



## **“E-Commerce Dispute Resolution Mechanisms in Ethiopia”**

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## **Abstract**

*E-commerce is part of the virtual world which facilitates B2B, B2C and other forms of market relationships. Dispute is unavoidable facts in economic relationships. The Problem worsened when disputes arise out of virtual relationships. No law governs the virtual world for internet has no jurisdiction. In various nations, disputes out of e-commerce are regulated based on outdated traditional laws. Nowadays, e-commerce is the choice of all in spite of the fact that e-dispute resolution mechanisms are staggering. This thesis has examined E-commerce Dispute Resolution Mechanisms in Ethiopia. E-commerce dispute resolution mechanisms are plausibly enshrined under the various legislations, regulations and directives in Ethiopia. However, the practice is incredibly crawling and no courts, quasi-judicial bodies, associations, regulatory practices and institutions are addressed any complaints from e-consumers or e-traders. All the redress mechanisms enshrined under various legislations did not consider peculiar nature of e-commerce practices and institutional arrangements in Ethiopia. No structurally independent institutions which really serves e-marketplace actors interests. ADR/ODR, internal or in-house code of conduct, regulations as well as ombudsman offices are some redressing mechanisms enshrined under Ethiopian legal regime. Establishment legislation and regulation of ECX, Custom Authority, Chamber of Commerce, and The Capital Market Authority properly recognize functional equivalence and evidentiary weights of e-documents. Besides, they inculcated various e-dispute resolution mechanisms ranging from ADR/ODR to establishing external dispute resolution agencies to protect e-financial consumers. E-consumer protections, except financial consumers, are left unattended in Ethiopia. ODR introduced under the draft Electronic Commerce Regulation for the first time. It still waits for ratification. Having plausible, easy and accessible redress mechanisms boost e-consumers' confidences. However, the practice in Ethiopia showed scattered regulatory practices and poor institutional integrations. These made e-consumers in Ethiopia vulnerable for any market abuses. E-disputes redress practices are far behind expectations. No courts entertains any e-commerce marketplace disputes. After the ratification of Proclamation 916/2015, adjudicatory roles of many executives were moved to the Ministry of Justice, quasi-judicial bodies were established as proper courts under the aforementioned ministry. However no consumers have any knowledge of the establishments of these courts. This radically declined the confidence of e-consumers. Except the NBE, all institutions left e-consumers to absorb grievances out of e-marketplace relationships. E-financial consumers properly protected through stringent directives and follow-ups from NBE and Eth-switch. E-commerce actors are also unregulated. The operators did not properly posted disclosure terms. Surprisingly, two of the operators employ California Consumer Protection Act for consumer data protection in which Ethiopia is not party. Many of the contractual terms have adhesive mode. Survey made in the courtrooms and authorities showed that e-consumers as well as officials have no knowledge of e-commerce market place disputes and its redress. Integration among various government bodies and awareness creation sessions are recommended so as to educate e-consumers rights.*

*Key Terms: E-commerce, ADR, ODR, E-consumers,*

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## 1. Introduction

The advent of Information Communication Technologies (ICTs) has indeed changed commercial transaction modalities worldwide. Dispute is an unavoidable fact in any business transaction. E-commerce contradicts with traditional dispute resolution techniques because the law is not coping up with the virtual world. Law serves tool to redress dispute, which is an inherent facet of business transactions and legal relationships. Internet gives rise to unique and unusual circumstances, rights, privileges and relationship that are not adequately dealt with by traditional laws.<sup>2</sup>Laws traditionally regulate dispute in territory (jurisdiction) base unlike e-commerce which transcends territory and no state may effectively regulate it<sup>3</sup>. Peculiarities of each nation’s laws can even worsen e-dispute resolution due to the fact that consumers/traders are residing in different territories. Consumers’ rights’ could be easily abused and quick and efficient redress are hard to meet. This in turn deteriorates consumers’ confidence, which is a base for e-commerce. A borderless internet and bordered jurisdiction made e-commerce dispute redress system challenging. In the traditional litigation, dispute could be handled based on prescribed legal principles: procedural and substantive. While using electronically assisted transaction in cross border business, remedies available for disputes redressing is challenging due to various reasons. To mention, recognition of electronic contract/e-awards, choice of law, difference in bargaining power of parties, validity of evidence and proof of burden, e-signature, fraud, consumer protection, forum/jurisdiction, recognition of awards etc.

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<sup>2</sup> Davidson Alan, *The Law of Electronic Commerce*, (Cambridge University Press, 2009).

<sup>3</sup> Puurnen Tapio, *Dispute resolution in International Electronic Commerce*,( Helsinki University Printing House, 2005,) P. 8

The traditional forms of dispute redressing mechanism have been defeated by time and distance.<sup>4</sup> Normative rules of dispute resolution system put jurisdiction, adopt hard evidence rule, demands physical presence of parties, etc. as requirements unlike the inherently decentralized architectures<sup>5</sup> of internet. Due to these reasons, parties' faces costly litigation with delayed solution for business disputes consequently loss confidences. To resolve such problem, traders resorts to other means of dispute resolution mechanisms like ADR/ODR.

E-dispute resolution mechanisms are at infant stage in Ethiopia and really is the source of uncertainty in the digital market space due to lack of legal backings and awareness among consumers/traders, judges etc. Paradoxically, with all the prevailed loss of confidence and absence of proper redress in online transaction related dispute in businesses, consumers now a day are strengthening online transaction mechanism as better and profitable way of doing commerce in the web. This is real fact in Ethiopia too. Considering the opportunities, the Ethiopia government is striving to create business that employ internet as a tool. The introduction of G5 network by the Ethiopian Telecommunication Corporation is designed to actualize 'Digital Ethiopia' by the year 2025.<sup>6</sup> Aspiration to develop digitized market needs accessible, reliable, prompt and trusted dispute redressing system. Absence of redressing system for e-commerce disputes, lack for out-of-court remedies together with scattered institutional arrangements made e-dispute redress mechanisms in Ethiopia challenging. Furthermore, mandating electronic commerce platform operator to establish dispute settlement mechanisms<sup>7</sup> (even though they are part of the dispute), absence of accessible dispute redresses and treaties or internationally ratified documents like OECD's or UNICTRAL's Model Law and other award providing documents except the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award and Conciliation in Ethiopia made the problem bitter.

Ethiopia ratified various legal documents like Electronic Signature Proclamation (No. 1072/2018) and Electronic Transaction Proclamation -ETA (No. 1205/2021) with the draft Council of Ministers on Electronic Transaction, and Personal Data Protection Proclamation (No.1320/202) in

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<sup>4</sup> Omoola Sadiq. A. and Oseni Oumer, A. Towards An effective Legal Framework for Online Dispute Resolution in E-Commerce Transaction: Trends, Traditions, and Transitions, IIUM Law Journal, 24/1, P. 259.

<sup>5</sup> Supra Note (n.4), P. 7

<sup>6</sup> National Digital Payment Strategy (2021-2024);

<sup>7</sup> Electronic Transaction Proclamation, No.1205, Art. 42(1).

order to regulate the resolution of investment and commercial related disputes in addition to many computer and telecommunication related legislations. The Electronic Signature Proclamation at part five provides dispute settlement system by the National Crypto Council (Under the Information Network Security Agency (INSA)) and vested the administrative appeal right to high court. Governmental bodies (MinT, and Ministry of Trade and Regional Integration as well as ECX, except NBE) did not address any dispute out of online transaction. Chamber of Commerce and Sectoral Association has started crude effort to resolve e-disputes based on parties consent. In the effort to protect e-consumers, all Ministries have left their roles of prosecution to the Ministry of Justice. Though preferred way of organization, still confusions of roles among regulatory bodies left e-consumers unprotected. Focusing on the redressing mechanism that the Ethiopian legal system provides, the thesis will assess the extent to which dispute resolution mechanisms are addressed under the different legislations focusing on business to consumer and business to business (B2B) transactions.

