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The Role of Electronic Arbitration in Boosting E-Commerce

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Article info.

Article history:

- Received 2 May 2023
- Accepted 22 May 2023
- Available online 1 June 2023

Keywords:

- e-commerce.
- commercial transactions.
- legal regulation.
- e-arbitration.

Abstract: The goal of this article is to cover many aspects of e-commerce, such as most important characteristics of e-commerce, e-commerce components, e-commerce legal regulation features, and how electronic (online) arbitration can contribute to the resolution of e-commerce disputes. Electronic commerce can benefit the economies of all countries. In the short term, developed countries are likely to benefit the most, but developing countries will benefit more in the long run. More international trades will occur as a result of e-commerce. Knowledge will spread to countries that are open to high-income economies' imports. Furthermore, people believe that electronic commerce will both create and destroy jobs.

دور التحكيم الإلكتروني في تعزيز التجارة الإلكترونية

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الخلاصة: الغرض من هذه المقالة هو تغطية العديد من جوانب التجارة الإلكترونية ، مثلًا " أهم خصائص ومكونات التجارة الإلكترونية، ميزات التنظيم القانوني للتجارة الإلكترونية ، وكيف يمكن للتحكيم الإلكتروني (عبر الإنترنت) المساهمة في حل نزاعات التجارة الإلكترونية. يمكن أن تستفيد اقتصادات جميع البلدان من التجارة الإلكترونية. على المدى القصير ، من المرجح أن تذهب معظم المكاسب إلى البلدان المتقدمة ، ولكن على المدى الطويل ، ستكسب البلدان النامية المزيد. من خلال التجارة الإلكترونية ، سيكون هناك المزيد من التجارة الدولية. بالإضافة إلى ذلك ، يمكن أن يساعد التحكيم الإلكتروني في نمو التجارة الإلكترونية بمعدل أسرع. خاصة عندما تكون هناك عملية عادلة تخضع لها حلول التحكيم الإلكتروني.

معلومات البحث :

تواريخ البحث:

- الاستلام : ٢ / ايار / ٢٠٢٣
- القبول : ٢٢ / ايار / ٢٠٢٣
- النشر المباشر : ١ / حزيران / ٢٠٢٣

الكلمات المفتاحية :

- التجارة الإلكترونية.
- المعاملات التجارية.
- التنظيم القانوني.
- التحكيم الإلكتروني.

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Introduction :

A technology revolution is on the horizon, and it will forever alter our daily routines and relationships with one another. In terms of scale, scope, and complexity, the transformation will be unprecedented. since March 2020, when the Covid-19 pandemic started, there have been more online purchases and sales.¹

During the First Industrial Revolution, water and steam power were used to automate industry (mid-eighteenth to mid-nineteenth century). Mass production was made possible by the use of electric power during the second revolution (late nineteenth to early twentieth centuries). The Third Industrial Revolution saw the automation of production through the use of electronics and information technology. The digital revolution, which began in the middle of the twentieth century and is now in its fourth decade, is laying the groundwork

¹ Mohammad Ghozali and Budi Ispriyarso, 'The Online Arbitration in E-Commerce Dispute Resolution During Covid-19 Pandemic' (2021) 4 Jurnal Daulat Hukum 157,157

for a Fourth Industrial Revolution. Because of this, it's impossible to tell where one reality ends and another begins anymore.¹ Unlike the first industrial revolution, which relied heavily on raw materials, the electronic revolution can thrive on a relatively minimal amount of energy and materials; instead, the innovation, efficiency, and profit made possible by humans themselves are the true drivers of this economic boom.²

However, the rapid conclusion and implementation of contracts underpins scientific advancement in the electronics industry, the consequent growth of information, and the shift in international trade towards international electronic commerce. Business-to-business (B2B) and consumer-to-consumer (C2C) or retail sales both make up 12% of the entire e-commerce market, according to a study by the McKinsey Global Institute.³ This is because communications technology has changed a lot, especially with the creation of the Internet when the digital and ICT revolutions came together. This meant that, in practice, there were no borders between countries..⁴

