resolution*, (1stedn, Cambridge University Press, 2018), 28.

¹⁹¹Sutatepe, n 142, 178-192

¹⁹²Pavlo, n 189, 125

¹⁹³Pablo Cortés, n 52, 71

¹⁹⁴Ibid., 60

¹⁹⁵Ibid.

¹⁹⁶Ibid.

controlled ODR represent external ODR, which is still best suited for resolution of e-consumer disputes.¹⁹⁷

The OECD Recommendations, which enunciate the development of easy, effective, fair, timely, cheap, meaningful, transparent and accessible, in and out of court e-consumer dispute settlement forums, highly encourage businesses to establish charge-free internal complaint management procedures to informally handle their differences with e-consumers at the earliest stage possible.¹⁹⁸ Members are not allowed to make any limitation on choice of consumers to dispute settlement forums in their national laws.¹⁹⁹

Consumers suffering from damages as a result of defective goods or damage to their device or quality compromise in their cross-border and domestic e-commerce should effectively be compensated.²⁰⁰ Governments are also under obligation to develop an appropriate framework of redress for losses of e-consumers arising out of non-monetary transactions.²⁰¹ Besides, the OECD Recommendations encourage the joint task of government bodies, businesses, consumer organizations and other relevant bodies in ensuring effective enforcement of e-consumer protection.²⁰²

2.4.3 Control of Unfair Terms and Conditions

The notion of controlling unfair business practice in e-consumer transactions exists before, during and after conclusion of consumer contracts.²⁰³ In this regard, the OECD Recommendations impose general obligations on businesses not to engage in deceptive, misleading, and misrepresentative commercial practice or to conceal important terms and conditions and not to use unfair contractual terms.²⁰⁴ The EU model however treats control of unfair commercial practices and unfair contract terms of general stream of unfair business in two separate legislations,²⁰⁵ in view of which the forthcoming few paragraphs draw discrete discussions.

a. Control of unfair commercial practices

¹⁹⁷Ibid., 65

¹⁹⁸OECD Recommendations, n 15, principles43-45

¹⁹⁹Ibid.

²⁰⁰Ibid., principle 46.

²⁰¹Ibid.

²⁰²Ibid., principle 47.

²⁰³ Cristina, n 48, 157.

²⁰⁴OECD Recommendations, n, 15, principles4-6, 8-9,

²⁰⁵ Hans-W. Micklitz, 'A Common Approach to the Enforcement of Unfair Commercial Practices and Unfair Contract Terms', in Willem van Boom, Amandine Garde and Orkun Akseli (eds) *The European Unfair Commercial Practices Directive: Impact, Enforcement Strategies and National Legal Systems*, (Routledge, 2016), 60.

The UCPD has an umbrella prohibition of commercial practices distorting the economic interest of consumers.²⁰⁶ The unfair commercial practices under control of the Directive take forms of all-time-unfair practices as listed in Annex 1, misleading, aggressive and any other unfair commercial practice assessed within the blanket prohibition under Article 5 of the same legislation.²⁰⁷ The UCPD regards omission of material information and commission of certain acts as constituting misleading practices that affect the transactional decisions of consumers.²⁰⁸ Similarly, it gives an account of circumstances in which traders develop aggressive commercial practices against the transactional decisions of consumers.²⁰⁹

The UCPD in its amendment prohibits provision of search results for online search queries of consumers without clearly divulging information about paid advertisements or any payment for achieving higher ranking of products within the search results.²¹⁰ It always regards the habit of reporting consumers' reviews without employing reasonable steps for verification of original publications from the consumers or submission of fake consumer review and indorsements for promotion of products, as unfair commercial practices in online marketplaces.²¹¹ For products offered online, failure of intermediaries to disclose whether the party using their platform is a trader or non-trader to consumers and their respective relations is material in determination of misleading practices²¹² in this respect, it should be noted that the usual privilege of intermediaries not to verify contents is lifted for consumer protection purposes.²¹³

The UCPD including its amendment adopts different forms of measures to curb unfair commercial practices. Member states are duty-bound to establish an effective redress mechanism with which e-consumers can claim compensation and termination of contracts when suffering from unfair commercial practices.²¹⁴ The UCPD empowers members to take legal actions ranging from injunctive measures to imposition of fines of no more than 2 million Euros against unfair commercial practices within their respective competent bodies.²¹⁵

²⁰⁶ UCPD, n, 67, recital 13.

²⁰⁷ Deirdre Leahy, 'The Unfair Commercial Practices Directive and Regulation of Online Commercial Platforms: Online Penny Auctions Examined' (2020) 4 *Edinburgh Student L Rev* 11, 15.

²⁰⁸ UCPD, n 67, Art. s6-7.

²⁰⁹ *Ibid*, Art. s 8-9.

²¹⁰ UCPD, as amended in directive no. 2161/2019, annex I, 11A,

²¹¹ *Ibid*, Annex 23B and 23C.

²¹² *Ibid* art. 7(4) F.

²¹³ Mariacristina Zarro, 'Online Unfair Commercial Practices: A European Overview' (2021) 7 *Italian LJ* 201, 215

²¹⁴ UCPD as amended, n, 210, art.11A.

²¹⁵ *Ibid.*, Arts.11, 13/

b. Control of Unfair Contract Terms

The EU Directive on unfair consumer-contract terms declares any part of a contract that is not individually negotiated and significantly impairs the equal bargaining power, particularly to the disadvantage of consumers, as unfair.²¹⁶ The Annex in this Directive has an indicative blacklist of circumstances, the incorporation of which into consumer contracts makes such terms ineffective or unfair.²¹⁷ In a research conducted on 50 websites in Australia and New Zealand, it was reported that 60% of online contracts contain unfair terms.²¹⁸ This finding reveals that online consumer contracts are easily susceptible to unfair terms compared to those in brick-and-mortar transactions.²¹⁹

The Directive mandates EU members not to give effect contracts with unfair terms.²²⁰ With a view of discouraging contracts containing unfair terms in both offline and online transactions, fines are introduced into the Directive against unfair terms in consumer-contracts.²²¹

2.5 Private international law in e-consumer disputes

The traditional connecting factors for operation of private international law rules in determination of jurisdiction and applicable law do not squarely fit in the perplexing environment of e-commerce.²²² The noble issues in this business model continue to be impediments to effective consumer protection.²²³

2.5.1 Jurisdiction Issues

In assuming jurisdiction over cross-border e-consumer contracts, the common law tradition, which US judicial decisions influenced, has already developed the ‘zippo’ test and the ‘effects’ test to establish that the defendant owes a minimum contact in the forum state.²²⁴ By ‘zippo’ test, non-resident websites in furtherance of their commercial activities in the forum states are classified into active websites doing business in the forum state, interactive websites to which consumers interact for commercial purposes, and passive websites in the forum state for sole

²¹⁶ EU Council Directive On Unfair Terms in Consumer Contracts, 93, (1993), Art.3(1)

²¹⁷ Ibid., the Annex

²¹⁸ Trish O'Sullivan, 'Online Shopping Terms and Conditions in Practice: Validity of Incorporation and Unfairness' (2014) 20 Canterbury L Rev 1, 5

²¹⁹ Ibid.

²²⁰ Directive 93, n 216, Art.6(1)

²²¹ Directive 93, (As Amended by Directive No. 2161/2019), Art.8B

²²² Lorna E. Gillies, *Electronic Commerce and Private International Law: A Study of Electronic Contracts*, (Markets and The Law Series, Routledge, 2016), 3.

²²³ Ibid.

²²⁴ Anna Hutchings, 'Determining Jurisdiction in E-Consumer Contracts: Are Consumers Being Abandoned in Cyberspace' (2010) 4 Galway Student L Rev 56, 60

provision of information to consumers.²²⁵ There is zero possibility for establishing minimum contact by courts to find jurisdiction over passive websites.²²⁶ On the other hand, courts base the intentional conduct of websites in the forum state to determine jurisdiction by the operation of the doctrine of the ‘effects’ test.²²⁷

The Brussels I Regulation in the EU model has *sui generis* rules of jurisdiction for e-consumer disputes.²²⁸ The rules of the Regulation apply on consumer contracts made with a person who conducts commercial or professional activities in a member state where a consumer is domiciled, or by any means directs such activities in that member state or several other states and the contract falls within the scope of such activities.²²⁹ The notion of commercial operations or professions directed to member states of consumers’ domicile is deemed to have been incorporated in the regulation to accommodate new developments of e-contracting through distant communications.²³⁰ Accordingly, the regulation employs the following techniques of jurisdiction allocation for resolution of e-commerce disputes arising out of B2C and C2C commercial relations.

In the absence of an otherwise agreement,²³¹ it is the discretion of the consumer to initiate proceedings in his/her own domicile or in the domicile of the other party and courts of member states are duty-bound to handle cases presented to them this way.²³² It is, however, obligatory for the other party who wishes bringing an action against the consumer to use the jurisdiction of domicile of the latter.²³³

2.5.2 The Applicable Law

Party autonomy plays the major role in choosing applicable law for contractual obligations.²³⁴

The weaker party protection in consumer contracts, nonetheless, places plenty of limitations which may range from restricting the types of the applicable laws to discarding parties’ choice of law at all to the full exercise of the party autonomy principle.²³⁵

²²⁵Ibid.

²²⁶Ibid.

²²⁷Ibid.

²²⁸Ibid., 57

²²⁹ Regulation (EU) No 1215, (2012), Art. 17(1) C.

²³⁰ Francesca Ragno, Concise Commentary on the Rome I Regulation, (2ndedn, Cambridge University Press, 2020), 114

²³¹Regulation1215, n, 229, Art.18(3)

²³²Ibid., Art.18(1)

²³³Ibid., Art.18(2)

²³⁴Zheng Tang, 'Parties' Choice of Law in E-Consumer Contracts' (2007) 3 J Priv Int'l L113

²³⁵Ibid., 114-128

The Rome Regulation in the EU model adopts special rules for applicable laws to contracts made between consumers and professionals under which professionals conduct their commercial activities in the state of the consumer's habitual residence or direct such an activity in a country of similar characterization and the contract results from such an activity.²³⁶ The requirement of directing commercial activity to the country of consumers' habitual residence is strictly understood in e-communications or distance selling from the Internet to imply that professionals clearly offer their goods or services or pay search engine operators to promote their trading activities in a country where the consumers reside.²³⁷ Provided that these requirements of the law are duly met, the Regulation approaches the special rules from two perspectives.