### 1.1. **Research Questions**

The research question of the thesis is to what extent, and whether, Ethiopian laws provide proper redressing mechanisms for disputes arise out of e-commerce. The thesis further seeks to address the following sub questions:

- How and to what extents are e-commerce disputes resolution mechanisms treated under Ethiopian laws?
- What are the major redress system established to serve claims from e-consumers and e-payment related claims in Ethiopia?
- What are the institutional setup of Ethiopian courts, executives and quasi-judicial bodies and platform operators in regulating e-commerce disputes?
- Do Ethiopian e-commerce related legal documents address e-dispute resolution mechanisms to win e-consumers' confidence compared to the South Africa and UK's as well as internationally recognized and applicable dispute resolution mechanisms?

### 1.2. **Objectives**

The general objective is to analyze the overall purpose of the paper, whereas the specific objectives tried to supplement the various issues that could arise out of the general objective.

### ❖ **General Objectives**

The general objective of this paper is to critically examine the extent to which the Ethiopian laws address disputes under e-commerce transactions.

### ❖ **Specific Objectives:**

The specific objectives of the research are to:

The specific objectives of the research are:

- Analyze the extent to which dispute out of e-commerce marketplaces have been resolved in Ethiopian legal systems;
- Identify major challenges e-consumers' face and protection under e-commerce marketplaces by comparing with South Africa and UK e-commerce acts
- Assess the extent to which electronic transaction related legal documents in Ethiopia are compatible with the internationally/regionally recognized and applicable electronic related dispute redress practices'.

### 1.3. **Research Methodology**

The thesis primarily adopts a doctrinal method by which primary legislations concerning e-commerce and secondary sources (literatures like books, articles and international/national documents) will be explored. Furthermore, the thesis employs empirical method (interview) to understand the actual practice and comparative method to draw international best practices. Interview will be conducted with relevant authorities who have exposure to electronic commerce related regulations. To supplement the doctrinal approach, comparative study of selected acts (the UK Electronic Commerce Act (2000) and The South African Electronic Communication and Transaction Act, (2002)), which have directly involved with e-commerce dispute resolution provisions and mechanisms, will be discussed.

## **2. E-commerce Dispute Resolution Mechanisms: Practices**

E-commerce is no more a hype; it becomes a reality in the globe and Ethiopia is not an exception. The vision to build 'digital Ethiopia' in 2025 has been underway with initiatives in various

economic spaces including among others sales of airlines tickets, gas stations, tax declaration and renewal, banking transactions and electronic procurement (eGP) etc.

### **2.1. E-commerce Dispute and Law: Peculiarities**

E-commerce contains conflicting concerns: high accessibility fused with risk in dispute resolution and privacy. . E-commerce has been ideal choice for many people due to varieties of reasons: it provides parties ease of access, anonymous browsing of products, larger choice, and convenience of shopping and enormous efficiencies. Scholars like Alan questioned the concept of electronics law. For Allan, cyber law, as a separate body of law, is non-existent, and cyberspace is a delightful new playground for old games.<sup>8</sup>

### **2.2. E- Contracts Types and Trends**

Virtuality makes e-contract peculiar. The Model Law does not address the idea contract directly. Rather it tried to generalize electronic media in commercial transactions.<sup>9</sup>There are various forms of virtual contracts: shrinkwrap, clickwrap and browsewrap agreements. Under shrinkwrap contract, customers have two choices: either agree or reject the terms and conditions enclosed. This specific contract includes provisions such as arbitration clause, choice of law and forum clauses, disclaimers and limitations. Clickwrap agreements are formed on the internet using interactive webpages.

### **2.3. E-commerce Jurisdiction**

Jurisdiction is the power of the court to adjudicate and provide enforceable decisions so as to take the economic system effective than impotent. Jurisdictional issues could be treated in various modalities due to the porosity nature of the Internet. Some countries treated Internet using old principles which are impractical because cyberspace has its own sovereign jurisdiction.<sup>10</sup> In such a manner, through developing brand scheme, i.e. by just self-regulating each cyberspace related activities than searching for all-in-one solutions, it is possible to regulate internet smartly. In determining jurisdiction of cases, there are some common standards which are used under the

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<sup>8</sup> Ibid, P. 2

<sup>9</sup> The United Nation Convention on the Use of Electronic Communication in International Contract, (2007).

<sup>10</sup> Ibid

international legal relationship: place of performance rule (EU), jurisdiction of rules of contract disputes (China) may apply. In resolving dispute out of e-commerce contractual relationship, the involvement of technologies made redressing mechanism arduous compared to the traditional debtor/creditor litigation in courts. Some nations applied conflict of law rules, which still is problematic. The India IT Act covers any electronic related transgression involves a computer, computer system or computer network located in India, which is still incompatible.

## **2.4.. Evidentiary Weight of E-Documents**

E-evidences are real, hearsay and derived.<sup>11</sup> Real evidence entails that the thing stands for itself unless it's genuinely is doubted. Hearsay evidences are copies of information supplied to the computer by human beings like cheques drawn and paying in slips. Whereas derived evidences are the combination of the above two. Bank statements are the best hearsay evidences under the virtual world. Admissibility and reliability of evidences are two most important matters that determine the effectiveness of dispute resolution procedures under e-market places disputes resolution efforts. Evidence adduced against claims based on e-market place relationships has its own unique nature. Admissibility of electronically produced and printed documents, authentication of e-documents and related matters made e-disputes complex.

Concerning admissibility of evidences under the e-commerce disputes adjudication, UK treated computer generated evidence differently from other evidence. Computer generated evidence demands certificate as to its authenticity. If one cannot adduce certificate, the authenticity of the evidence is compromised. The UK Civil Evidence act put stringent requirements to accept computer generated evidences as legal.

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<sup>11</sup> Kamath, Nandan, Law Relating to Computers, Internet and E-Commerce, A Guide to Cyberlaws and the Information Technology Act, 2000 With Rules and Notifications (Universal Law Publishing Co. Pvt. Ltd. 2006) P.60.

## **2.5. E-signature**

Signature under the electronic transaction has similar purpose: accepting the associated practical and legal risk<sup>12</sup> with the traditional paper based documents. Besides it has the following functions: identifying the signatories, clarify personal involvement of the signatory, associate particular person with content of the document, witness another's person signature, approve the content of the document and indicate authorship of the document by the signatory.<sup>13</sup> Signature in general approves the evidentiary, authenticity and reliability of attested documents.

## **2.6. Global E-consumer Protections Experiences**

The OECD advised collaborative works of businesses, consumers' representatives and government<sup>14</sup> to protect e-consumers. Federal Trade Commission (FTC) of US has developed four specific remedies to protect consumers under virtual transactions, these are: consumer and business education, law enforcement, self-regulation by industry and inclusive approach for policy making.<sup>15</sup> Scholars agree that well served e-dispute redress demands collaborations among governments. Consumer under OECD adheres to internal complaint handling procedure together with the ADR. Web based market is propitious to unfair commercial practices<sup>16</sup> and deteriorate consumer confidence on e-commerce. To build confidence on the e-consumers' side, guideline 14 (b)<sup>17</sup> imposes restrictions on contract terms in the web, which should be clear, concise and easy to understand.