The internet is the sum of computing devices located in various countries around the world, connected to application programs to exchange messages over a network. It is designed to send packets across the internet and ensure the successful delivery of data and messages over networks. This is called the TCP/IP, which stands for the Transmission Control Protocol/Internet Protocol. The TCP/IP was first used for scientific research. Then, the US Department of Defense used it to make sure that data were sent between connected devices in a

¹ Klaus Schwab, 'The Fourth Industrial Revolution: what it means, how to respond' (*WORLD ECONOMIC FORUM*, 2016) <<https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>> accessed 16 May 2019

² Carmen Galve-Górriz and Ana Gargallo Castel, 'The relationship between human resources and information and communication technologies: Spanish firm-level evidence' (*SeiELO*, 2010) <https://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-18762010000100003> accessed 16 May 2020

³ IN FOCUS, 'International Trade and E-Commerce' (*IN FOCUS*, 2020) <<https://crsreports.congress.gov/product/pdf/IF/IF11194>> accessed 17 May 2019

⁴ Schwab (n2)

correct and precise way.¹ The World Wide Web (www), also known as “the Web”, is an information system that uses Uniform Resource Locators (URLs) to identify documents and other web resources.²

1.2.E-commerce: An overview

By 1998, the World Trade Organization (WTO) had established the following definition of electronic commerce “the production, distribution, marketing, sale, or delivery of goods and services by electronic means”.³

In general, “E-commerce is a way to conduct commerce in totality using the internet as a medium.” According to Hemant Goel, e-commerce is “the conducting of transactions using a network of computers and telecommunications, i.e., the internet”. Goel also states that “It is an exchange of goods and services over the internet and a financial consideration for them”.⁴

E-commerce is represented in all types of commercial transactions that are conducted electronically via the internet, processing third-party B2C or consumer-to-consumer (C2C) sales via online marketplaces, and buying and selling for B2B transactions.⁵

E-commerce includes a lot of different things, like promotion, advertising, and advertising activities; giving information about a good or service; signing contracts for electronic goods and services; giving purchase and sale orders; keeping track of contracting processes and putting deals into action electronically; and getting goods and services right away through networks or

¹ FORTINET, 'What is a Transmission Control Protocol TCP/IP Model?' (*FORTINET*, 2000) <<https://www.fortinet.com/resources/cyberglossary/tcp-ip>> accessed 17 May 2020

² James Tobin, *Great Projects: The Epic Story of the Building of America, from the Taming of the Mississippi to the Invention of the Internet* (Free Press 2012)

³ Yasmin Ismail, 'E-commerce in the World Trade Organization: History and latest developments in the negotiations under the Joint Statement' (2020) International Institute for Sustainable Development 1,1

⁴ Benita Ezeigbo, *E-contracts. Essentials, variety and legal issues* (GRIN Verlag 2018)1

⁵ mayple, 'The Ultimate Guide to ecommerce Marketing' ' (*mayple*, 2021)

<<https://www.mayple.com/blog/ecommerce-marketing#chapter>> accessed 1 May 2021

outside of them, as well as settling payments and paying off financial obligations right away.¹

2.1 Types of goods-related e-commerce

This activity is very important in e-commerce because a seller's business plan is mostly based on a product profile.

2.1.1 Trade in tangible items (material things)

The goods offered by companies on their websites are purchased,² so payment is mostly made by bank credit card and the goods that are purchased are sent by traditional means of transportation. For example, the purchase of consumables from mall websites (or moles).³

2.1.2 Trade in digital items (goods)

Any goods that are sold, supplied, or transferred in digital form are referred to as “digital goods”. Media files, such as music files, video files comprising movies or television programming, branded multimedia files, and other similar sorts of items, are some of the most prevalent instances of digital goods. In this sense, the two processes of paying the price and delivering the sale take place electronically. For example, the purchase of computer programs, films, pictures, books, and electronic magazines.⁴

2.1.3 Services trade

The United Nations (UN) states that the “Trade in Services refers to the sale and delivery of an intangible product, called a service, between a producer and

¹ Ruth A. Wienclaw, ' B2B Business Models' (*EBSCO Publishing*, 2011)

<<https://www.yumpu.com/en/document/view/4874373/b2b-business-models-ebSCO-publishing>> accessed 15 May 2020

