

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