The autonomy of parties is given priority in so far as the agreement in their choice of law does not contravene mandatory rules of the law of the country of consumers' residence.²³⁸ The applicable law in agreement is not automatic in that it finds no applicability unless it accords more protection for e-consumers than they can get from the law of their habitual residence.²³⁹ If the assessment of the applicable law in agreement in light of the law of the country of consumers' habitual residence turns out to be negative, or nothing is said in the agreement about choice of law, it will be the law of the country of consumers' habitual residence governing default contractual relations of consumers and professionals.²⁴⁰

²³⁶ Regulation (EC), No 593, (2008), Art.6/1(A-b).

²³⁷ Francesca, n, 230, 118.

²³⁸The regulation593, n, 236, Art.6(2)

²³⁹ Francesca, n, 230, 121.

²⁴⁰ regulation1215, n, 229, Article 6(1)

CHAPTER THREE

ASSESSMENT OF E-CONSUMER PROTECTION UNDER ETHIOPIAN

E-COMMERCE LAW

3.1 General Remarks on Consumer Protection and the E-Commerce Law

The concept of consumer protection, which has implicitly been practiced in the legislative history of the country dating back from the era of the *Fetha Nagast* to the period of modern codification and laws thereafter, is claimed to have gained a clear recognition in the 2010 trade competition and consumer protection law, which preceded the existing Trade Competition and Consumer Protection Proclamation No. 813/2013.²⁴¹ The existing consumer protection scheme lacks adequate space for “second generation rights” which are introduced as a result of e-commerce.²⁴² The fundamental policy initiatives of the country in the 2016 ICT Policy and Digital Transformation Strategy lay the foundation for the legal framework on e-commerce.²⁴³

The general principle of Ethiopia’s contracts law does not make distinction as between methods of commercial communications to make offer and acceptance.²⁴⁴ To a minimum degree of tolerance, the law in this respect does not explicitly discriminate e-communications.²⁴⁵ Besides, the Civil Code adopts rules for contracts between absent parties.²⁴⁶ This part of the law has particularly a clear dedication for ‘telephonic contracts’.²⁴⁷

The promulgation of the Ethiopian Commodity Exchange (ECX) Proclamation in 2007, which allows the ECX and its members to conduct electronic transactions, was a breakthrough in the country’s legislative measure of recognizing e-commerce.²⁴⁸ This trend was taken up in the National Payment System (NPS) Proclamation, which gives legal effects to transfer of funds made electronically.²⁴⁹ The adoption of the E-signature Proclamation in 2018 came in front to

²⁴¹ Elias N. Stebek, *Consumer Protection Law in Ethiopia: The Normative Regime and the Way Forward*, (2018) 41 J of Consum Policy, 2.

²⁴² *Ibid.*, 15

²⁴³ Yohannes, n 37, 102

²⁴⁴ Gebrehiwot, n 19, 51

²⁴⁵ *Ibid.*

²⁴⁶ Civil Code of the Empire of Ethiopia, 1960, *Neg, Gaz.*, Proclamation no. 165, Extraordinary Issue, Art.1692(1-2)

²⁴⁷ George Krzeczunowich, *Formation and Effects of Contracts in Ethiopian Law* (Faculty of Law, Addis Ababa University, 1983), 21.

²⁴⁸ Kinfe Micheal Yilma & Halefom Hailu Abraha, 'The Internet and Regulatory Responses in Ethiopia: Telecoms, Cybercrimes, Privacy, E-Commerce, and the New Media' (2015) 9 *Mizzen L Rev* 108, 138.

²⁴⁹ *Ibid.*

end the legal barriers to the validity of electronic messages in any transaction.²⁵⁰ The e-transaction legislation, under which relatively detailed coverage is given to e-commerce provisions, nevertheless appears as a separate body of law for e-transactions in general and issues in e-commerce, including consumer protection. Any transaction of goods and services made via the Internet or other information networks is e-commerce by the operation of this law.²⁵¹

3.2 The Interplay between the e-Transaction Law and Other Relevant Ethiopian Legislations

There are different laws in Ethiopia with e-consumer protection provisions and various responsible institutions empowered to manage consumer affairs. To cite few examples, the Ethiopian Communications Services Proclamation has defined objectives of safeguarding consumer interests in their relations with telecom operators and in their ultimate consumption of communication services.²⁵² The ECA is specifically empowered to issue a detailed directive on consumer protection in provision of communication services and to decide on consumer disputes arising therefrom.²⁵³ Similarly, the Banking Business,²⁵⁴ the Insurance Business,²⁵⁵ the NPS,²⁵⁶ and the Micro-financing Business²⁵⁷ Proclamations empower the NBE to enact directives for details in protection of financial consumers including e-finance consumers.

The NBE discharged its legislative and executive role under a directive with long list of businesses' obligations and rights of e-finance consumers under which it hears all consumer disputes and decides on in its appellate power.²⁵⁸ The ECA has also issued a directive that regulates the relation between consumers of telecommunication services and its licensees.²⁵⁹

It is now the question of whether the e-consumer protection system in such and other similar laws remains detached from the general e-consumer protection framework in the e-transaction law. Unlike its source in the SAECETA,²⁶⁰ the Proclamation does not set a clear boundary on its relation with other commercial laws containing e-consumer protection provisions. It rather

²⁵⁰Geberehiwot, n 19, 52.

²⁵¹ETP, n 24, Art.2(11)

²⁵² Communications Service Proclamation , 2019, neg., gaz., Proclamation no. 1148, Year 25, No. 82, Art.6(14-15)

²⁵³Ibid., Art.50

²⁵⁴ The Banking Business Proclamation , 2019, neg., gaz., Proclamation no 159), year 25, no. 88, art.57

²⁵⁵ The Insurance Business Proclamation , 2019, neg., gaz. Proclamation 1163, year 26, no. 6, art.59

²⁵⁶ The National Payment System Proclamation , 2012, neg., gaz., Proclamation no. 718, year 17, no. 84, art.20(2)

²⁵⁷ The Micro-Financing Business Proclamation , 2019, neg., gaz., Proclamation no 1164, year 26, no. 7, art.26

²⁵⁸ FCP, n 22, Arts. 4-10.

²⁵⁹ ECA-directive, n 23, Art.4.

²⁶⁰ SAECETA, n 33, sec.42(3).

provides for a minimum standard of consumer protection with which rights of e-consumers in other laws for more protection will be given effect.²⁶¹ It does not, however, seem that commercial laws other than the e-transaction Proclamation providing for consumer protection employ this minimum standard as a benchmark in crafting consumer provisions. For instance, the Directive issued by the Communications Authority on rights and interests of consumers in its information disclosure provisions does not provide withdrawal rights or rights to cooling-off period.²⁶² Likewise, though obligation of indicating withdrawal options in the FCP forms part of information disclosure requirement of financial institutions,²⁶³ there is no mechanism by which e-consumers can take time to continue or discontinue their financial transactions. It is different institutions empowered by equally ranking Proclamations with the e-transaction law which issue below-standard protection in their respective areas of coverage. It would, thus, be difficult to determine as to which norm of e-consumer protection system applies against the other.

3.3 The Scope of E-Consumer Protection in the E-Transaction Law

Apart from the general scope of e-transactions,²⁶⁴ the consumer protection section of the ETP does not define its scope.²⁶⁵ The Explanatory Notes on the e-transaction law state that digital financial services are intentionally left out from the remit of the ETP.²⁶⁶ The Notes report that the NBE is entrusted to issue law and implement on digital financial services in a close discussion with the MInT, but not based on enabling law.²⁶⁷

3.3.1 The notion of e-consumers

The e-transaction does not define e-consumers, which would have provided better clarity. As a family of the existing legal system in “legislative rush and reticent lawmaking” race among various sectors for regulation of cyber issues,²⁶⁸ Ethiopia’s e-commerce law seems to miss the central point for its failure to define e-consumers, whom it protects.

This poor draftsmanship of the e-commerce law also appears to be an antecedent to the problem of identifying average and vulnerable e-consumers. Neither the ETP nor its specific section on

²⁶¹ ETP, n, 24, Art.33(2)

²⁶²ECA Directive, n 23, Art.9

²⁶³ FCP, n 22.

²⁶⁴ ETP, n 24, art.3(2)

²⁶⁵Ibid, art.28-34

²⁶⁶ The explanatory note on the draft e-transaction Proclamation , house of peoples’ representatives, 2020, 22.

²⁶⁷Ibid.

²⁶⁸Kinfe Micheal Yilma, Between Regulatory Reticence & Legislative Rush: Internet Lawmaking in Ethiopia — Editorial Introduction, in kinife Michael yilma(The Internet And Policy Responses in Ethiopia, vol. 3, (2020), 3

consumer protection provides for any set of rules to accommodate the interests of vulnerable e-consumers. This is contrary to the EU model²⁶⁹ and the OECD model²⁷⁰.

The General Comment 2 on the Convention on the Right of Persons with Disability (CRPD) underscores the right of persons with disability to ICT as accessibility precondition for persons with disability to fully and independently participate in e-transactions.²⁷¹ As Ethiopia is party to the Convention,²⁷² the ETP should have at least been drafted considering the special needs of persons with disability as e-consumers.

Equally important is the need for establishing the relations of consumers with the other party. The other party is understood as a trader who is a natural or legal person professionally acting in his private capacity or through agents in any form of commercial establishment.²⁷³ In general terms, the OECD Recommendations considers the other party as a business in its commercial connections with consumers in the e-marketplace and businesses facilitating C2C transaction.²⁷⁴ Regarding C2C e-transactions, e-consumer protection laws do not govern an ordinary relation of e-consumers.²⁷⁵ They rather regulate C2C relations through proprietary platforms pursuing their commercial activities in sole facilitation of e-offers from consumers directed to consumers visiting such platforms.²⁷⁶

The ETP is hazy in stating forms of commercial relationships in which e-consumers engage. In an interview made with the Director of Legal Affairs Directorate at MInT,²⁷⁷ this researcher learnt that the term ‘e-transaction’ in the whole body of the ETP is intentionally chosen as an umbrella clause to cover any aspect of e-consumer transaction, which includes by extension, any form of B2C and C2C e-consumer relations. To relate this intention of the drafters to the words of the law, the type of e-consumer relationship we find in the ETP is the e-consumer-supplier

²⁶⁹ CRD, n 53.

²⁷⁰ OECD Recommendations, n, 15, principle23.

²⁷¹ The United Nations on Committee on the Rights of Persons with Disabilities, Eleventh session, general comment no 2 (article 9 accessibility), 2014, 2

²⁷² The Convention on the Right of Persons with Disability Ratification Proclamation , 2010, neg., gaz., Proclamation No. 676, year, 16, no. 32.