² Tanya Yablonskaya, 'Types of Ecommerce: General Overview, Examples and Success Tips' (*ScienceSoft* 2019) <<https://www.scnsoft.com/ecommerce/types-of-ecommerce>> accessed 16 May 2020

³ Darren De Matas, '10 Types of Ecommerce Business Models That Work Right Now' (*ecommerceCEO*, 2021) <<https://www.ecommerCEO.com/types-of-ecommerce-business-models/>> accessed 11 September 2021

⁴ Techopedia, 'Digital Goods: What Does Digital Goods Mean?' (*Techopedia*, 2016) <<https://www.techopedia.com/definition/1467/digital-goods>> accessed May 16 2021

a consumer. Trade in services takes place between a producer and a consumer that are, in legal terms, based in different countries, or economies, this is called International Trade in Services".¹ As such, this concerns providing legal, medical, or engineering advice on the internet, or developing new special services that can only be provided through the internet, such as email services, searching for information, and electronic advertisements.²

2.2 The most important characteristics of e-commerce

2.2.1 *Electronic networks*

The various types of transactions (buying and selling of goods and services, or the transmitting of funds or data) between the parties involved in e-commerce are carried out over electronic networks, most commonly the internet, starting with the exchange of data via email between dealers, commercial negotiation, electronic billing, electronic banking transactions, electronic follow-up of contracting processes, the implementation of deals, etc. Therefore, it was necessary to reconsider the traditional models of marketing and customer service in some industries to take advantage of the possibilities offered by the distribution channels based on the internet. The post-Thanksgiving Black Friday and Cyber Monday shopping days in the United States are a good example of how e-commerce has affected physical retail. According to Rakuten Marketing data, Cyber Monday generated 68% more revenue in 2017 than Black Friday, traditionally the year's largest brick-and-mortar shopping day.³

¹ UNITED NATIONS, ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN ECLAC - WASHINGTON OFFICE, 2002 LC/WAS/R. 2

² Len Nitti, 'Which Businesses Are Considered a Specified Service Trade or Business?' (*WilkinGuttenplan*, 2018) <<https://www.wgcpas.com/989-which-businesses-are-considered-a-specified-service-trade-or-business/>> accessed 16 May 2020

³ Wesley Chai, Brian Holak and Ben Cole, 'e-commerce' (*TechTarget*, 2020) <<https://www.techtarget.com/searchcio/definition/e-commerce>> accessed 15 January 2021.

2.2.2 A well-developed economy

People who do well in e-commerce need to have an economy that is well-developed, which means making new types of goods that are appropriate for e-commerce and flexible production bases, a complete information infrastructure, and networks and communications.¹ Thus, e-commerce can be said to embody a “new economy that depends on information-intensive production”, and on advanced technology.² Therefore, it is not surprising that most users of online e-commerce are concentrated in North America and Europe, where the countries in those regions account for about 84% of internet users. However, according to a projection by *Inc.* magazine, the “annual ecommerce spending, in billions, for 2014 will be: North America \$202.8; Western Europe \$166.5; Asia-Pacific \$93.2; Latin America \$27.1; Eastern Europe & Russia \$27.0; Australia \$4.9; Africa & the Middle East \$3.0”.³

2.2.3 A private sector

The private sector must play an active and effective role in promoting e-commerce,⁴ as well as the efforts of individuals on their own.⁵

2.2.4 Qualified personnel

The importance of a competent human element capable of using and developing information technology and continuous innovation in its various mechanisms and means of work.¹

¹ Shatha Khalil, 'E-commerce creates a change in the global economy' (*Rawabet Center*, 2018) <<https://rawabetcenter.com/en/?p=5241>> accessed 18 May 2020

² OECD, 'Economic and Social Impact of E-commerce: Preliminary Findings and Research Agenda' (*OECD Publishing Paris*, 1999) <https://read.oecd-ilibrary.org/science-and-technology/economic-and-social-impact-of-e-commerce_236588526334#page1> accessed 17 May 2020

³ NurayTerzi, 'The impact of e-commerce on international trade and employment' (2011) 24 ScienceDirect 745,746

⁴ Kati Suominen, 'Private Sector Priorities for Ecommerce Development' (*UNCTED*, 2017) <https://unctad.org/system/files/non-official-document/dtl_eWeek2017c09-nexttradegroup_en.pdf> accessed 18 May 2020

⁵ Alfonso Avila and Violeta Boncanoska Almeida G., 'Promoting e-commerce in developing countries' (2007) 15 Internet Governance Policy Discussions Paper 2014,1,10.