## **2.7. E-commerce Dispute Resolution Mechanisms**

Countries develop mechanisms to solve e-disputes through arrangements on dispute prevention, complaints handling and effective methods of redress using ADR/ODR. FTC of US advocates for four strategies for consumer protections: consumer and business education, Support for law enforcement bodies, self -regulation by the industry and inclusive approach to policy making. The

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<sup>12</sup> Ibid, P. 79.

<sup>13</sup> Ibid, P. 79-80

<sup>14</sup> Organization for Economic Cooperation and Development (OECD), Guidelines for the Consumers Protection in the Context of Electronic i Commerce, (2000, Paris);

<sup>15</sup> Zhao, Yun, Dispute Resolution in Electronic Commerce: Studies on Materials on Settlement of International Disputes, Vol. 9, (Brill Academic Publisher, 2005), P.78.

<sup>16</sup> Ibid, P. 5

<sup>17</sup> UNCTAD Working Group on Consumer Protection in E-commerce, report on Cross Border Cooperation. P. 7.

EU, on the other hand proposes for partial harmonization of the existing national laws, developing similar principles, and adopting ADR/ ODR in addition to the national consumer protection laws.

The UK's Competition and Market Authority (CMA) and South African National Consumer Commission (NCC) relied on court orders unlike FTC which operate trial-type adjudication by the Administrative Law Judges which can result in a cease-and-desist order.<sup>18</sup> Under the UK e-commerce environment, serious regulatory framework forced any e-marketers to post self-regulatory mechanisms. These in turn reduces the prevalence of consumer dispute and enforced customer confidence. Confident consumer is vital to build strong e-commerce. E-commerce organizations like e-Bay and PayPal have introduced range of mechanisms to redress e-commerce grievances through peer to peer algorithm to automatically settle disputes<sup>19</sup> between consumers. Consumers should get gateway to redress any complaints through collective redress, public regulatory and enforcement actions, ombudspersons, ADR, ODR and business customer care and complaints<sup>20</sup>. ADR includes, unlike the online dispute resolution system, mediation, arbitration, conciliation, ombudsman and complaint boards.<sup>21</sup>

<sup>22</sup>.

### **2.7.1. Alternative Dispute Resolution**

ADR, originally introduced to supplement the court, provides various advantages under e-commerce market place disputes. ADR can be viewed as a range of approaches that fits within the broader spectrum of dispute resolution<sup>23</sup>. It mainly characterized by resolving claim through the use of out- of- court resolution mechanisms. Under the ADR system, process control<sup>24</sup> creates more satisfaction among parties. ADR was devised in response to the deficiencies in the court system.<sup>25</sup>

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<sup>18</sup> Ibid, P. 16.

<sup>19</sup> Akhtar, Naureen (Dr.), Online Dispute Resolution as a Solution to E-commerce Dispute: A Comparative Study of Pakistan and UK, Journal of Contemporary Issues in Business and Government (Vol. 28, no.3/2022).P. 152.

<sup>20</sup> Zheng, Jie. Online Resolution of E-commerce Disputes: perspectives from the European Union, the UK and China, (Springer, 2020), P. 22

<sup>21</sup> Addressing Dispute in Electronic Commerce: Final Recommendations and Report, (The Business Lawyers, Vol. 58, No. 1), P. 429

<sup>22</sup> Rule, Colin, Online Dispute Resolution for Business, Jossy-Bass Publisher (2002), P.3

<sup>23</sup> Supra Note ( n. 27), P.33

<sup>24</sup> Ibid, P.56.

<sup>25</sup> Ibid, P.49.

ADR provides opportunities for parties, to choose the forum and experts on the issue at hand, by their agreement, to create legitimacy for their decision.

### **2.7.1.1. Online Dispute Resolution**

ODR is a form of ADR which involves ICTs to facilitate e-dispute resolution procedural concern under e-commerce marketplace. ODR is recently introduced dispute resolution technique supplemented by ICTs. It is a broader term that encompasses many forms of ADRs that incorporate the use of the internet, websites, email communication and other information technology as parts of the dispute resolution process.<sup>26</sup> Square Trade/E-bay are best examples in treating internet supported ADR. Disputants through the help of their Websites respond to multiple choice questionnaires. ODR service itself is considered as part of e-transactions, by its nature. Like e-commerce. In China, the ODR related regulation is left for businesses. Platforms in China digital business are forced to create law<sup>27</sup> for two practical purposes. The first is to fill the loophole, where there is no formal legislative framework and the second, which is the wisest decision from the regulatory body, is utilizing the experience of the private sector<sup>28</sup>. ODR, in supplementing the formal judicial procedures, provides comparatively swift, cheap and efficient redress, with all deficiencies. ODR, in the problematic virtual engagements, provides a better framework to resolve e-disputes. ODR services, as has been provided by business entities like e-bay, or WIPO or Electronic Case Facility (ECAF), ICC's NetCase, Square Trade Web, or Bitcoin self-enforcing dispute resolution mechanisms, have been in use with all recognition and enforcement problems.

## **2.8 E-Payment Dispute Redressing Mechanisms**

Since payment has been effected without the involvement of paper money or cash, it is more exposed to abuses. Risks in electronic payment systems are stolen credential or password, dishonest merchant, dispute over transactions, inappropriate use of transactions details, forged or copied disputed charges, and insufficient funds in customer's account and unauthorized

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<sup>26</sup> Organization for Economic Cooperation and Development (OECD), Guidelines for the Consumers Protection in the Context of Electronic i Commerce, (2000, Paris); P.419.

<sup>27</sup> Ballesteros Teresa, International Perspectives on Online Dispute Resolution in the E-commerce Landscape, International Journal on Online Dispute Resolution 2021(8), P. 92.

<sup>28</sup> Ibid, P.92.

redistribution of purchase items. Consumers in UK e-payment system are protected through disclosure of information, integrity of financial service providers and fiduciary duties.<sup>29</sup> In the UK, credit card charge back and joint liabilities of payment service providers and credit card issuers<sup>30</sup> are common ways of redresses under e-payments related disputes. Under RSA, ODR is legislatively supported redress, but its accessibility is far behind. The following are common e-payment dispute resolution mechanisms.

### 2.8.1. E-payment Credit card charge backs and Ombudsman

A credit card chargeback supports e-consumers while paying in advance for goods and services under e-transaction. It mainly avoids dispute by shifting the power from the merchant to the consumer<sup>31</sup> and is the cheapest service compared to other forms of dispute redress mechanisms. This mechanism is known for no dispute resolution fees and the simplest obligation for the cardholder is to call for card issuers. This balances, to certain extent, the bargaining power.<sup>32</sup> Customers are expected to call or write the claims they have for the card issuers. More complaint on a given credit card issuer jeopardized its credibility. .

- **Good Offices/Ombudsman:** Good offices<sup>33</sup> are independent officials, who receive complaints, conduct investigation and make recommendations. Sometimes they adjudicate disputes.<sup>34</sup> Online Ombudsman service overcomes the problem in the good offices bureaucratic procedures.
- **Customer Service/support:** is an internal dispute redress mechanism developed by the ISPs or online traders on the web. It includes clear information on complaining procedures, how to go about making complaint, contacting method, suggesting possible response.<sup>35</sup> Such support system is termed as internal dispute redress system in some jurisdiction and considered as a dispute avoidance technique.<sup>36</sup>

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<sup>29</sup> Ian Mac Neil, : Consumer Dispute Resolution in the Uk Financial Sector: The Experience of Financial Ombudsmen Service, Law and Financial Market Review (1/6, 2007).