²⁷³ CRD, n 53, Art.2(2)

²⁷⁴ OECD Recommendations, n, 15, the preamble

²⁷⁵ Christine Riefa, consumer protection and online auction platforms: Towards a Safer Legal Framework, (in markets and the law series, (Ashgate Publishing, 2015), 24

²⁷⁶ Ibid., 25

²⁷⁷ Interview with Ato Ayaleneh Lema, Director of the Directorate of Legal Affairs in MIT), (on the date of November 14, 2021, at 10:30-11:23).

relationship.²⁷⁸ The term supplier is not defined in any part of the Proclamation. It is now the question of whether any supplier in any of its e-transaction with consumers falls within the regulatory provisions of the Proclamation in its consumer protection section.

Under the ETP, we have e-commerce operators²⁷⁹ and e-commerce platform operators²⁸⁰ that may potentially be acquainted with the status of ‘suppliers’. E-commerce operators are e-traders selling goods or providing services through the Internet or other information networks.²⁸¹ E-commerce platform operators are also understood to mean legal entities, who in e-commerce, supply online sites for other traders wishing to independently engage in business operations, match-making, information release and other services.²⁸² Unless a supplier is understood in reference to e-commerce platform operators, the use of the ETP consumer provisions not to cover any harm of e-consumers with ordinary sellers as suppliers would be against the very essence of consumer protection law. Therefore, it can be said that the words of the law, at least, show that e-commerce operators and e-commerce platform operators as suppliers are the other parties that form commercial relationship with consumers in the parlance of the law.

3.3.2 Defining E-Consumer Contracts

The quintessential aspect of e-consumer contracts may be expressed in terms of contracts for the sale of goods,²⁸³ provision of services,²⁸⁴ and supply of digital contents and digital services.²⁸⁵ Contracts for supply of digital content and digital services are concluded between a trader and an e-consumer for supply of digital contents and digital services in exchange for personal data or price.²⁸⁶ This is also true of contracts concluded for delivery of goods or provision of services.²⁸⁷ The ETP does not comprehensively deal with the nature of e-consumer contracts, nor defines goods, services, and digital content and digital services. The general scope of ETP excludes any transaction for transfer of immovable goods,²⁸⁸ which necessarily applies to transfer of such goods in e-contracts. Just to give meaning for e-contracts in light of the ETP, any contract between e-commerce operators or e-commerce platform operators as suppliers and consumers

²⁷⁸ ETP, n, 24, Arts. 28-34

²⁷⁹ Ibid., Art.2(13),

²⁸⁰ Ibid., Art.2(14)

²⁸¹ Ibid., Art.2(13)

²⁸² Ibid., Art.2(14)

²⁸³ The CR, D, (as amended by Directive No 2161/2019), Art.2(5)

²⁸⁴ Ibid., Art.2(6)

²⁸⁵ Directive (EU), 770, (2019), Art.1.

²⁸⁶ Ibid., Art.3(1-2)

²⁸⁷ CRD-amendment, n, 283, art. 2(5-6) and 3 A

²⁸⁸ ETP, n 24, Art.3/2(D)

for transfer of movable goods in the language of the Civil Code for price,²⁸⁹ and provision of commercialized service other than services in wage or salary for consideration within the meaning of the General Consumer Protection Law (GTCCPL),²⁹⁰ may be understood as an e-consumer-contract. A prototype of this construction still hosts flaws from its exclusionary approach to ‘personal data’ as an instrument of exchange.

A similar problem is also created on contracts for the supply of digital contents or digital services. Digital content represents data which are produced and provided in digital form²⁹¹, such as audio files, e-books, video files and applications.²⁹² The term digital service refers to a “service that allows the consumer to create, process, store or access data in digital form, or a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service”.²⁹³ The ETP is silent on consumer-contracts for supply of digital content or digital service.

3.4 Forms of Protection in the ETP

This section explores forms of protection accorded to e-consumers in the ETP at any level of their participation in e-commerce. It modestly evaluates the protective and remedial measures of the ETP for effective enforcement of e-consumer rights.

3.4.1 Information Disclosure

In this subsection, information disclosure is dissected into disclosure particularities in terms of content, form and medium employed in the ETP as center of analysis.

a) Content of the Information

The ETP requires traders who wish to offer goods or services “by way of e-transaction” to provide detailed information.²⁹⁴ These details mainly involve types of information to be made available and obligation of traders to give adequate opportunity for consumers to effectively optimize the information disclosed.²⁹⁵

1. Type of information to be made available
 - (I) Information about the identity of the traders

The ETP requires suppliers to divulge themselves on the following details as:

²⁸⁹ Civil-Code, n, 246, Art. 1127-1129, 2266

²⁹⁰ The GTCCPL, 2013, neg., gaz., Proclamation no. 813, year 20, no. 28, Art.2(2)

²⁹¹ Directive770, n, 285, Art.2(1)

²⁹²Ibid., recital19.

²⁹³Ibid., Art.2/2(a-b).

²⁹⁴ ETP, n, 24, Art.28(1-2)

²⁹⁵Ibid.

1. The full name, electronic address: telephone number, website and e-mail address of the supplier and physical address of the supplier, which includes the place where she or he is summoned;²⁹⁶
2. For legal persons: the name of its managers, its place of registration and its registration and operation numbers;²⁹⁷
3. For a member of a commercial body, on whose behalf goods are dispatched by such a commercial body: the contact details of such a body;²⁹⁸
4. Any code of conduct subscribed by the supplier and information to consumers on how to electronically access such a code.²⁹⁹

(II) Information about transaction

Suppliers are also duty-bound to provide the following information:

1. Adequate explanation of the main characteristics of the goods or services and the total price, the relevant fees and costs related to purchase of such goods or services;³⁰⁰
2. Terms and conditions of the transaction which include: method of payment, terms of agreement on warranties and methods of assessing, storing and reproducing such terms through electronic means by consumers, period for delivery of goods or rendering of services, the period and manner of accessing to electronic records by consumers, and refund, exchange and return policies of the suppliers;³⁰¹
3. For agreements to supply goods or services on a recurrent or temporary basis: the minimum span of the agreement.³⁰²

(III) Information on dispute settlement and security measures

The ETP obliges suppliers in respect of their payment process and personal data protection to disclose their privacy policy and security procedures to e-consumers.³⁰³ It places a similar duty upon them to make information available about any “alternative code of dispute resolution” for which subscription is made.³⁰⁴ The information about this code should contain all basic

²⁹⁶Ibid., Art.28/1(A and E)

²⁹⁷Ibid., Art.28/1(d)

²⁹⁸Ibid., Art.28/1(B).

²⁹⁹Ibid., Art.28/1

³⁰⁰Ibid., Art.28/1(F-g)

³⁰¹Ibid., Art.28/1(h-l).

³⁰²Ibid., Art.28/1(O).

³⁰³Ibid., Art..28/1(N).

³⁰⁴Ibid., Art. 28/1(M).

particulars, the whole content of the code and the method by which consumers can electronically access such details.³⁰⁵

2. Obligation to give opportunity

As part of the pre-contractual phase of consumer protection, the ETP puts additional obligation on the supplier to provide consumers with the opportunity to review the entire transaction.³⁰⁶ This is a checkpoint by which the law intends to make sure whether consumers are able to fully understand the information that has been provided to them. Effective exercise of this opportunity helps consumers either rectify errors or discontinue transactions before they finally vote for orders.³⁰⁷

The ETP, however, lacks clarity on how to communicate this opportunity of consumers' right to review and check whether a supplier has carried out its responsibility. On the other hand, the right of withdrawal of consumers from transaction as a result of their opportunity to review, is baffled with the traditional notion of withdrawal rights often referred to after confirmation of orders. Having regard to the circumstances in context, the term should be understood to mean a stoppage of ongoing transaction.

The ETP also misses fundamental information provision requirement in relation to cooling-off period and withdrawal rights of consumers upon suppliers. The SAECETA has a provision for information disclosure on the right to cooling-off period for consumers.³⁰⁸ It is also a common feature of the OECD and EU models to envisage information disclosure obligation on the right of withdrawal. Besides, the ETP does not impose an obligation of suppliers to divulge information on interoperability, functionality and compatibility of digital content and digital services to consumers.

(b) Form of Information Disclosure

The consumer protection scheme of the SAECETA is highly criticized for its failure to provide for a form of information disclosure.³⁰⁹ In addition to proposing legislative revision on the issue, South African scholars have resorted to developing temporal constructions in light of common principles with a view to innovating a certain form of disclosure.³¹⁰ Regardless of any criticism

³⁰⁵Ibid.

³⁰⁶Ibid., Art.28/2(A).

³⁰⁷Ibid., Art.28/2(B-C).

³⁰⁸SAECETA, n, 33, Sec.43/1

³⁰⁹Wenette, n 10, 558.

³¹⁰Ibid.

towards the SAECETA, all this conundrum is imported in the consumer protection section of Ethiopia's e-commerce law.

It is immaterial for provision of bulk of information if it is not intelligible to its addressees. Any information shared across any electronic platform should be presented in a way that is clear and comprehensible. Proximity of the information to the product or service, language used to present the information, and accessibility issues are important considerations in determining the form of information disclosure.

In an interview with the Director of the Legal Affairs Directorate at MInT,³¹¹ though it was possible to know that a draft directive on consumer protection has been tabled for approval, the institution was not willing to share the draft work for reference. This writer is not, thus, sure whether the draft works would have answered problems in relation to form of information disclosure.

c. The medium of information disclosure

In terms of the medium used for information disclosure, the ETP provides that suppliers should publish the information about goods and services in a website where such goods for offer are hosted.³¹² In its section where e-transaction is defined, it is indicated that computer mediated networks including mobile phones and other devices may be utilized to conduct e-business which *inter alia* comprises of e-commerce.³¹³

Mobile phones and other networking devices may be in place to display websites of such purpose. The consumer protection regime of the ETP is silent on the caveat of the networking devices in their capacity to display the information in a clear and legible manner. The capability of devices' effective disclosure of information may be challenged by their small screens or other technological limitations. Similarly, the very design of the website itself could be of limited space to display all the required information once. Information asymmetry resulting from such inconveniences hampers the decision-making power of consumers. The ETP does not prescribe rules for appropriateness of the media for effective information disclosure.

The ETP is not also clear whether suppliers can devise telephone calls, e-mail offers and social media sites to reach out consumers. We do not also have rules on the durability of the media at all.

³¹¹Ayaleneh, n, 277.

³¹², ETP, n, 24, Art.28(1), the first paragraph

³¹³*Ibid.*, Art.2(19).

Generally, the information disclosure aspect of the ETP requires rigorous consideration. As information disclosure rules of the GTCCPL are designed in response to brick-and-mortar B2C relations.³¹⁴ They cannot be of much help to fill in the gaps. In respect of these many issues, the need for legislative revision is thus imperative.