2.3 Components of e-commerce and their growth potential

In the last decade, e-commerce has evolved from something that most people were suspicious of to something that now plays a significant role in many of our lives.² Thus, activated e-commerce cannot happen until its basic parts are achieved by meeting the following three conditions:

2.3.1 *The first set of conditions*

Data availability enhances the ability to engage in e-commerce activities, which includes a number of elements:

2.3.1.1 The adoption of an ICT system as a “nervous system” capable of providing very fast and effective communication and rapid responses to opportunities and emergencies.³ For example, Cisco and Dell are two companies that provide electronic commerce infrastructure. Cisco router sales and Dell personal computer sales are two notable examples. In 1998, less than a year Dell raised its online sales from \$1 million per day to \$5 million per day. In 1996, Cisco allowed consumers to purchase equipment over its website for the first time, generating \$100 million in sales. By 1997, sales had surpassed \$1 billion.⁴

2.3.1.2 Freedom to circulate and exchange data between the parties concerned at a speed that achieves the immediate handling of information. In contrast, restricting data transmission across national borders may limit the websites and platforms that are available. For example, China broadly restricts cross-border data transfer. All companies that process or sell goods or services to people in the EU must follow strict data protection rules set up by the EU.⁵

¹ Tanya Castleman Yvette Blount, , Paula MC Swatman, 'E-commerce, human resource strategies, and competitive advantage: two Australian banking case studies' (2005) 9 International Journal of Electronic Commerce 74

² Laura Tien, 'What are the components of an eCommerce business?' (*workit*, 2020) <<https://workitspaces.com.au/blog/what-are-the-components-of-an-ecommerce-business/>> accessed 18 May 2020

³ IN FOCUS (n4)

⁴ OECO (n19) p55

⁵ IN FOCUS (n25)

2.3.1.3 Efficiency in the performance of the financial and banking systems, their ability to support e-commerce operations, and the expansion of electronic payment systems to facilitate the completion of secure financial transactions on the network.¹ However, limiting buyers' access to electronic payment services, such as credit cards, restricts their ability to purchase and finance goods. For example, payments made using local Korean-branded credit cards are not accepted by US companies selling in the South Korean online market. Tunisians are often unable to open foreign currency bank accounts, which makes it difficult for them to buy American goods online.²

2.3.1.4 In any country, having access to power has a strong positive link with e-commerce adoption. Broadband subscriptions and safe internet servers, on the other hand, had different effects on e-commerce adoption. Access to electricity was statistically significant, though.³

2.3.2 The second set of conditions

The conditions encompass providing the legislative and regulatory framework for e-commerce. Providing the legislative and regulatory framework is a necessity to support an appropriate environment for e-commerce, whether by introducing amendments to the existing legislation to make it more responsive to the requirements of e-commerce,⁴ or issuing specialized

¹ Jong Kang, Tengfei Wang and Dorothea Ramizo 'The role of technology in business-to-consumer e-commerce: Evidence from Asia' (2021) Asian Development Bank Economics Working Paper Series 1,1.

² IN FOCUS (n27)

³ Twi-Brempong Christiana, Hejun Gu, Tetelesti OpongBaah, Isaac Owusu, Edward Gyamfi, Jovanka Pinas, Elina Kim, Adjoa Afedua Nsafu, Boateng Frederick Adjei, and Deborah Ofose, 'The Impact of Access to Electricity on E-Commerce Adoption in Ghanaian SMEs, an Empirical Analysis' (2019) 8 Open Journal of Business and Management 245,247

⁴ United Nations, 'conference on Trade and Development, Cyberlaws and regulations for enhancing e-commerce: Case studies and lessons learned' (Geneva ,2015, TD/B/CII/EM5/2).

