The hidden world of consumer ADR: Redress and behaviour

How can regulators, business and consumers deliver redress, dispute resolution and improved standards?

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ADR: Advantages and disadvantages

ADRs must be fair and respect procedural safeguards

**Advantages:**
- Informal, quick - and inexpensive for consumers (but maybe not for companies)
- Most decisions are followed

**Disadvantages:**
- Decisions are normally not enforceable
- Often not possible to produce evidence (e.g. witness statements) – subsequent court procedure can be necessary
  - Possible solutions:
    1) The decision is enforceable **by default** if the trader does not inform the ADR board that he does not intend to follow its decision
    2) Free legal aid to consumers/ small claims procedure
    3) ‘Name and shame’
    4) Decision is binding according to prior agreement between the parties
- One-case solutions only
The role of a public consumer ombudsman

Advantages:

A more general approach
- Intervention (e.g. by negotiation with trade and industry or court proceedings) can:
  - rectify the market
  - give trade and industry ‘ownership’ to the interpretation of the law (guidelines and guidance papers)

Enforcement in cases that are of more general interest:
- Administrative orders
- Injunction/order and/or penalty imposed by the court
- Civil lawsuit (e.g. for compensation) on behalf on one or more consumers
- Collective redress

Disadvantages:

- The cases or investigations can be very costly for the businesses concerned
- The question of prioritisation
- A penalty is often disproportional to the profit made by the business and does not deliver redress to the consumers

Combination of ADRs and public enforcement?
Challenges: what next?

How to make ADRs effective:

- Not too comprehensive a system

- Not all types of goods and services should be included – sometimes the claim is too small and costs therefore disproportionate

- Mediation and settlements within the ADRs should be possible

- Make sure that decisions are followed in the majority of cases
Challenges: what next?

**Essential to have effective tools**

- Collective redress is one such tool (can also facilitate settlements)

- A white paper from the EU Commission Com(2008)165 final suggests a new model for achieving compensation for consumer and businesses who are victims of antitrust violations
  - Collective redress
  - In case of breach of the competition rules the infringer is liable for damages unless he demonstrates excusable error

  Don’t forget to improve the court procedures