3.4.2 The Right to Withdrawal

The right of withdrawal is a right of e-consumers through which they can decide to walk away from contracts they concluded under some conditions. This right is introduced in the ETP in two ways, i.e. for non-compliance of suppliers with their information disclosure obligations,³¹⁵ and without any reason.³¹⁶ The prototype of a withdrawal right to be exercised without reason in the SAECETA is recognized as the right to cooling-off period,³¹⁷ while a kind of such distinction is not made in the provisions of CRD in the EU model.³¹⁸

a) The scope of withdrawal right

Withdrawal rights basically have two limitations. In this paper, these limitations are called ‘time limitations’ and “exclusion limitations”. By time limitations, consumers are limited by time to benefit from withdrawal rights. As their name indicates, they are benefits of consumers that expire after a certain period of time prescribed by law. On the other hand, certain goods or services are left out of the application of withdrawal rights through exclusion limitation. Exclusion of goods or services from the scope of withdrawal rights takes place for various policy and practical reasons.

We have two forms of time prescriptions within which consumers can withdraw from contractual obligations. These are 7-days,³¹⁹ and 14-days³²⁰ time prescriptions. A period of 14 days is granted to consumers to unilaterally rescind their contracts with suppliers if the contract is concluded in violation of suppliers’ information disclosure obligation.³²¹ This period is calculated from the time when the consumer receives the goods or the services. As regards the burden of proof on facts of non-compliance of the suppliers with mandatory information disclosure rules, the ETP has nothing to say. In this respect, the legislative practice of the EU

³¹⁴ GTCCPL, n, 290, Art. 14-18.

³¹⁵ ETP, n, -, 24, Art.28(3)

³¹⁶Ibid., Art.29(1)

³¹⁷ SAECETA, n, 33, Sec.44(1).

³¹⁸ CRD, n, 53, Art. 9-16.

³¹⁹ ETP, n, 24, Art. 29(1).

³²⁰Ibid., Art. 28(3).

³²¹Ibid.

model shows that the obligation to prove compliance with information disclosure requirements lies on traders.³²²

As to the other form of time limitation, the ETP provides consumers with a right of withdrawing from any e-transaction or supply of credit agreement without any reason within a period of 7 days to be calculated from the time of receipt of the goods or beginning to receive services.³²³ The transaction in supply of credit agreement is omitted from a similar provision of the Amharic version. It is not clear whether it was intentional. Similarly, despite the caption on termination of the contract, the content of the provision for exercise of such withdrawal right is designed in a way it embraces cancellation of the entire electronic transaction. Confusions in use of the terms may complicate the practical application of the right.

In addressing questions from members of the standing committee of the HPR, the drafters clarified that consumers who received defective goods can make use of this time limit to cancel their contractual obligations.³²⁴ This poses the question as to how two consumers with and without reason can benefit from a similar provision. Let alone for their delivery of defective goods, suppliers are punished by unilateral cancellation of their contracts by consumers within 14 days of after the delivery time, for mere non-compliance with information disclosure provisions of the law.³²⁵ It is with this understanding that the draft ETP came out as law. This general assumption of the lawmaker does not however go in line with the need for making difference between 7 and 14 days' period of time limit to rescind contracts and in light of the rationales for cancellation of contracts without and with reasons.

An exclusion limitation is commonly practiced in e-consumer legislations. In the SAECETA, the cooling-off period for the exercise of withdrawal rights does not apply, among others, to goods which are made to consumers' specifications, are clearly personalized, are perishable or cannot be returned by their nature, or lose their utility rapidly.³²⁶ Transactions for sale of goods through auction, newspaper, magazines, periodicals and books are similarly excluded from the cooling-off period for withdrawal rights.³²⁷ On the other hand, the SAECETA lifts the application of withdraw rights within the cooling-off period from certain categories of services, which include

³²² CRD, n 53, Art. 6(9).

³²³ ETP, n 24, Art. 29(1).

³²⁴ The minute with explainers (*Asrejis*) from the standing committee for human resource development and technology issues, (House of Peoples Representatives, 2020), 11.

³²⁵ ETP, n 24, Art.28(3)

³²⁶ SAECETA, n, 33, Sec.42/2(F).

³²⁷ *Ibid.*, sec.42/1(B and H)

financial, investment, gaming and lottery services.³²⁸ With varying scale and form of exclusion, the EU CRD also adopts this approach to limit the exercise of withdrawal rights.³²⁹

The ETP, however, adopted a different approach to limit exercise of withdrawal rights for no reason. The ETP provides that, application of the withdrawal right within 7 days takes effect ‘depending on the nature of the goods’.³³⁰ The Explanatory Notes on the ETP states that the phrase “depending on the nature of goods” is inserted to limit exercise of withdrawal rights in contract for sale of perishable goods.³³¹ On the session addressed to the Standing Committee on Human Resource Development and Technology Issues, the drafters of the ETP explained that the perishable nature of the goods shortens the 7-days period to 3, 2 and 1 day, as the case maybe.³³² This is nothing special from time limitation other than giving the discretion for law interpreters to shorten the time limit for withdrawal.

The ‘nature of goods’ approach in shortening the time limit for withdrawal may not appear sound for various justifications. For instance, some goods are made on consumers’ specifications. Some goods are explicitly personalized to the consumer. In such cases, there will be no purpose to serve in granting the right of withdrawal to consumers who are fully aware.

In the other extreme, be it intentional or unintentional, a period of less than seven days limitation does not apply to service contracts.³³³ This implies that consumers are at liberty to unilaterally cancel service contracts within 7 days of their access to the services. It can be said that e-contracts for services in the ETP are simply subject to time limitations, with or without reason. Conditions such as request of performance of the service by the consumer, acknowledgement of the consumer to performance of services by the trader, and omission of information by traders on existence of withdrawal rights etc. may legally be put to set aside the applicability of withdrawal rights in service contracts.³³⁴ In our case, since it is the legislative force of the law that initiates the beginning of the performance of services, the role of any of the contracting parties to the effect of exercising withdrawal rights within the period of 7 days is irrelevant.

³²⁸Ibid., sec.42/1(A and I)

³²⁹ CRD, n 53, Art.16.

³³⁰ ETP, n 24, Art.29(1)

³³¹ Explanatory-note, n, 266, 18.

³³² The Minute, n 324, 10.

³³³ ETP, n 24, Art. 29(1), the first paragraph.

³³⁴ CRD, n 53, Art.16/1(a)

b) Effects of withdrawal right

Withdrawal ends contractual obligations.³³⁵ Practically, the general exercise of withdrawal rights under ETP provisions does not cause penalty upon consumers.³³⁶ In case where a consumer cancels a contract for no reason,³³⁷ it is only the direct cost of returning the goods which is to be collected from the consumer or to be deducted from what the supplier refunds.³³⁸ Suppliers are under obligation to refund full payment to consumers within 30 days to be counted from the date of cancellation of the contract.³³⁹

In the event of withdrawal for non-compliance of the supplier with the law,³⁴⁰ the ETP requires consumers either to return performance of services if possible or to relinquish use of the service.³⁴¹ Consumers are entitled to full refund of what they have paid except the direct cost of returning the goods that the supplier deducts.³⁴² In this respect, it is not clear whether the supplier can collect a similar cost from consumer who did not affect payment to receive goods. On the same token, no period within which the supplier refunds payment to consumers is set. May we apply the 30 days' time limit which is applicable for refund of payments as a result of cancellation of contract by consumers without reason?

In both cases of withdrawal, it seems that it is the responsibility of suppliers to work on the task of returning the goods. In the law, there is no mechanism by which suppliers can be compensated for what they have performed during cancellation of service contracts. Similarly, the law has nothing to say on the fate of diminished value of goods when they are returned back to suppliers. This may cause unlawful enrichment, which is not a goal of consumer protection law.

Suppliers are under obligation to compensate any damage which may be caused to consumers for their use of insecure payment system.³⁴³ This part of the ETP also begs the question of whether suppliers, who in non-performance of their obligations³⁴⁴ or for a unilateral measure of contract cancellation by the consumer without reason,³⁴⁵ refund payments are encumbered with a similar

³³⁵ ETP, n 24, Art.28(3) and 29(1).

³³⁶ Ibid., Arts.28(4) and 29.

³³⁷ Ibid., Art.29(1).

³³⁸ Ibid., Art.29(2-3)

³³⁹ Ibid., Art.29(3)

³⁴⁰ Ibid., Art.28(3)

³⁴¹ Ibid., Art.28/4(A)

³⁴² Ibid., Art.28/4(B)

³⁴³ Ibid., art.28(6)

³⁴⁴ Ibid., Art.31(3)

³⁴⁵ Ibid., Art.29(1 and 3)

duty. This liability provision is formulated in a way it applies only to suppliers who violate their information disclosure obligations in the ETP.³⁴⁶

3.4.3 Security Measures

The interplay between consumer confidence and e-marketplace remains positive if security measures are in place within the framework of both legal prescriptions and self-regulation codes.³⁴⁷ E-consumer protection laws develop on this thesis to furnish consumers security for their participation in e-commerce. This section highlights some of the security measures in favor of consumers under Ethiopian e-commerce law.

a) Security of E-payment

When suppliers, whose contractual commitments are barred for their non-compliance with information disclosure requirements, defray back consumers,³⁴⁸ they are duty-bound to use sufficiently secure payment system.³⁴⁹ The sufficiency of the security of the payment system required by the law is measured in terms of accepted technological standards by the type of transaction concerned and at the time of the transaction.³⁵⁰ The first limitation of this provision concerns its extent of applicability. The provision is formulated in a way it imposes such a duty upon only suppliers who do not comply with information disclosure rules of the law.³⁵¹

The second problem relates to its relation with other laws. The payment system, including e-payment system, is generally governed by a separate national payment system law,³⁵² which precedes promulgation of the ETP. Though this Proclamation has long been criticized for its low dedication to protection of consumers in the e-payment system,³⁵³ policy and legislative measures undergone in the area seem to have detracted such criticism.

The National Digital Payment Strategy, which has the goal of realizing the 2025 digital Ethiopia, has plenty of issues, such as interoperability of payment infrastructures, access and reliability of telecom infrastructures, payment gateways tailored to consumers, and other cashless innovative e-payment mechanisms and to achieve across all sectors including e-commerce.³⁵⁴ As an implementing tool of this policy initiative and the specific Proclamation on NPS, the NBE has

³⁴⁶ Ibid., art. 28(3and6).

³⁴⁷ Cristina, n 48, 42-52

³⁴⁸ ETP, n 24, Article 28(3-4)

³⁴⁹ Ibid., Art.28(5)

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² The NPS-Proclamation , n, 256.