legislation to regulate the various aspects of this commerce.¹ There are a number of factors to consider when it comes to setting up websites on electronic communications networks and registering their addresses, as well as making sure that electronic contracting systems work and that the procedures for securing them are safe.²

2.3.3 The third set of conditions

These conditions relate to the presence of qualified human beings. The availability of expertise with appropriate experience (information systems professionals) is a requirement for creating an e-commerce-friendly atmosphere. Especially in recent years, with the growth of the internet and e-commerce, technological advancements have been matched by changes that have been almost as swift in the business environment, as well as in the way organizations employ technology to meet their needs and function efficiently. The, a lack of the right skills is a major problem when it comes to implementing organizational e-commerce strategies.³

Robert Katz, professor at Amos Tuck, argued that, broadly speaking, human endeavours require three sorts of skills: technical, human, and conceptual. Katz defined the first category, “technical skills”, as the precise and specialized knowledge and analytical tools required for a specific subject. The ability to be effective in leadership, communication, decision making, and team building are all considered human skills. These are called “conceptual skills”. They help people better understand and see a subject or problem from different angles.⁴

¹ SCHULTE-NÖLKE Hans, 'The legal framework for e-commerce in the internal market' (2020) European Parliament 1,13.

² Tea Edisherashvili, 'Legal Regulation of Electronic Contract and General Review' (PhD, Grigol Robakidze State University, Tbilisi, Georgia 2016) 50,51.

³ Eugene Cash, Pak Yoong, and Sid Huff, 'The impact of e-commerce on the role of IS professionals' (2004) 35 ACM SIGMIS Database: the DATABASE for Advances in Information Systems 50,50.

⁴ Robert L. Katz, 'Skills of an Effective Administrator' (*Harvard Business Review* 2014) <<https://hbr.org/1974/09/skills-of-an-effective-administrator>> accessed 18 May 2020

2.4 The impact of e-commerce

The impacts of e-commerce can be seen on the following.

2.4.1 Market structure

E-commerce affects the structure of markets, whether for goods or services, or markets for production elements. It is worth noting that economic growth is dependent not only on the supply of production elements or the increase in the supply of goods and services, but also on how to leverage all these factors to achieve the highest possible revenue, whether economically or socially, depending on the nature of the market in which it operates, which plays a crucial role in achieving the optimal allocation of resources, as the closer the market is to full competition.¹

2.4.2 Economic growth

E-commerce has an impact on economic factors and rates of growth. It results in greater incomes, higher living standards for individuals, market structuring and marketing expansion, increased sales and exports, and so increased production and growth rates. The use of modern technological means in dealings means that it is possible to develop production in accordance with its electronic nature, which increases sales and this is beneficial to the social, health, and education sectors.²

By supporting the computer and software industries, the technology industry, and other related industries, such as electronic storage media, networks, and communications, which are the infrastructure for e-commerce, e-commerce creates the ideal environment for increased output and efficiency. E-growth commerce necessitates more of these products, which increases production. The use of electronic means in trade, in particular, improves the level of management and organization within the institution as well as the development of its productivity activities, such as searching the internet for new sources of

¹ Khalil (n18)

² OECO (n26) p151

funding from abroad and producing new types of goods that are appropriate for the nature of e-commerce, which helps countries' economies.¹

2.4.3 Exports

By making it easier to enter global markets, make business deals quickly and easily without any administrative or commercial barriers, respond to changes in consumer demand, and market local items in these markets, e-commerce helps to boost exports.² E-commerce is expanding cross-border service trade. This industry accounts for 60% of global output. With the rise of modern ICT, e-commerce has become a way to speed up the process of convergence between customers and producers, as well as remove geographical barriers.³ The paper was prepared by Washington Office of the Economic Commission for Latin America and the Caribbean (ECLAC) pursuant Recommendation stated that the E-commerce was expected to be worth more than half a trillion dollars globally by 2008, making this the fastest-growing segment of international trade.⁴

The power of e-commerce and IT to turn non-tradable services into tradable ones is the most significant change in service trade. Research and development, computing, inventory management, quality control, accounting, personnel management, secretarial support, marketing, advertising, distribution, and legal services are all examples of non-tradable activities that will now be traded through the use of e-commerce.⁵

¹ Syed Naimathullah Hussaini, 'E-COMMERCE: PURCHASING AND SELLING ONLINE' (*academia*, 2008)

<https://www.academia.edu/22873462/E_COMMERCE_PURCHASING_AND_SELLING_ONLINE> accessed 16 May 2020

² Terzi(n20)p748

³ Khalil (n36)

⁴ United Nations Economic Commission for Latin America and the Caribbean ECLAC— Washington Office, Electronic Commerce, International Trade and Employment: Review of the Issues (LC/WAS/R.22,2002) 20.