<sup>30</sup> Hornle Julia, Cross-Border Internet Dispute Resolution, Cambridge University Press, (2009), P. 38.

<sup>31</sup> Supra Note (n. 65). P. 42.

<sup>32</sup> Supra Note (n.65), P, 165.

<sup>33</sup> African Union Convention on Cyber Security and Personal Data Protection, Art. 34(1),

<sup>34</sup> Supra Note (n.55), P,162

<sup>35</sup> Supra Note (n.55), P. 170.

<sup>36</sup> Ibid, P. 169

- **Self or Industry regulations:** self-regulators are generally experts in the industry capable of producing appropriate objective decisions<sup>37</sup> E-commerce marketplace is known for high information asymmetry and seller and buyer have not any physical contact. Self-regulation should supplement the potential asymmetric contractual relationship between online traders and consumers and expected to be protective than the formal legislation. Self-regulations put minimum requirements like providing technical information to protect consumers.

### **3: E-Commerce Dispute Resolution under Ethiopian Laws**

Under the Ethiopian legal jurisprudence, legislations related to e-commerce are numerous. The paper analyzes various legal documents including Electronic Transaction Proclamation No. 1205/2020 with the draft Council of Minister Regulation on Electronic Transactions, Personal Data Protection Proclamation No. 1321/2024, Electronic Signature Proclamation No. 1072/2018, Trade Competition and Consumer Protection Proclamation No. 813/2013, Capital Market Proclamation No. 1248/2021 with the necessary directives, National Payment System Proclamation No. 718/2011 with relevant directives, Ethiopian Commodity Exchange Proclamation No. 550/2007, Definition of Powers and Duties of the Executive Organs Proclamation No. 1263/2021, Chamber of Commerce and Sectoral Association Establishment Proclamation 341/2003 and Customs Proclamation No. 859/2014.

#### **3.1. E-commerce Dispute Resolution Mechanisms in Ethiopian Legislation**

E-commerce marketplace dispute resolution mechanisms enshrined under Ethiopian legislations are: ADR/ODR, internal (in house) complaint handling procedures<sup>38</sup> (customer service programs), charge back and refund, rating/feedback and ombudsman<sup>39</sup> programs, expert determination, and

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<sup>37</sup> Supra Note (n.65), P. 113.

<sup>38</sup> National Payment System Proclamation No. 718/2011, Art. 20(1)

<sup>39</sup> National Digital Payment Strategy (2021-2024),.P. 58

industrial self-regulation<sup>40</sup> (industry self-discipline) in addition to the administrative measures<sup>41</sup>. NBE exceptionally inculcates external dispute resolution scheme<sup>42</sup> by which dispute among financial consumer, security providers and financial service providers will be resolved. Recently, ODR<sup>43</sup> is proposed under the draft regulation as part of the internal dispute resolution mechanism. In fact, ODR, in its crude form<sup>44</sup>, has been exercised in Chamber of Commerce Arbitration Tribunals, which is a radical leap towards employing ICT in the dispute redress efforts.

### 3.1.1. In House (Internal) Code of Conduct

ETP recommends establishment of in-house dispute redress mechanism to resolve claims between Electronic Platform and Intra Platform Operators (POs). It commands POs to develop in-house dispute settlement mechanism<sup>45</sup>. The draft Electronic Transaction Regulation demands businesses to establish in house standards to protect e-consumers' rights and addresses complaints. E-consumer protection provisions under the draft document demands suppliers who transact electronically to provide the code of conduct they are subscribed.<sup>46</sup> Besides, the draft regulation listed various dispute redress mechanisms by which E-commerce Operator (EO) should abide by. EO shall publish all the code of conduct or provides link to such information.<sup>47</sup> Providing guarantee,<sup>48</sup> in addition to the POs duty to assist proactively consumer legitimate rights and interests<sup>49</sup> and having the right to lodge complaint at MinT for any non-compliance<sup>50</sup> against provision by suppliers are additional redressing mechanisms. However, discussion with officials in MinT showed that no office assigned<sup>51</sup> for such purposes. Complaints, which could not be resolved through in-house procedures of platform operators and suppliers, as put under Art. 28

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<sup>40</sup> Trade Competition and Consumer Protection Proclamation No. 813.2013, Art. 30(11) and Capital Market Proclamation No. 1248/2021, Art. 24.

<sup>41</sup> Electronic Transaction Proclamation, No.1205/2020, Art. 34

<sup>42</sup> Financial Consumer Protection Directives, No. FCP./01/2020, Art.2 (12).

<sup>43</sup> The Draft Council of Minister Regulation on Electronic Transactions, Art. 42.

<sup>44</sup> Interview with Mister Mohammad, Addis Ababa Chamber of Commerce and Sectorial Association, Arbitration Coordinator, May 12<sup>th</sup>, 2024.

<sup>45</sup> Supra Note (n. 52) Art. (42).

<sup>46</sup> Supra Note (n.55), Art. 28 (1)(C).

<sup>47</sup> Ibid. Art. 27 (1).

<sup>48</sup> Ibid, Art. 39.

<sup>49</sup> Ibid, Art. 43.

<sup>50</sup> Supra Note (n. 23 ) Art. 34.

<sup>51</sup> Interview with Eyerusalem Kebede.

(1)(m), will be resolved by ADR, which suppliers are obliged to facilitate and develop code. Suppliers should mitigate dispute through developing institutional ethical standards and self-regulatory practices<sup>52</sup>.

### 3.1.2. ADR and ODR

ADR is a common mechanism employed under e-market place disputes in UK, RSA. However, ODR is a new introduction in Ethiopia. ETP dictates the use of Arbitration<sup>53</sup> in line with established regulation and directive. The regulation and directives are waiting for ratification. The draft regulation proposes negotiation, mediation and mediation<sup>54</sup> (it should be arbitration), courts<sup>55</sup> and ODR<sup>56</sup>. It has also proposed administrative remedies<sup>57</sup> for any illegal acts and imposes penalties as per the non-ratified directives, which is a new introduction. In fact, ODR proceedings are devised to provide straight forward problem-to-solution approach.<sup>58</sup> E-Bay and PayPal in UK employed automatic negotiation and professional<sup>59</sup> assisted support. These ICTs supported dispute resolution trends, though necessary, are not part of the legal regime in Ethiopia. ODR mostly employed in disputes in B2C questions of fact than law.<sup>60</sup>

The Capital Market Proclamation resolve disputes among security holders, capital market service providers, issuers of securities, investors, securities exchanges and securities depository clearing companies through mediation<sup>61</sup> and arbitration<sup>62</sup>. In the proclamation, self-regulatory organization<sup>63</sup> which has a supervisory and disciplinary<sup>64</sup> functions delegated by the Capital Market Authority, has established. Self-regulatory institutions should devise rules concerning

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<sup>52</sup> Supra Note (n. 52),

<sup>53</sup> Ibid, Art. 42(3)

<sup>54</sup> Supra Note (n.52) Art. 41(1)

<sup>55</sup> Ibid, Art. 41(2)

<sup>56</sup> Ibid, Art. 42

<sup>57</sup> Ibid, Art. 51.

<sup>58</sup> Akthar, Naureen (Dr.), Online Dispute Resolution as a solution to E-Commerce Disputes: A Comparative Study of Pakistan and UK, Journal of Contemporary Issues in Business and Government, vol. 28(3) P. 157

<sup>59</sup> Ibid, P. 154.