³⁵³ Simret Zewdu, n 21.

³⁵⁴ The National Digital Payment Strategy2021-2025, the NBE, 2021, 2-7, 24

recently issued the Licensing and Authorization of Payment Instrument Issuers Directive,³⁵⁵ the Licensing and Authorization of Payment System Operators Directive,³⁵⁶ and the Financial Consumer Protection Directive³⁵⁷ with a view to ensuring, among others, effective protection of e-consumers across all their payment transactions. The ETP should, thus, have a clear communication to such laws with plainly identified role.

b) Data protection

The consumer protection scheme of the ETP does not have any provision on protection of personal data of consumers. Recent reports show that the Ethiopian government tracks the electronic communications of individuals without their knowledge.³⁵⁸ This is so in the absence of a comprehensive and clear legal framework for collection, storage, dissemination and processing of personal data.³⁵⁹

The Explanatory Note developed on the ETP promises a tailored protection of personal data of consumers in a separate legislation.³⁶⁰ Regardless of the specific relevance of the legislation to protection of consumers in e-commerce, the draft Data Privacy and Data Protection Proclamation contains the common details of data protection issue.³⁶¹ Till the writing up of this paper, the draft Proclamation has not yet come into effect. The consumer protection scheme in respect of this security measure will thus continue to be in vain. As a final remark, it is however important to note that, if a person who obtains the personal data of consumers in the form of electronic message is duty-bound to keep it confidentially, failure to discharge this obligation is punishable under the Criminal Code.³⁶²

3.4.4 Containment of Unfair Trading Practices

Unfair trading practices in respect of e-consumers may be manifested in terms of unfair commercial practices, unfair contractual terms and conditions and other forms of malpractices that traders may employ to influence weaker consumers. As stated in the second chapter of this

³⁵⁵ The Licensing and Authorization of Payment Instrument Issuers Directive, 2020, the NBE, Directive No. 01.

³⁵⁶ Licensing and Authorization of Payment System Operators Directive, 2020, The NBE, directive no. 002.

³⁵⁷ FCP, n, 22.

³⁵⁸ Alebachew Birhanu Enyew, *Towards Data Protection Law in Ethiopia*, (Law, Governance and Technology Series 1, (Springer International Publishing AG 2016), 155

³⁵⁹ Ibid.

³⁶⁰ Explanatory-note, n, 266, 15.

³⁶¹ Kinfe Micheal Yilma, 'Data privacy law and practice in Ethiopia' (2015), 5 *International Data Privacy Law* 3, 177, 185.

³⁶² ETP, 24, Art.43(2)

paper, the EU and OECD countries have developed strong frameworks that easily contain such malpractices in the best interest of consumers.

Under the consumer protection section of the ETP, the only regulated aspect of unfair commercial practice is control of spams.³⁶³ The ETP obliges suppliers to devise a mechanism with which consumers can make a choice to opt-out any unsolicited commercial communication from their mailing list.³⁶⁴ They are also required to give details on source of consumers' personal information to direct the communications upon request by consumers.³⁶⁵

We do not find another explicit provision, which is designed to control unfair trading practices in e-commerce, unless the general non-compliance of suppliers with consumer protection section of the ETP reported by consumers to the MInT³⁶⁶ is taken as an act of unfair trading. The GTCCPL has 18 list of unfair trade practices.³⁶⁷ Any businessperson in violation of any one or all of these unfair practices is punishable with fine and rigorous imprisonment of no more than 5 years.³⁶⁸ It is possible to use provisions of the GTCCPL to counter any non-compliance of e-traders with any of their obligations under the ETP in connection with these trading malpractices as appropriate. It is however the problem that power conflict between MInT and consumer protection entities to entertain the issues may complicate the situation. Besides, the GTCCPL does not have a mechanism of control of unfair commercial practices tailored to e-commerce.

The Advertisement Proclamation, which recognizes internet websites and telecom as media of commercial advertisements,³⁶⁹ outlaws commercial advertisements through telephone against the consent of the user but in exclusion of public advertisements and advertisements of telecom service providers,³⁷⁰ and dissemination of an advertisement of liquor with more than 12% alcoholic content via electronic screens.³⁷¹ This Proclamation also makes an illustrative list of practices that it considers are misleading or unfair in their presentation and content to consumers.³⁷²

³⁶³Ibid., art.30

³⁶⁴Ibid., art.30(1)

³⁶⁵Ibid., art.30(2)

³⁶⁶Ibid., art.34

³⁶⁷ GTCCPL, n 290, art.22

³⁶⁸Ibid., art.43(2-3)

³⁶⁹ The Advertisement Proclamation 2012, fed., neg., gaz., Proclamation no. 759, Year 18, No. 59, art.2(2)

³⁷⁰Ibid., art.22(2)

³⁷¹Ibid., art.26(2)

³⁷²Ibid., art.8

The applicability limitation of the Proclamation to organizations established in Ethiopia and persons who reside in Ethiopia³⁷³ excludes those advertising from anywhere to Ethiopia using the Internet. It does not also provide for rules on ads and online search functionalities. Unless an appropriate interpretation is resorted to the umbrella phrase ‘any other similar advertisement misleading or unfair with its content or presentation’.³⁷⁴

Ethiopia’s e-commerce law, in its consumer protection regime, particularly does not regulate unfair commercial practices of the online marketplace, such as report of fake consumer reviews about products, deletion of bad consumer reviews about products, hiding the status of high ranking products in search results, products in search results as paid, or any indirect payment for achieving high ranking. Unfair commercial practices of online search functionalities may be committed by e-traders, including intermediaries, search engines, comparison websites and other online marketplaces.³⁷⁵ Intermediaries of mere conduit, caching, hosting and resource locating or interface service provision under the ETP, are not disciplined in a way they can have obligations towards consumers to provide details on the nature of the content running in their services. Without the need for referring to the private laws in force, it does not also grant a specific device of containing unfair online contract terms and conditions.

3.4.5 Effective e-consumer redress

a) The dispute settlement mechanism

Basically, the ETP recognizes two forms of dispute settlement mechanisms that may be relevant for resolution of e-consumer disputes. These are the MInT complaint handling mechanism,³⁷⁶ and the ODR mechanisms, i.e., the internal dispute settlement mechanism³⁷⁷ and the external dispute settlement mechanisms.³⁷⁸

i. The MInT complaint handling mechanism:

The MInT entertains any grievance of consumers in their relations with suppliers.³⁷⁹ The forms of complaints by consumers may be of any kind so long as they fit the non-compliance of suppliers with ETP provisions.³⁸⁰

³⁷³Ibid., art.3(3)

³⁷⁴Ibid., art.8(18)

³⁷⁵Amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83, (EU)directive, no. 2161, (2019), recital 20

³⁷⁶ ETP, n 24, art.34

³⁷⁷Ibid., Art.42(1)

³⁷⁸Ibid., Art.42(3)

³⁷⁹Ibid., Art.34

The equivalent power of the MInT, in the SAECETA, is vested on the South African Consumers' Affairs Commission, which has administrative, judicial and other investigative purposes irrespective of the business model used in creating the consumer relationship.³⁸¹ There is also no change in the new Powers and Functions of the FDRE Executive Organs Establishment Proclamation, which has given many of the consumer protection-related mandate (other than the adjudication duty) to the Ministry of Trade and Regional Integration.³⁸² The only consumer protection authority transfer made to this new ministry is referred from the GTCCPL.³⁸³

The ETP does not provide any procedure under which the MInT receives complaints from consumers and solves any dispute therefrom. The ETP does not say anything on the power of the MInT whether it exercises judicial or administrative or investigative power. This work is informed of the fact that there is no specific division or department resolving disputes at the MInT.³⁸⁴ This writer equally learnt that the idea of organizing such a department is not yet a completed task.³⁸⁵ Therefore, this work questions both the possibility and legality of answering these complicated issues through a directive as promised by the MInT.³⁸⁶

ii. The ODR mechanism

The ODR dispute settlement mechanisms that the ETP recognizes are mainly internal and external mechanisms. By the internal dispute settlement mechanism, e-commerce platform operators are duty-bound to establish an internal dispute settlement code through which they can resolve ecommerce disputes without the intervention of a third party.³⁸⁷ To connect this to the specific dedication of the duties of the traders in their relations with consumers, the ETP obliges suppliers to, among others, inform consumers of their internal codes and accessibility thereto through electronic means.³⁸⁸ Though the duty of establishing a kind of this internal mechanism is put on e-commerce platform operators, suppliers as e-commerce operators or intra-platform

³⁸⁰Ibid.

³⁸¹ The SAECETA, as amended in (South African consumer protection act, no. 68, 2008 schedule A), sec.49.

³⁸² Definition of powers and duties of the executive organs Proclamation , 2021, neg., gaz., Proclamation no. 1263, year, 28, no. 4, art.22/1(Q)

³⁸³Ibid.

³⁸⁴Ayaleneh, n 277.

³⁸⁵Ibid.

³⁸⁶Ibid.

³⁸⁷ ETP, n 24, art.42(1)

³⁸⁸Ibid., Art.28/1/ C

operators are not also prohibited to engage in subscribing or establishing any computer mediated code to resolve their disputes with consumers.³⁸⁹

As an external dispute settlement mechanism, arbitration is provided as the only method for resolution of e-commerce disputes that could not be resolved through internal dispute settlement mechanisms.³⁹⁰ Consumers also have the right to be informed of any alternative dispute settlement codes to which suppliers subscribe and of the details how to access them.³⁹¹ But, it is restricted to arbitration.³⁹² In this respect, the prime difficulty goes to inarbitrability of consumer disputes.³⁹³ The fact that consumer disputes are not arbitrable also conflicts with the norm of external dispute settlement mechanism under the ETP. The external dispute settlement mechanism will thus face a legitimacy crisis.

Despite the exclusion of courts' role in the ETP, the draft Regulation on E-transaction has a provision for non-preclusion of courts in favor of ADR mechanisms.³⁹⁴ Mediation is also inserted as an alternative to arbitration.³⁹⁵ It is questionable, however, whether this draft can have the power of adding other dispute resolution methods.

b) Forms of remedies

Under the consumer protection provisions of the ETP, we do not find any direct form of remedy that may be awarded to consumers. The ETP obliges suppliers to make damages good for a harm they cause upon refund of consumers through insecure payment system.³⁹⁶ There is no explicit procedure by which the damage is calculated, determined, and enforced. It is also specific to cancellation of contracts for non-compliance with the provisions of the law.