⁵ Ibid

2.4.4 Investment

As ICT plays such a crucial role in e-commerce infrastructure, e-commerce opens up new investment opportunities, particularly in the ICT sector. The growth of e-commerce means that more people need to work in this field and more money needs to be spent on building e-commerce infrastructure. Then, more money needs to be spent on the ICT sector, which helps the national economy.¹

According to Stephen Ezel, vice president of Global Innovation, Information Technology, and Innovation Policy (ITIF), ICT is the most important driver of the modern innovation economy, productivity, and growth. Today, ICT accounts for 6% of the global economy. Ezel argues that at the national level, around 80% of the advantages come from using ICTs, and the value of ICTs comes from the country's ICT industry, which develops ICT hardware and goods. In recent decades, ICT breakthroughs have created enormous value in the global economy.²

2.4.5 The capital market

E-commerce has an impact on the capital market because capital flows are exchanged between surplus units, or “savings”, and “deficit” units, or “investors”, through the issuing of long-term stocks and bonds, which helps to stimulate investment and economic growth. It should be noted that e-commerce improves the effectiveness of stock exchanges, where contracts for the purchase and sale of securities traded on the stock exchange are concluded electronically, as well as the ability to obtain information on these traded securities quickly and the issuance of orders for the sale and purchase of securities for brokers. E-commerce allows for greater flexibility by allowing for the availability of contracts or orders for sale or purchase via email or other modern electronic

¹ Khalil(n40)

² Valentina Mucuska Palevska and Blagica Novkovska, 'THE PARTICIPATION OF ICT IN ACTIVITIES OF ECONOMIC SUBJECTS IN SMALL ECONOMY' (2018) 9 UTMS Journal of Economics 157,162.

means of communication, as well as providing investors with quick market information, despite brokers not always being able to provide this information about securities traded in the market.¹

2.4.6 Work strength

The majority of developing and developed countries are plagued by unemployment and a scarcity of jobs to accommodate the labour force.² On the subject of employment, e-commerce can benefit a state's national economy in two ways:

A. The first is that it creates new job opportunities by establishing small and medium-sized businesses and connecting them to international markets at low investment costs. This is particularly the case in the trade in services, where e-commerce provides a mechanism for specialized individuals to provide their services at the regional and global levels without the need to relocate, a matter that is of great importance to the economy.³

B. The second important aspect of e-commerce jobs is that they can be found in a variety of different places, and include specialists in e-commerce sites, employees, administrators, and technicians in e-shops, and jobs in the ICT field, where e-commerce relies on network and software engineers, among other factors.⁴

The use of e-commerce will result in the abolition of traditional occupations and the creation of new jobs requiring individuals to be trained in the use of technology in order to compete for and win positions. This indicates that e-commerce has a detrimental influence on physical work and unqualified labour, but a beneficial impact on technically skilled labour, since it makes it easier to

¹ Khalil (n43)

² Henry J. Bruton, 'Unemployment problems and policies in less developed countries' (1978) 68 *The American Economic Review* 51,51.

³ OECD (N37)P18

⁴ Sam O'Brien, 'Jobs in Ecommerce: Everything you Need to Know to Enhance Your Career in a Booming Industry' (*BIGCOMMERCE*, 2015)

<<https://www.bigcommerce.com/blog/ecommerce-jobs/>> accessed 17 February 2021

discover jobs and helps to develop job titles and specialties that were previous unknown or not required.¹

2.5 Features of e-commerce legal regulation

The development of international e-commerce necessitates the resolution of legal concerns, which are addressed at the international level, not only by the EU, but also by other specialized world organizations. The WIPO, WTO, UNCITRAL, International Chamber of Commerce (ICC), United Nations Conference on Trade and Development (UNCTAD), and the Organization for Economic Cooperation and Development (OECD) are among these organizations. One of their main concerns is making sure that international e-commerce relationships are properly regulated by law.²

2.5.1 EU legislative framework

The current legislative framework of the EU has an impact on the functioning of e-commerce.