<sup>60</sup> Supra Note (n.12), P. 31.

<sup>61</sup> Capital Market Proclamation No. 1248/2021. Art. 111(1).

<sup>62</sup> Ibid, Art. 111(2).

<sup>63</sup> Ibid, Art. (22)

<sup>64</sup> Ibid, Art. 24 (!)

procedures for dispute resolution,<sup>65</sup> data protection<sup>66</sup> and taking disciplinary actions against its members without prejudice the power of the authority<sup>67</sup>. The Draft Directives aimed at protecting interests of the investors and ensure the integrity of the capital market transactions<sup>68</sup> through establishing administrative measure<sup>69</sup> and refer the case to criminal investigation based on the proclamation and the criminal code<sup>70</sup> ..

NBE has mandated to regulate disputes under the payment system to protect financial consumers. It regulates financial matters through issuing directives<sup>71</sup> in addition to devising internal (in-house) complaint handling process<sup>72</sup> and administrative measures<sup>73</sup>. Besides, NBE dictates operators, participants and issuers of payment instruments to resolve complaints concerning electronic fund transfer promptly through internally established systems,<sup>74</sup> which is understood as self-regulation. The Financial Consumer Protection Directives, which is new in its kind, commands financial service or security providers to establish internal complaint handling process<sup>75</sup> that are easily accessible, transparent and effective as well as prompt.

The financial consumer protection directive defines dispute resolution as process which includes negotiation, mediation, arbitration and litigation<sup>76</sup>. NBE further establish external dispute resolution<sup>77</sup> mechanism, which resolves disputes between financial consumer and financial or security service providers which did not yet established. It has put mediation<sup>78</sup>, next to employing in-house dispute resolution techniques. If parties did not settle the case, arbitration is final and binding on parties. In Ethiopian legal jurisprudence, assisted negotiation, expert determination (except ECX) and similar ODR related dispute resolution techniques are not still introduced, which are common in UK and RSA

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<sup>65</sup> Ibid, Art. 24(2(d))

<sup>66</sup> Ibid, Art, 24 (2(g))

<sup>67</sup> Ibid, Art. 26(1) and (2).

<sup>68</sup> Directives on the Public Offering and Trading off Securities, Preamble.

<sup>69</sup> Ibid, Part Seven

<sup>70</sup> Ibid, Art. 105(2).

<sup>71</sup> Supra Note (n.54), Art. 31(4) and Art, 20(2).

<sup>72</sup> Ibid. Art. 20 (1)

<sup>73</sup> Ibid Art. 34.

<sup>74</sup> Ibid, Art. 22(4).

<sup>75</sup> Ethiopian Commodity Exchange Proclamation 550/2007..

<sup>76</sup> Ibid, Art. 2.10

<sup>77</sup> Ibid, Art. 2.12.

<sup>78</sup> Ibid, Art. 31(1)

ECX develops directives and procedures for the resolution of disputes arising from exchange transaction through arbitration.<sup>79</sup> The legislation recommends establishment of Business Conduct Committee<sup>80</sup> to adjudicate category one to four disciplinary violations depending on its gravity. Internal dispute handling procedures were major forms disciplinary system among actors under ECX system before 2021. Currently, the power is given to the Ministry of Justice<sup>81</sup>. The exchange, in addition to the internal Business Conduct Committee used arbitration, conciliation and expert determination as mandatory way of solving dispute unless the Exchange was a party. Arbitral award and procedure for arbitration is given and received through writing. Though electronic warehouse receipts, electronic received goods notes are admissible evidence under the revised rule.

No electronic form of communication is acceptable under the arbitration procedure. Even cheques/ pay order and demand draft for the deposit<sup>82</sup> should be presented in hard copies. Arbitration jurisdiction is laid on by the Proclamation as it claims more than 50 000 birr. Exceptionally, future contracts are also introduced under the revised rule. Currently the adjudicative power of executive organs are lifted and moved to the Ministry of Justice and entertain consumers' cases. However, disputants did not know establishments of courts and are afraid of resorting to courts for the clumsy procedures. Even the established court itself did not entertain any cases. This practice deteriorates e-consumers' confidence.

### **3.2. E-consumer Protection and Dispute Resolution Mechanisms out of B2C Relationship**

Consumer and competition protection institutions have four roles: Investigation, prosecution, adjudication and advocacy despite differences in institutional arrangements.<sup>83</sup> The Adjudicative Benches had power to arbitrate issues and provide remedies based on three schemes:

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<sup>79</sup> The Revised Rule of the Ethiopian Commodity Exchange 549/2021, Art. 28 (1).

<sup>80</sup> Ibid, Art. 15(1(1))

<sup>81</sup> Proclamation on Definitions of Powers and Duties of the Executives Organ of the Federal Democratic Republic of Ethiopia, No. 916/2015, Art. 40 (2) (D).

<sup>82</sup> Ibid Art. 16.1.10.3,

<sup>83</sup> The Addis Ababa Chamber of Commerce and Sectoral Association, Review of the Legal and Institutional Framework for Market Competition in Ethiopia, (2009), P. 14

administrative<sup>84</sup>, civil<sup>85</sup> and criminal<sup>86</sup>. Discussion made with presiding judge Tsegaye G/Tsadik,<sup>87</sup> confirmed that, though jurisdictional problems cannot hinder the bench to adjudicate e-consumers concern (the scope of the proclamation apply to any commercial activity or transactions in goods and services conducted or having effect<sup>88</sup> within the territory of FDRE, no cases are entertained so far for various practical reasons.

Interview at ECX<sup>89</sup> confirms that after dissolving the adjudicatory office by proclamation 1263/2021, the market continues to resolve disputes through arbitration as final decisions for the mere reason that any aggrieved party will resort to the board, though non-existed. Visit to the administrative tribunal established to adjudicate ECX related matters showed that there is no single case adjudicated since its establishment<sup>90</sup>. The judge further expresses his concern on the failure of the system and unattended B2B and B2C relationships. The court strictly adheres to the proclamation and supposedly entertain issues and, takes administrative measures, penalize the wrong doer and issue compensation. Except few advertisements made through TV before two years, no one knows where the court situated and what it is doing. As a result no case is adjudicated so far. The problem is similar with the ECX bench. Desta acutely oppose the organizational arrangements that detached them from the consumers. He proposed an independent institutional arrangements like Zambia<sup>91</sup>.

In UK, e-consumer claims could be regulated through three approaches: updating and simplifying the clumsy legal procedures, easing the barriers of communication between consumers and professional, in addition to resorting to ADR. In RSA, schemes like ADR agents like Ombud with jurisdiction and industry Ombud<sup>92</sup>, consumer complaint commission and consumer court<sup>93</sup> in the province are employed in order to protect consumers. The RSA Consumer Commission establish an ADR agents that are an Ombud with Jurisdiction, accredited industrial Ombud and a person or entity providing conciliation, mediation or arbitration services.<sup>94</sup> Consumers in RSA and UK have

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<sup>84</sup> Ibid, Art. 32(2(a, b, and c)).

<sup>85</sup> Ibid, Art. 32(1(b))

<sup>86</sup> Ibid, Art. 37(1(b))

<sup>87</sup> Interview made with Presiding Judge Tsegaye G/Tsadik, on Oct 12<sup>th</sup>, 2024.

<sup>88</sup> Supra Note (n.176), Art. 4.

<sup>89</sup> Interview made with Eskinder Melaku, ECX legal office head, on Oct 12<sup>th</sup>, 2024.

<sup>90</sup> Interview with presiding judge Desta Kifleyohannes, on Oct 12<sup>th</sup>, 2024.