To the extent practical, e-consumers are not precluded to use compensation schemes of the GTCCPL, which result from the use of goods and damage incurred from defective goods.³⁹⁷ The same goes to criminal provisions of the GTCCPL.³⁹⁸ Some of the non-compliance issues, such as

³⁸⁹ Ibid.

³⁹⁰ Ibid., Art.42(3)

³⁹¹ Ibid., Art.28/1(M)

³⁹² Ibid., art. 42(3).

³⁹³ The Arbitration and Conciliation working Procedure Proclamation , 2021, neg., gaz., Proclamation no. 1237, year 27, no. 21, Art.7(8).

³⁹⁴ The draft E-transaction regulation, Council of Ministers, art.44.

³⁹⁵ Ibid.

³⁹⁶ ETP, n. 24, art.28(6)

³⁹⁷ GTCCPL, n. 290, arts. 14(5) and 20(3).

³⁹⁸ Ibid., art.43(2-3).

spams³⁹⁹ and unauthorized callback services,⁴⁰⁰ may also be backed through computer crime and telecom fraud laws. Since it is not clear what form of power the MInT assumes, it is hard to say that consumers are awarded such form of remedy in the ETP provisions. However, we can be sure that the arbitration forum can provide with civil redress. This still remains unfeasible in that the rules and procedures for conducting ODR arbitration are not clearly provided in active subsidiary laws.⁴⁰¹

c) Rules of conflict of laws in e-consumer disputes

Irrespective of boundary limit, the ETP applies to ‘e-commerce’.⁴⁰² E-traders may conduct or direct their business activities in Ethiopia using e-commerce from every angle of the globe. This potentially forges a relationship of foreign traders and Ethiopian consumers, the situation of which may bring about conflicts in laws and jurisdiction.

On its mention to application of foreign laws, the ETP excludes any ‘legal system’ upon which parties agree to govern their relations.⁴⁰³ To give meaning to the provision, it is important to relate the caption on ‘applicability of foreign law’ to the general essence of the provision. Accordingly, connecting the dots, we find that any foreign law as part of a legal system under the ETP is left out as a law of governing e-consumer contracts regardless of any agreement to that effect.

The legal system in the main body of the provision for its foreign element in the caption does not similarly govern consumer relations of the ETP under its consumer protection section. Moreover, the term “legal system” is jurisprudentially understood as a synergy of laws, actors, judges, police, prosecutors, courts and other entities making up the system.⁴⁰⁴ One can thus argue that all private international law issues are implicitly and explicitly avoided from Ethiopia’s e-consumer protection regime for policy reasons.

It is not only in respect of foreign legal system that the law prohibits agreement of parties to avoid the consumer protection section of the ETP. The ETP does not allow conclusion of e-consumer contracts through a waiver of any right provided for in it, including its consumer

³⁹⁹ The computer crime Proclamation , 2016, neg., gaz., Proclamation no 958, year 22, no 83, art.15.

⁴⁰⁰ Telecom fraud offence Proclamation , 2012, neg., gaz., Proclamation no. 761, year 18, no. 61, art.8.

⁴⁰¹ETP, n 24, Art.42(3)

⁴⁰²Ibid., Art.3/1(B)

⁴⁰³Ibid, Art.32

⁴⁰⁴Murado Abdo, *Legal History: Teaching Material*, Justice and Legal System Research Institute, (2009), 67.

protection provisions.⁴⁰⁵This does not however hinder the development of better protection through provision of consumer rights in other laws.⁴⁰⁶

The better protection discourse in other laws may be arguable whether it includes foreign laws. The comparison between the ETP and other laws in achieving better protection should be understood in a way that refers to laws of parity application from the legislature of the country. It is futile for the ETP to have a single provision on inapplicability of foreign laws, unless a constructive interpretation is given. Besides, the intention of the legislature in inserting the provision on ‘applicability of foreign law’ under the consumer protection chapter of the SAECETA is to do away with general application of foreign laws.⁴⁰⁷

3.5 The Institutional Framework for Enforcement of E-Consumer Rights

The existing GTCCPL’s institutional framework for enforcement of consumer rights in the brick-and-mortar transactions is criticized for its intolerant approach for representation of major stakeholders: consumer organizations, consumer representatives and other relevant bodies within the organization of the authority.⁴⁰⁸ The general justice system adopted in such a framework hosts similar critic in that it does not promote public interest and collective action litigation systems to effectively contain small claims of consumers in one basket or to do away with economic incapacities for individual redress requests.⁴⁰⁹

The MInT is generally entrusted with the major function of enforcing the ETP in its individual capacity and in coordination with the private and government sectors.⁴¹⁰ The ETP empowers the MInT with among other responsibilities:

1. To issue a directive on consumer protection;⁴¹¹
2. To enact a directive for implementation of the ETP;⁴¹²
3. To receive complaints from consumers against suppliers for non-compliance with provisions of the ETP;⁴¹³

⁴⁰⁵ ETP, n 24, art.33(1)

⁴⁰⁶ Ibid., Art.33(2)

⁴⁰⁷ Wenette, n 10, 557.

⁴⁰⁸ Tessema Elias, 'Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia' (2015) 9 Mizan L Rev 83, 105

⁴⁰⁹ Elias, n 241, 21.

⁴¹⁰ ETP, n 24, art.5(1)

⁴¹¹ Ibid Art.5/2(d)

⁴¹² Ibid, Art.45(2)

⁴¹³ Ibid, Art.34

4. To establish or clarify rules in a directive for a system of arbitration adopted the ETP and its regulations.⁴¹⁴

The function of the MInT to enact a directive on consumer protection is redundant. If the MInT is naturally authorized to issue a directive for implementation of the Proclamation and regulations thereunder, it follows that no additional provision is necessary to that effect. Deletion of Article 5/2(d) would thus avoid power redundancy and confusion in the authority of the MInT. Apart from the general statement of the law on the function of the MInT to entertain consumer complaints, the scope of the power of the MInT, methods of receiving claims and other organizational and operational complaint handling mandates are not explicitly indicated. It is not clear whether consumers can be represented in collective actions public bodies, consumer associations, civil society organizations and other special forms of representations in approaching the MInT for resolution of their complaints. It is not also clear whether consumers are free for submission of their complaints in their discretion, either with the MInT or to ADR bodies, or which one precedes the other and the effects thereof. In respect of all these issues, the MInT believes that subsidiary laws will have adequate responses.⁴¹⁵ The MInT is, however, convinced that the ETP in its existing form cannot be enforced.⁴¹⁶

The ETP is also nebulous in the policy of the MInT in its power distribution culture to regions and city administrations. The Proclamation remains applicable to any entity of the country.⁴¹⁷ It is not, however, clear if the MInT can establish agencies in regions and city administrations for enforcement of consumer rights. The role of consumer education and enhancing digital competence is not entrusted to the MInT or another authority with the same function. The ETP does not clearly state the power of MInT or other government bodies in policing, prosecuting and disciplining traders in violation of provisions of the MInT on consumer rights.

⁴¹⁴Ibid, art.42(3)

⁴¹⁵Ayalneh, n 277.

⁴¹⁶Ibid.

⁴¹⁷ ETP, n 24, Art.3/1(a)

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

The need for a separate body of consumer protection law is fundamentally based on the vulnerable position of consumers in their relations with businesses. The information asymmetry about transactions, unequal bargaining power and lack of confidence in e-transactions, which impair rational decision-making power of consumers are generally identified as common foundations to issue protective laws: in filling the gaps in information, identifying and prohibiting unfair practices, and enhancing the confidence of consumer transaction in e-commerce through various measures. The notion of consumer protection always begins from identification of consumers and the term consumer is understood in an evolving basis to mean this or that, in various laws of policy fundamentals.

In this respect, the recent Ethiopian e-commerce law does not define consumers, which would have provided clarity on who the law aims at protecting. It follows that no mechanism is put in place in the legislation to enhance the level of protection on the part of some vulnerable consumers, such as persons with disability, minors, aged and other sections of communities that behavioral economists consider their rational decision making is affected in comparison to average consumers. Similarly, determination of a consumer is a potential source of controversy. On the other hand, the term ‘supplier’ as a party to consumer transactions is not defined in the law. In such situations, it is difficult to evaluate the relationship between suppliers and consumers as commercial relationship, which is to be established between a stronger and weaker parties respectively.

A continuation of this terminology problem also goes to goods, services, digital content and services as objects of contracts and the medium of exchange to be employed. Except for exclusion of immovable goods from the general scope of the e-commerce law, the legislation neither refers to other laws in defining goods, services, or digital content and digital services or all in one, nor covers them by itself. Nowadays, it is usual for consumers to engage in non-monetary transactions in exchange for their personal data. This is a newly introduced exchange medium equivalent to price. Though, to some extent, controversies as to meaning of goods and services may be solved by reference to other commercial laws of the country, regulation of

digital content and digital services and personal data as medium of exchange is still hard to establish.

With all this conundrum, the legislation has incorporated basic forms of consumer protection. The prime form of consumer protection is information disclosure. The information disclosure aspect in terms of content is relatively formulated well. This aspect still misses the important component of ensuring consumer protection on the existence of the right of withdrawal. But, the form of disclosure in e-transaction is not regulated. This makes presentation of both information and contractual terms and conditions unstable for consumers to feel confident in e-commerce. The medium of both information disclosure and form of disclosure is not clear and is subject to debate. Besides, there is a loophole for the law to use website as medium of offer and acceptance in exclusion of e-mail and other computer mediated transactions or social media sites to make offers.

The second form of consumer protection in e-commerce is the right of withdrawal mechanism. A prototype of this mechanism is unique to electronic consumer contracts in particular and distant contracts and off-premises contracts in general. Consumers in Ethiopia's e-commerce law can use this mechanism to withdraw from confirmed commercial transactions with and without reason. The terms cancellation and termination are confusingly used to refer the effects of contracts in measure of withdrawal. The law does not provide for any remedy for the suppliers in their services received by consumers till the cancellation date or diminished value of the goods to be returned to the traders. There are also discriminatory obligations on traders to use secure e-payment system and to pay damages for defective payment systems.

On the other hand, the scope of right of withdrawal in the ETP is ill-drafted, inconvenient and hard to apply. It is sometimes impossible or much painstaking to return some goods. In case, the best practice adopted in EU and the mother copy of Ethiopia's e-consumer protection law (SAECETA) excludes certain goods and services, such as financial services, transport services, perishable goods, newspaper, books, goods clearly personalized to consumers or goods made to consumers' specifications, from the remit of withdrawal rights. The model adopted under the e-commerce law of Ethiopia to make a similar limitation is not exclusion, but shortening the period of seven days to a minimum of a day. This will be subject to interpretation and potential backlash to practical application of the provision.