<sup>91</sup> Ibid.

<sup>92</sup> Republic of South Africa Consumer Protection Act, 2008, No. 68, Art. 70 (1)

<sup>93</sup> Ibid, Art. 70.

<sup>94</sup> Ibid, Art. 70 (1(a,b,c)).

many alternatives: court<sup>95</sup>, filing to the commission<sup>96</sup> and finally approaching a court with jurisdiction over the matter<sup>97</sup>.

In Ethiopia, the role and duties of the Executive Organs were reorganizes to coordinate<sup>98</sup> governmental activities so as to pull out its adjudicatory<sup>99</sup> roles. In principle, the rule: ‘police to investigate, Public Prosecutor to prosecute as well as the Judiciary to adjudicate’ help the legal system to win integrity. This reorganizations, though, are the base for the role reshuffling, create confusion and currently left e-consumers unregulated<sup>100</sup> in Ethiopia. Where to initiate claims is unknown for many B2C actors<sup>101</sup>. Ministry of Trade and Regional Integration establish departments to investigate abuse of market dominance, anti-competitive agreements and unfair competition and refer cases to the Ministry of Justice adjudicative bench<sup>102</sup>. How consumers reach such remedies is still an unresolved matter. No free telephone call, websites and advertisements<sup>103</sup>. Due to these institutional gaps, e-consumers are left to absorb the burden.

Under RSA Competition Act, the commission is independent as it is only responsible to the constitution and the law.<sup>104</sup> Freedom of the commission develops independence from executive influences and serves the market freely. Under the Ethiopian legal environment, ministries are responsible for the office of the Prime Minister. This compromises the independence and integrity. The draft regulation on Trade Competition and Consumer Protection recognizing the administrative courts, established under the Ministry of Justice, provide ADR to resolve civil disputes under B2C relationships.

Data privacy is another thorny issue in consumer protection schemes. Data privacy and protection, internationally, as prime source of grievance for e-consumers, is secured through legislation, self-regulation and reliance on Trustworthy Third Parties<sup>105</sup>. The Data Protection Proclamation of

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<sup>95</sup> Ibid, Art, 70(1(d))

<sup>96</sup> Ibid, Art. 69 (C(IV))

<sup>97</sup> Ibid 69(d)

<sup>98</sup> Supra Note (n.171), Preamble.

<sup>99</sup> Ibid. Art. 22(1) (q).

<sup>100</sup> Interview with Mr. Getnet Ashenafi, Anti-Competitive Trade Practice and Law Violation Desk Head, on Dec. 12<sup>th</sup>, 2024.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Muhammad, Kebei Hillo, A Critical Appraisal of the Institution Controlling Competition in Ethiopia: Analysis of the Law and the Practice, AAU, School of Law, May 2014, P. 47.

<sup>105</sup> Supra Note (n.41), P. 399.

Ethiopia, make data controller compulsorily observe technical and organizational<sup>106</sup> as well as by design and by default<sup>107</sup> measures which includes internal policies as verification of the effectiveness of personal data protection of e-consumers. Unlike any other government bodies and Ministries in Ethiopia, the Commission is really free and accountable to the House of People Representatives<sup>108</sup> like the RSA Consumer Commission. This is a leap in protecting personal data of individual and institutions.

### **3.2.1. Financial Consumers Protection and E-disputes**

Financial consumer protection regulation in Ethiopia is left to NBE. It has developed truly stringent procedures to protect e-consumers compared to other institutions in addressing e-payment related claims. NBE has established a Payment Settlement Directorate to oversee the whole e-payment system and produced directives to promote fair, responsible and transparent financial transactions and shape professional conduct of financial service providers towards financial consumers.<sup>109</sup> Payment system security is base for any economic transactions. To this purpose, National Payment System Council<sup>110</sup>, is established by the government. However, the National Payment Council did not yet materialize.<sup>111</sup>

Eth-Switch is established to regulate financial service providers (banks) in addition to putting self-regulatory requirements on Fin-techs.<sup>112</sup> Eth Switch establishes dispute management and fraud monitoring scheme in its website. NBE has issues directives to license Payment Instrument Issuers to protect the interest of users of payment instruments<sup>113</sup>: financial consumers. The directive provides consumers the right to complain in any form (in person, through writing, Phone calls or any other traceable means) and free of any charge<sup>114</sup>. UK's e-financial consumers' rights protected through a free call centers, citizens' advice, consumers' lines and the Ombudsman offices. They have the right to resort to other remedies like claiming damages, seeking specific performances

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<sup>106</sup> Personal Data Protection Proclamation No. 1321/2024, Art. 53 and 53 (3)

<sup>107</sup> Ibid. Art, 60.

<sup>108</sup> Supra Note (n.41 ), Art. 4(2).

<sup>109</sup> National Bank of Ethiopia, Financial Consumer Protection Directive No. FCP/01/2020.

<sup>110</sup>Supra Note (n.135), Art. 32.

<sup>111</sup> Interview with Ermias Kenjo,

<sup>112</sup> Ibid

<sup>113</sup> Licensing and Authorization of Payment Instrument Issuers Directives No. ONPS/01/2020.

<sup>114</sup> Ibid. Art. 12(5) (b-d)

and orders for specific implementations. NBE oversight this through regular means and forced all to establish call centers<sup>115</sup> to manage grievances of consumers. Compared to e-market place dispute settlement trends, financial consumer in Ethiopia has got almost equivalent treatment with UK and RSA's financial consumers with the exception of having a single and independent authority in UK and RSA.

### **3.3. E-dispute Regulation**

E-commerce is recently addressed matter under Ethiopian legal jurisprudence. Regulating such rapidly changing platforms urged reviewing the nature. The tenet 'no single principle fit for all scenarios' works for the virtual world. Adaptation through change<sup>116</sup> is mostly recommended in many regulatory practices. In treating e-disputes, e-commerce actors (electronic platform operators, electronic service providers, payment service providers etc) and professional associations develop different models of treating claims in quick, cheap and flexible manners. Looking at Ethiopian legislation, e-commerce dispute redressing regulations are scattered across many laws and institutions without proper infrastructure, awareness and readiness among institutions. Regulating financial institutions has foundational rationales: Ensure stability and integrity of financial system; protects the interest of depositors and ensure accountability of the system.<sup>117</sup> In addition to formal regulatory practices, industries are supposed to develop self-regulatory role to protect consumers. The UK Banking Codes govern ethical standards of bankers and apparently protect e-financial consumer which is unknown in Ethiopia financial system.

## **E-commerce Dispute Related Considerations**

### **3.4. E-document Recognition and Functional Equivalence**

ETP basically proclaimed to assure equal uses of paper and computer based information.<sup>118</sup> Information and attachment through referral<sup>119</sup> cannot be denied its legibility due to the fact that it

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<sup>115</sup> Interview with Ermias Kenjo.

<sup>116</sup> Supra Note (n.36), P.52

<sup>117</sup> Supra Note (n.119), P. 421.

<sup>118</sup> Electronic Transaction Proclamation 1205/2020, Preamble.

<sup>119</sup> Ibid, Art, 7(2).

was presented in the electronic form<sup>120</sup> Links and attachments referred by the original document have got legal recognition as long as the information has reached recipients. NBE to facilitate e-payments recognizes validity of e-data<sup>121</sup> and any payment instruments presented in electronic form (presentation of image for payment)<sup>122</sup> has won acceptance under the payment system. Though NBE stipulated the use and recognition of payment instruments image, it did not produce directives though purported to produce directives on imaging of paper based payment instruments and their processing. Equivalence of form (both hard and electronic forms of communication) has been enshrined and used by the Chamber of Commerce as common forms of lodging complaints as well as taking the virtually created contract as valid.<sup>123</sup>

The Custom Authority establishes procedures for the completion of custom procedures for users. Similarly, the principle of functional equivalence have been included under the same proclamation in that document presented physically or by electronic means<sup>124</sup> has won legal recognition. The use of e-communication is mandatory in ECX unless failures on the electronic information exchange system.<sup>125</sup>

### **3.5. E-Signature and Admissibility of E-evidences.**

Electronic signature is defined as information in electronic form affixed or logically associated with and electronic message which may be used to identify the signatory and approval of the information contained in the electronic message<sup>126</sup>. Signature under any contractual relationship connotes the intention of signatories in ratifying the relationship. E-signature has introduced under the Ethiopian market places before seventeen years back in Ethiopian Commodity Exchange (ECX). It was admissible by the administrative tribunals. E-signature is acceptable and serves as approval of fund transfer.<sup>127</sup>The Custom Proclamation Art. 2(23) and 80 recognize e-signature as means of authentication for the registered members. Proclamation No. 1072/2018 recognizes e-

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<sup>120</sup> Ibid, Art. 7

<sup>121</sup> Supra Note (n.191) Art. 23

<sup>122</sup> Ibid, Art. 24.

<sup>123</sup> Case No. A19/74/2019, electronically created contract has been taken as valid and the proceedings were based on it;

<sup>124</sup>, Ibid, Art. 2(25).

<sup>125</sup> Ibid, Art. 82(1).

<sup>126</sup> Electronic Signature Proclamation No. 1072/2018, Art. 2(6).

<sup>127</sup>Supra Note (n.225) , Art. 25(8).

signature to promote trust in electronic communication and enable to verify the identity of participating parties, authentication of messages and ensure non repudiation.<sup>128</sup>

Functional equivalence of hard and digital copies is accepted by NBE as long as the information or matter is rendered or made available in any electronic form and accessible so as to be able for subsequent reference.<sup>129</sup> Payment documents in any form (either in photograph, micro film, microfiche or computer images<sup>130</sup>) have acceptance before the matter under transactions. E-negotiable instruments like cheque presented in any formats are acceptable irrespective of how the payment instruments were presented. Images of the documents shall be considered as the equivalence of the paper that it represents.<sup>131</sup> Government securities should be immobilized and dematerialized<sup>132</sup> so that it is expected to be deposited electronically. However interview conducted with Ermias Kenjo proves the opposite. The use of e-negotiable instruments was not yet implemented. The proclamation also inculcates the validity and admissibility of electronic data/evidence before any courts. Electronic payment instructions initiated and processed through e-form including electronic signature shall be admissible as prima facie evidence of the matters.<sup>133</sup> This legislation peculiarly updated itself by adopting the media neutrality principles of electronic transaction related challenges. The principle of media neutrality is applied where originality requirements were in question irrespective of the media type it presented.

The Custom Proclamation, next to ECX, is pioneer in recognizing e-communication as an evidence for any legal proceedings.<sup>134</sup> It provides discretionary power for the authority to verify alternatively using hard copy. Under goods declaration, the authority demands the presentation of supporting document in hard or soft copies. Transportation document, invoices, bank permit, packing list and certification of origin<sup>135</sup> could be delivered either of the aforementioned forms. Digital or electronic evidences<sup>136</sup> are acceptable. Besides, the Authority's legislation and tariffs

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<sup>128</sup> Ibid, Preamble.

<sup>129</sup> Ibid Art. 21 (1).

<sup>130</sup> Supra Note (n.135), Art. 23(2).

<sup>131</sup> The National Payment System proclamation (Amendment) No. 1282/2023, Art. 24(1).

<sup>132</sup> Ibid, Art. 2(1) (a)

<sup>133</sup> Supra Note (n.147), Art. 23 (1).

<sup>134</sup> Supra Note (n.109), Art. 174 (1).

<sup>135</sup> Ibid, Art. 10 (1(a-e)).

<sup>136</sup> Ibid Art (174(1)).

should be accessible through publication and electronic information system, as may be appropriate.<sup>137</sup> However, implementing e-documents are not started yet.

### **3.6. Dispute Resolution Mechanisms under Selected E-Commerce Actors**

Merkato Online provides various options for e-consumer on its website. Under the Return Policy, consumers' rights like termination within 14 days<sup>138</sup> are in place under the website. The policy and terms provided by Mekina.net is outlined to protect data privacy of visitors<sup>139</sup> only under e-transactions. Mekina.net and 2mercato.com paradoxically adopt the CCPA (California Consumer Privacy Act), which really witnessed unregulated e-marketplace practices. Eth switch provide financial service providers interoperability with their payment system and help serve their customers with convenience.<sup>140</sup> Interview made with Bethlehem Sisay<sup>141</sup>, showed that Eth-switch devised internal and external mechanisms to resolve dispute between banks and financial consumers. System based Control and settlement of disputes is commonly employed. Procedurally financial issues are resolved through four steps:

- Retrieval request (Charge back) by the ATM owner bank;
- If declined, second presentment then
- Pre arbitration and finally
- Arbitration by Eth-switch<sup>142</sup>.

### **3.7. Institutional Frameworks for E-commerce Dispute Resolution in Ethiopia**

Harmonization of various regulatory practices boosts consumer confidences. It is impossible to think redress mechanisms without acknowledging the institutional roles. Consumers rely on institutions tacitly or consciously<sup>143</sup>. Cooperation between public and private sectors, on basic e-commerce policy approaches are essential to build effective system of e-consumer protection. As enshrined under the Digital Policy of Ethiopia, it is possible to devise scheme adaptive to

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<sup>137</sup> Ibid Art. 177(2).

<sup>138</sup> <https://www.Merkato.net/service/consumer.service>. Accessed on June 1<sup>st</sup>, 2024.

<sup>139</sup> <https://www.mekina.net/services/privacy-policy>, Accessed on June 5<sup>th</sup>, 2024.

<sup>140</sup> <https://ethswitch.com/electronic-retail-payment/> accessed on June 5<sup>th</sup>, 2024

<sup>141</sup> Interview Session with Bethlehm Sisay, Director of Digital Operation, Made on Oct, 2024.

<sup>142</sup> Ibid.

<sup>143</sup> Hamid, Bushra, Institutional Approach to E-commerce: An Integrated Framework for Pakistan Author(s), Pakistan Development Review (41/2, 2002). P. 187.

change.<sup>144</sup> Developing regulatory sandbox, which is an approach summarized in writing and published that allow live, time-bound testing of innovations under a regulatory oversight.<sup>145</sup> Scattered regulatory efforts, as experienced in Ethiopia, have seriously affects the development of e-commerce dispute resolution mechanisms. Role confusion and friction among institutions delayed redresses. The Digital Policy, though, put direction to adopt regulatory sandbox approaches<sup>146</sup> except NBE<sup>147</sup>, no specific regulatory body started yet. It seems optional for many institutions in Ethiopia. Even if NBE has adopted, it did not yet<sup>148</sup> implemented. Regulatory sandbox, though is a new concept, refer to regulatory tools that helps businesses to cope up with frequently changing virtual world.