The third category of consumer protection mechanism generally refers to security of consumer transactions and effective containment of unfair commercial practices. Apart from the non-communicative nature of the law with financial laws of the country, problems in e-payment security are not more issues. The security threat in protection of personal data and the confidence in exchange for personal data will remain in quest for legislative response. On the other hand, the ETP never sets a mechanism of identifying and containing unfair commercial and contractual practices. Search engines intermediaries and online traders keep detached from the regulation of the law.

The fourth form of e-consumer protection, which is effective redress mechanism, is not satisfactorily responded through the ETP. The MInT and the ODR (ADR) dispute settlement mechanisms do not address the nature of remedies that can be awarded to consumers. The ETP does not provide any form of remedy to consumers except statement to liability of suppliers to the damages caused to consumers in use of insecure payment system at the time of cancelling contracts for non-compliance of suppliers with the law.

Finally, the institutional framework is provided in the law generally, with broad mandate of the MInT. The fate of regions and city administrations is also not clear. The role of courts, forms of consumer actions, the role of consumer organizations, associations, and consumer representatives are not dealt in a way that can buttress the enforcement task. Generally, this paper finds that the ETP in its consumer protection scheme needs improvements to better protect consumers.

4.2 Recommendations

Based on the aforementioned findings, the following are recommended.

1. This work recommends revision of the ETP in a way it contains provisions on definition of e-consumers, e-consumer contracts, suppliers, special considerations for protection of vulnerable consumers, the nature of consumer transactions, regulation of non-monetary transactions, contracts for supply of digital content and services, and meaning of goods and services.
2. It also recommends reconsideration of the ETP to have provisions for rules of information disclosure on the existence of withdrawal rights, information on functionality, interoperability, and compatibility of digital contents and services, form of information disclosure, medium of information disclosure and durability of the media.

3. It suggests the adoption of the term “withdrawal” as a fundamental right of e-consumers in a specific provision of ETP, not to stay within the sanctity of contracts. The use of termination or cancellation as a single effect of this right should be revised in a way it represents one of either terms. There should be express exclusion of certain goods and services and digital content and digital service from the scope of this right. There should be a common provision that allocates obligation to use secure payment system upon every supplier and liabilities in use of insecure payment system across all payment refund transactions.
4. The ETP should be reconsidered in a way it introduces unfair commercial and contractual practices, which impair e-consumer interests before, during and after contractual relations. Particularly, it should be reconsidered in terms of online search functionalities and the extent of obligation of traders, including intermediaries, to comply with rules of information disclosure about the contents of priority in search results and ads. It should also be able to envisage a mechanism by which traders in violation of unfair commercial and contractual practices are criminally liable; contracts containing unfair terms are made ineffective; consumers as a result are effectively redressed.
5. The dispute settlement in the ETP should also be revised in a way it embraces in and out of court mechanisms, clear, identified and enforceable forms of consumer remedies. The ETP should also envisage criminal provisions to violation of unique e-consumer rights, such as non-disclosure of information on consumers’ right of withdrawal. On the other hand, there should be some degree of flexibility in the freedom of consumers to choose the legal system applicable to their transaction.
6. In enforcing e-consumer rights, the ETP should be revisited in a way it designates the MInT as administrator, adjudicator, prosecutor, policing institution, or any other body of clearly stated role. The ETP should also allow a system of collective action, public interest litigation, representation of consumers by consumer organizations, associations, public prosecutors and other bodies.
7. Finally, the MInT should have a program of digital competence and consumer education. There should also be a provision on the scope of the ETP in its relation with other consumer laws.

Bibliography

a. Books, articles and theses

1. Ahmad Alhusban, *The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jordan*, (PhD in Law Thesis, 2014).
2. Ajar Rab, 'Smart Contracts & Blockchain: The Panacea to the Unequal Bargaining Power of Consumers?' (2020) 8 *IJCLP* 40.
3. Alebachew Birhanu Enyew, *Towards Data Protection Law in Ethiopia*, (Law, Governance and Technology Series 1, (Springer International Publishing AG 2016).
4. Alan Davidson, *Social Media And Electronic Commerce Law*, (2ndedn, Cambridge University Press, 2016).
5. Alan Davidson, *the Law of Electronic Commerce*, (Cambridge University Press, 2009).
6. Alina Popescu, 'The Evolution of the Right to Information of the Consumer: References to European Policies and Legislation with Effects on Internal Law' (2018) 4 *JL & Pub Admin* 77.
7. Amy J. Schmitz, *Building trust in ecommerce through online dispute resolution*, in John A. Rothchild (ed) *Research Handbooks In Information Law Series*,(Edward Elgar Publishing Limited, 2016).
8. Andrew D. Schmulow¹ and James O'Hara, 'Protection of Financial Consumers in Australia', in Tsai-Jyh Chen (ed), *An International Comparison of Financial Consumer Protection* (Springer, 2018).
9. Anna Hutchings, 'Determining Jurisdiction in E-Consumer Contracts: Are Consumers Being Abandoned in Cyberspace' (2010) 4 *Galway Student L Rev* 56.
10. Anne Salaiin, *Consumer protection issues*, in *E-commerce law and practice in Europe*, in Ian Walden and Julia Hornle (eds), (Woodhead publishing limited, 2001).
11. Aonghus McClafferty, 'Effective Protection for the E-Consumer in Light of the Consumer Rights Directive' (2012) 11 *Hibernian LJ* 85.
12. Ashok R Patil and Pratima Narayan, 'Protection of Consumers in Cross-Border Electronic Commerce' (2014) 2 *IJCLP* 59.

13. Batya Goodman, 'Honey, I Shrink-Wrapped the Consumer: The Shrink-Wrap Agreement as an Adhesion Contract' (1999) 21 *Cardozo L Rev* 319.
14. Christiana N. Markou, *Consumer Protection, Automated Shopping Platforms and EU Law*, (Routledge, 2020).
15. Christine Riefa, *consumer protection and online auction platforms: Towards a Safer Legal Framework*, (in *markets and the law series*, (Ashgate Publishing, 2015).
16. Christine Riefa and Harriet Gamper, 'Economic theory and consumer vulnerability: Exploring an uneasy relationship', in *Vulnerable Consumers and the Law, Markets and the Law Series*, (Routledge, 2021).
17. Christine Riefa and SéverineSaintier, 'In search of (access to) justice for vulnerable consumers', in *Vulnerable Consumers and the Law, Markets and the Law Series*, (Routledge, 2021).
18. Chris Reed, 'Electronic Commerce' in Chris Reed (ed) *Computer Law (Seventh Edition, Oxford University Press, 2012)*.
19. Cristina Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, (1stedn, *Markets and the Law*, Geraint Howells (ed), Routledge).
20. David Waite, 'Consumer Protection Issues in Internet Commerce' (1999) 32 *Can Bus LJ* 132.
21. Deirdre Leahy, 'The Unfair Commercial Practices Directive and Regulation of Online Commercial Platforms: Online Penny Auctions Examined' (2020) 4 *Edinburgh Student L Rev* 11.
22. E. N. Stebek, *Consumer Protection Law in Ethiopia: The Normative Regime and the Way Forward*, (2018) 41 *J of Consum Policy*.
23. Efraim Turban, David King Jae Kyu Lee, Ting-Peng Lian G and Deborrah C. Turban, *Electronic Commerce: A Managerial And Social Networks Perspective*, (8thedn, Springer International Publishing Switzerland, 2015).
24. Faye Fangfei Wang, *Law of Electronic Commercial Transactions*, (2ndedn, 2014).
25. Francesca Ragno, *Concise Commentary on the Rome I Regulation*, (2ndedn, Cambridge University Press, 2020).

26. Gebrehiwot Entehawu Desta, 'Enforceability of electronic contracts in light of the Ethiopian General Contract Law: appraising the issues', (2019) *Information & Communications Technology Law*, 28:1.
27. George Krzeczunowich, *Formation and Effects of Contracts in Ethiopian Law*, (Faculty of Law, Addis Ababa University, 1983).
28. Gert Straetmans, "Introduction", in Gert Straetmans (ed) *Information Obligations and Disinformation of Consumers*, (*Ius Comparatum - Global Studies in Comparative Law Series*, Vol. 33, Springer Nature Switzerland AG, 2019).
29. Hans-W. Micklitz, 'A Common Approach to the Enforcement of Unfair Commercial Practices and Unfair Contract Terms', in Willem van Boom, Amandine Gardeand Orkun Akseli (eds) *The European Unfair Commercial Practices Directive: Impact, Enforcement Strategies and National Legal Systems*, (Routledge, 2016).
30. Huancheng Liu Xiaolong Liu, *The Protection of the Privacy Right in Electronic Commerce*, 21Zhengzhou Institute of Aeronautical Industry Management, 695
31. Ian Rambarran & Robert Hunt, 'Are Browse-Wrap Agreements All They Are Wrapped up to Be' (2007) 9 *Tul J Tech &Intell Prop* 173
32. Ian Walden and Julia Hornle, *E-Commerce Law and the Practice in Europe*, 2001, (Woodhead Publishing).
33. Ida Madieha Azmi, 'E-Commerce and Privacy Issues: An Analysis of the Personal Data Protection Bill' (2002) 16 *Int'l Rev L Computers & Tech*, 317.
34. Immaculada Barral, 'Consumers and New Technologies: Information Requirements in E-Commerce and New Contracting Practices in the Internet' (2009) 27 *Penn St Int'l L Rev* 609.
35. James P Nehf, 'Borderless Trade and the Consumer Interest: Protecting the Consumer in the Age of E-Commerce' (1999) 38 *Colum J Transnat'l L* 457.
36. Jan W. Wiktor and Katarzyna Sanak-Kosmowska, *Information Asymmetry in Online Advertising*, (Routledge Studies in Marketing, Routledge, 2022,).
37. Jehirul Islam, 'Consumers' Data Privacy in E-Commerce: Concerns, Legal Issues and Challenges' (2020) 10 *GNLU JL Dev & Pol* 77.
38. Joanna Kulesza, *International Internet law*, (Magdalena Arent and Wojciech Wołoszyk – IURIDICO – Legal Consultancy & Translations, Routledge, 2012).