MinT issues directives on liabilities of intermediaries,<sup>149</sup> consumer protection<sup>150</sup> and develop e-commerce related standards, though sluggish<sup>151</sup>.The National Digital Economy Council, established by ETP, accountable for the Prime Minister Office and advice the government on many matters including digital economy.<sup>152</sup> As per the public speech by the Deputy Prime Minister in the Panel Discussion at Science Museums declared establishment of the Council<sup>153</sup>. The office, located at MinT, is developing directives<sup>154</sup> so as to cope up with the rapid changes of the digital world. The government strives to resolve such disruptive regulatory practice by establishing Innovative Office at MinT<sup>155</sup>. Concerning e-commerce dispute redress mechanisms, the draft regulation recommends the establishment of sectorial association of electronic commerce operators to issue industry self-discipline regulation,<sup>156</sup> still unrealistic. However, it is recommended to provide swift remedies for e-consumers claims. Data center<sup>157</sup> has been established to serve multi governmental concerns in which data privacy matters of consumers were

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<sup>144</sup> Supra Note (n.150) P.8

<sup>145</sup> UNSGSA (United Nations Secretary General’s Special Advocate Inclusive Finance for Development),

<sup>146</sup> Supra Note, (n.144), P. 84.

<sup>147</sup> Interview with Ermias Kenjo, NBE Payment Settlement Directorate Director, On 9<sup>th</sup> March, 2023.

<sup>148</sup> Ibid

<sup>149</sup> Supra Note (n.31) Art. 5((2)C).

<sup>150</sup> Ibid, Art. 5(2(D))

<sup>151</sup> Interview with Eyerusalem Kebede

<sup>152</sup> Ibid, Art. 6(4). Look at the composition of the council.

<sup>153</sup> Panel discussion on “Digital Economy: Building Ethiopian E-commerce Landscape” held on May 22<sup>nd</sup>, 2024. The Deputy Prime Minister, His excellency Ato Temesgen Tiruneh declares the establishment of the National Digital Economy Council.

<sup>154</sup> Interview with Eyerusalem Kebede.

<sup>155</sup> Supra Note, (n.144), P. 84.

<sup>156</sup> Council of Minsters Regulation on Electronic Transactions, Art. 5(3(a)) (draft).

<sup>157</sup> Interview with Eyerusalem Kebede.

enshrined under the draft regulation.<sup>158</sup> This regulation establish Data Protection Commission to take administrative measures<sup>159</sup>, get injunction order<sup>160</sup>, issue enforcement notice<sup>161</sup> and impose administrative fines<sup>162</sup> for any abuses of data privacy of e-consumers. Surprisingly, the Commission did not establish<sup>163</sup> adjudicatory power of the executives were assigned to the Ministry of Justice. The practice showed how scattered e-commerce dispute resolution regulation and e-consumers matters in Ethiopia.

#### **4. Conclusion and Recommendation**

Ethiopian e-commerce practices were accompanied by various legislation which devise varieties of schemes to resolve disputes out of e-commerce. Concerning e-dispute resolution techniques employed in Ethiopia, strong legislation coverage put a range of redressing mechanisms. The practice, however, reflects the opposite. Developing plausible legislation and directives cannot guarantee enabling legal environment for the e-commerce. The thesis found out huge gaps under e-commerce marketplace disputes resolution mechanisms. Courts in many benches did not have any awareness about e-commerce legislations. All the three courts, visited, have confirmed that no e-dispute cases have been adjudicated so far. This communicates that e-commerce marketplace disputes are absorbed painfully by the weaker party: consumer. Thus, e-consumers in Ethiopia are left to devise their own e-dispute resolution mechanisms. In a country where legal loopholes are large like Ethiopia, e-consumers are abused and decline their confidence which is basic for the development of e-commerce.

To rectify these problems, the thesis forward the following recommendations.

- Advocacy and awareness creations sessions are priority area to manipulate e-commerce opportunities.
- E-commerce dispute should be treated by devising separate adjudicatory benches in courts and quasi-judicial bodies in the Ministry of Justice together with self-regulation, assisted negotiation scheme and ODR/ADR;

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<sup>158</sup> Personal Data Protection Proclamation (draft)No. 1321/2024

<sup>159</sup> Ibid, Art. 5(12).

<sup>160</sup> Ibid, Art. 5(14).

<sup>161</sup> Ibid, Art. 5(15).

<sup>162</sup> Ibid, Art. 5(16)

<sup>163</sup> Observation made on MinT. There is only desk.

- Introducing e-proceedings/ODR in the Ethiopian judicial system as part of the e-commerce dispute resolution is recommended.
- Legal reform in the judiciary is contemporary pressing issue to be executed under e-commerce dispute resolution mechanisms in Ethiopia..
- Reliance on Technology driven solution (privacy by design and security by design) has risks..
- It is recommended to harmonize local laws in line with contemporary development of ICTs.

E-consumers related concerns are highly sensitive and consumer protections laws should at least recognize e-consumers in Ethiopia. Besides,

- Establishing one stop shop inquiry services for e-financial consumers.
- Providing various alternatives to redress any claims out of e-commerce.
- Absence of Customer Service/support in many e-commerce platforms creates new trends in the e-commerce marketplaces that is against basic tenet of consumer protections.
- Data privacy related concerns should also be organized and mandatory data breach notification service should be established to create awareness among e-consumers.

Having plausible financial e-consumers protection mechanisms are part of the redress system. To this end, the thesis recommends:

- Professional or sector based association (like Payment Association of South Africa).
- Practical observation on the e-marketers like Mekina.net and other sites confirmed that they have used shrinkwrap contracts, which did not have any legality in the Ethiopian courts.

Having a thorough look at the e-commerce platform operators and actors, the thesis recommends:

- Regulatory bodies should set stringent procedures for supervision of the implementation of in-house remedies
- Surprisingly, the regulatory bodies overlook these e-commerce platform operators that put consumer protection rules of US. It should be revisited.

Regulatory practices, mainly self-regulation, is the best e-commerce dispute resolution system adopted by many developed nations including China. Issuing directives and self-regulatory framework is forwarded as remedies by the thesis, In addition, the thesis forward the following recommendation in taking regulation as recommended mechanisms to redress e-commerce market place disputes. Besides:

- E-dispute regulatory practices are dispersed and calls for inter-institutional integrations.
- Producing harmonized rules.
- Setting up regulatory sandbox is a practical experience in Kenya and SRA

Dispute out of e-commerce demands jurisdiction rules, evidentiary weights of e-documents and communications, recognition of e-signatures. The thesis forwarded the following recommendations pertaining to these issues.

- Digital certification program:
- Both principles: jurisdiction based on country of origin principles (establishment) of EU and country of jurisdiction of Rome II (lex loci damni) (where the damage occurs) are not in practice in Ethiopia.
- Institutional arrangement has proactively contribute in electronic commerce dispute resolution process. In this regard, the thesis recommends:
- Institutional arrangements are narrowly oriented and closed door approaches are incompatibly collided with the ever-changing virtual development.
- Establishing Boards (as in the case of ECX) which serves as the best route to redress any claims among ECX participants.
- Establishing at least quasi-judicial bodies and special legislation to address e-claims and provide varieties of alternatives and protection for e-consumers like UK and RSA.
- Mix of roles: NBE serves as a standard setter, regulator and dispute resolution bodies, which needs to establish a standalone and neutral institution to resolve disputes (both general and e-financial consumers).
- Inter-institutional consultation forum should be established.
- Independent institutional arrangements should be in place. Sector regulation should secure independence of the regulatory bodies from the influence of the executives.

- NBE needs to pioneer the implementation of e-negotiable instruments;
- Establish Bankers associations;
- Ethiopia should accede UN Trade laws as part of its effort to join WTO.

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