39. Jorg Binding and Kai Purnhagen, 'Regulations on E-Commerce Consumer Protection Rules in China and Europe Compared - Same Same but Different' (2011) 2 J Intell Prop Info Tech & Elec Com L 186.
40. Juwenie, Ahmadi Miru, Juajir Sumardi and Hasbir Paserangi, 'Consumer Protection in E-Commerce Transactions in Indonesia' (2016) 47 JL Pol'y& Globalization.
41. Kanchana Kariyawasam & Shaun Wigley (Online shopping, misleading advertising and consumer protection, 2017), Information & Communications Technology Law.
42. Kinfe Micheal Yilma, Between Regulatory Reticence & Legislative Rush: Internet Lawmaking in Ethiopia — Editorial Introduction, in (the internet and policy responses in Ethiopia, vol. 3, 2020).
43. Kinfe Micheal Yilma, 'Data privacy law and practice in Ethiopia' (2015), 5 International Data Privacy Law 3, 177.
44. Kinfe Micheal Yilma & Halefom Hailu Abraha, 'The Internet and Regulatory Responses in Ethiopia: Telecoms, Cybercrimes, Privacy, E-Commerce, and the New Media' (2015) 9 Mizzen L Rev 108.
45. Lorna E. Gillies, Electronic Commerce And Private International Law: A Study Of Electronic Contracts, (Markets And The Law Series, Routledge, 2016).
46. Mariacristina Zarro, 'Online Unfair Commercial Practices: A European Overview' (2021) 7 Italian LJ 201. Mark E. Budnitz, 'Principles and Programs to Protect Consumers from the Deleterious Effects of Technological Innovation', in Dan Wei, James P. Nehf, and Claudia Lima Marques (eds) Innovation and the Transformation of Consumer Law: National and International Perspectives, (1stedn, Social Sciences Academic Press, 2020).
47. Mary O'Hara, 'Forward' in Christine Riefa and Séverine Saintier, Vulnerable Consumers and the Law, (Routledge Publisher, 2021).
48. MatejaDurovic& Franciszek Lech, 'The Enforceability of Smart Contracts' (2019) 5 Italian LJ 493.
49. Murado Abdo, Legal History: Teaching Material, The Justice And Research Legal

- Institute, (2009).
50. Nancy S. Kim, 'Wrap contracting and the online environment: Causes and cures', in John A. Rothchild (ed) *Research Handbooks In Information Law Series*, (Edward Elgar Publishing Limited, 2016).
 51. Nandini CP, 'B2C E-Commerce and Consumer Protection with Special Reference to India - ADR a Best Possible Solution' (2018) 6 *IJCLP* 74.
 52. Naoshi Takasugi, 'E-Commerce Law and the Prospects for Uniform E-Commerce Rules on the Privacy and Security of Electronic Communications' (2016) 33 *Ariz J Int'l & Comp L* 257.
 53. Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union*, (Routledge, 2011).
 54. Pablo Cortés, *The Law of Consumer Redress in an Evolving Digital Market: upgrading from alternative to online dispute resolution*, (1stedn, Cambridge University Press, 2018).
 55. Paul Todd, *E-Commerce Law*, (1 edn, Cavendish Publishing Limited, 2014).
 56. Rajiv Khare and Gargi Rajvanshi, 'E-Commerce and Consumer Protection: A Critical Analysis of Legal Regulations' (2013) 1 *IJCLP* 55.
 57. Rana Tassabehji, *Applying E-Commerce in Business*, (SAGE Publications Ltd, 2003).
 58. Rita S Heimes, 'Privacy and Innovation: Information as Property and the Impact on Data Subjects' (2015) 49 *New Eng L Rev* 649.
 59. Robin Simpson, 'A universal perspective on vulnerability: International definitions and targets', in *Vulnerable Consumers and the Law, Markets and the Law Series*, (Routledge, 2021).
 60. Roy J. Girasa, 'Click-Wrap, Shrink-Wrap, and Browse-Wrap Agreements: Judicial Collision with Consumer Expectations' (2002) 10 *Ne J Legal Stud* 102.
 61. Sabrina Rochemont, 'Payments Revolution Toward Financial Exclusion Or Inclusion?', in Cătălin-Gabriel Stănescu and Asress Adimi Gikay (eds)

- Discrimination, Vulnerable Consumers and Financial Inclusion: Fair Access to Financial Services and the Law, Routledge Research in Finance and Banking Law Series, 2021).
62. Salvatore Mancuso, 'Consumer Protection in E-Commerce Transactions: A First Comparison between European Law and Islamic Law' (2007) 2 J Int'l Com L & Tech 1.
 63. Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, (Hachette Book Group, 2019).
 64. Simret Zewdie Kebede, *Electronic Funds Transfer and the Case for Consumer Protection in Ethiopia*, (LLM Thesis, University of Oslo, 2013).
 65. Spencer, S. B., Privacy and predictive analytics in e-commerce, 631.
 66. Sue L.T. McGregor, Consumer education and the OECD electronic commerce consumer protection guidelines, (Mount Saint Vincent University), 176.
 67. Sutatip Yuthayotin, *Access to Justice in Transnational B2C E-Commerce*, (Springer, 2015).
 68. Tesfaye Neway, *Aspects Of Law And Economics In Competition And Consumer Protection*, (Addis Ababa, 2013).
 69. Tessema Elias, 'Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia' (2015) 9 Mizan L Rev 83.
 70. Thomas T Reith II, 'Consumer Confidence: the Key to Successful E-Commerce in the Global Marketplace' (2001) 24 Suffolk Transnat'l L Rev 467.
 71. Trish O'Sullivan, 'Online Shopping Terms and Conditions in Practice: Validity of Incorporation and Unfairness' (2014) 20 Canterbury L Rev 1, 5.
 72. Yohans Mebrate, 'The regulation of the future e-commerce and competition, n (the internet and policy responses in Ethiopia, vol. 3, 2020).
 73. Zach Smolinski, 'Smart Contracts' (2021) 17 NYU JL & Bus 704.
 74. Zheng Tang, 'Parties' Choice of Law in E-Consumer Contracts' (2007) 3 J Priv Int'l

b. Foreign legal documents, research reports and others:

1. OECD Recommendations for Protection of consumers in E-commerce, (2016).
2. OECD, 'Toolkit for Protecting Digital Consumers: A resource for G 20 policy makers', (2018).
3. The EU Directive on Unfair Practices No. 29 2005.
4. The United Nations on Committee on the Rights of Persons with Disabilities, Eleventh session, general comment no 2(article 9 accessibility), 2014.
5. The Amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernization of Union consumer protection rules, DIRECTIVE (EU) 2019/2161 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, Official Journal of the European Union.
6. Directive (EU) 2019/770 of The European Parliament and of the Council of 20 May 2019, on certain aspects concerning contracts for the supply of digital content and digital services, The European Parliament and The Council Of The European Union.
7. Directive93, (As Amended by Directive No. 2161/2019),
8. The CRD, Directive No 83, (2011).
9. General Assembly, 'United Nations Guidelines for Consumer Protection', (UNCTAD/DITC/CPLP/MISC/2016/1), (2015).
10. United Nations Conference on Trade and Development, 'Impact on Businesses and Policy Responses: COVID 19 and E-commerce', (2020).
11. United Nations Conference on Trade and Development, Trade and Development Board, Trade and Development Commission, 'Intergovernmental Group of Experts on Consumer Protection Law and Policy Second session', (Geneva, 3-4 July 2017).
12. UCPD as amended in directive no2161/2019.
13. EU Council Directive On Unfair Terms in Consumer Contracts, 93, (1993).
14. Regulation (EU) No 1215, (2012).
15. Regulation (EC), No 593, (2008),).

16. the south African electronic communication and electronic transaction act, No. 25, (2002).
17. The SAECETA, as amended in (South African Consumer Protection Act, No. 68, 2008 schedule A).
18. Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013).

c. Domestic laws, strategy and draft laws

1. The Electronic Transaction Proclamation , 2020, neg., gaz. Proclamation No. . 1205, 26th Year, No. 57.
2. The Convention on the Right of Persons with Disability Ratification Proclamation, 2010, neg., gaz., Proclamation No. . 676, year, 16, no. 32.
3. The Trade Competition And Consumer Protection Proclamation , 2013, neg., gaz., Proclamation No. . 813, year 20, no. 28.
4. The Advertisement Proclamation 2012, fed., neg., gaz., Proclamation No. . 759, Year 18, No. 59.
5. Communications Service Proclamation , Proclamation No. . 1148/2019, Neg., Gaz., 25th, Year No.82.
6. The Banking Business Proclamation , 2019, neg., gaz., Proclamation No. 159), year 25, no. 88.
7. The Insurance Business Proclamation , 2019, neg., gaz. Proclamation 1163, year 26, no. 6.
8. The National Payment System Proclamation , 2012, neg., gaz., Proclamation No. 718, year 17, no. 84.
9. The Micro-Financing Business Proclamation , 2019, neg., gaz., Proclamation No. 1164, year 26, no. 7.
10. Civil Code of the Empire of Ethiopia, Proclamation No. . 165/1960, Negaritt Gazette, Extraordinary Issue.
11. The Arbitration and Conciliation Working Procedure Proclamation , 2021, neg., gaz., Proclamation No. . 1237, year 27, no. 21.
12. FCP directive, 2020, NBE, Directive No. 001.
13. ECA, Communications Services Directive No. 832, 2021.

14. The National Digital Payment Strategy 2021-2025, the NBE, 2021.
15. The Licensing and Authorization of Payment Instrument Issuers Directive No. 01, 2020, the NBE.
16. Licensing and Authorization of Payment System Operators Directive No. 002, 2020, the NBE.
17. The draft E-transaction regulation, Council of Ministers.
18. Definition of powers and duties of the executive organs Proclamation , 2021, neg., gaz., Proclamation No. . 1263, year, 28th, no. 4.
19. The computer crime Proclamation , 2016, neg., gaz., Proclamation No. 958, year 22, no 83.
20. Telecom fraud offence Proclamation , 2012, neg., gaz., Proclamation No. . 761, year 18, no. 61.

d. Minute, explanatory notes and interview

1. Explanatory Notes on the Electronic Signature Proclamation, (House of Peoples Representatives, 2018).
2. The Explanatory Note on the Draft E-transaction Proclamation , (House of Peoples Representatives, April 2020).
3. The minute with asrejis (explainers) from the standing committee for human resource development and technology issues, (House of Peoples Representatives, 2020).
4. Interview with Ato Ayaleneh Lema, Director of the Directorate of Legal Affairs in MIT), (on the date of November 14, 2021, at 10:30-11:23).

Interview Questions

The following were the questions asked during the interview with Ato Ayalneh Lema, Director of Legal Affairs Directorate at the MInT.

1. In preparing the draft Electronic Transactions Proclamation, did you have the idea that the consumer protection regime covers C2C transactions?
2. What is the fate of the MInT's decisions on consumer complaints?
3. Is there any persons that is specifically assigned to enforce consumer rights at the MInT?
4. What is the role of this body, if any?
5. Does the MInT currently enforce the consumer protection regime?