2.5.1.1 Directives

2.5.1.1.1 E-commerce Directive 2000/31/EC

This directive was approved to create a legal framework to ensure the free movement of information society services between EU Member States by establishing a clear and broad framework to encompass certain aspects of e-commerce in the internal market.³

2.5.1.1.2 Audiovisual Media Services Directive (EU) 2018/1808

The main goal of this directive is to safeguard media consumers from harmful content, such as incitement to hatred, violence, and terrorism. It is also

¹ Terzi(n39) p751

² Ruslan Volynets Aleksy Kwilinski, Inna Berdnik, Mykhailo Holovko and Pavlo Berzin, 'E-Commerce: Concept and Legal Regulation in Modern Economic Conditions' (2019) 22 (25) Journal of Legal, Ethical and Regulatory Issues 1,3

³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') [2000] Official Journal of the European Communities, 178/1.

intended to improve the protection of young users, particularly with regard to content that could harm their physical and mental development, such as advertisements for alcoholic beverages or gambling.¹

2.5.1.1.3 Copyright Directive (EU) 2019/790

The Copyright Directive aims to ensure the smooth operation of the internal market while also encouraging innovation, creativity, investment, and the creation of new content. In this way, the directive tries to strike a balance between making the law future-proof and not stifling technological progress, while also taking into account the rights holders' and users' needs.²

2.5.1.1.4 Digital Content Directive (EU) 2019/770

This directive governs new types of contracts that have gained popularity in recent years. It deals with the supply of digital content and services. The directive is intended to make it easier for individuals to obtain digital information and services, which, in turn, will help the digital economy grow.³

2.5.1.2 Regulation

2.5.1.2.1 Fairness and Transparency of Online Platforms Regulation (EU) 2019/1150

This act establishes new regulations on parties operating online trading platforms and similar services, as well as parties acting as intermediaries. As a result, intermediation services are allowed to impose unfavourable and market-

¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) [2010] Official Journal of the European Union 95/1.

² Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance) [2019] Official Journal of the European Union 130/92.

³ 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 (Text with EEA relevance) [2019] Official Journal of the European Union 136/1.

distorting regulations on business users unilaterally. While the rule aims to correct the power imbalance between businesses and platforms by bolstering the position of business users, it does so with caution.¹

2.5.1.2.2 General Data Protection Regulation (EU) 2016/679 ("GDPR")

The GDPR regulates the free movement and processing of personal data and considers the protection of natural people in connection with personal data processing to be a fundamental right.²

While natural people are increasingly sharing personal data online, companies and governments are also making use of this information, resulting in an increase in the overall cross-border data flow.

2.5.1.2.3 Geo-Blocking Regulation (EU) 2018/302

This regulation reduces the hurdles erected by unjustifiable geo-blocking, while excluding circumstances in which geo-blocking is legitimate (for example, to ensure that its users comply with national or EU legislation). The regulation does not apply to online restrictions involving audiovisual services because it is focused on commercial business between countries.³

2.5.2 Current legislative framework at the international level

2.5.2.1 UN Commission on International Trade Law (UNCITRAL)

UNCITRAL began working on the development of legal rules relating to the provision of electronic documents with paper equivalent status in 1992. As a

¹ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Text with EEA relevance) [2019] Official Journal of the European Union 186/57.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) [2016] Official Journal of the European Union 119/1.

³ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (Text with EEA relevance.) OJ L 60I , 2.3.2018, p. 1–15

result of this work, the Model Law on Electronic Commerce (MLEC) was adopted by the UN General Assembly in 1996, to ensure that e-commerce is safe and secure. MLEC gives national legislators a set of internationally agreed-upon rules for removing legal barriers and strengthening the legal predictability of electronic commerce.¹

UNCITRAL's work in the area of settling relations in the implementation of e-commerce has evolved into the formulation of legal rules that can ensure the stability of the field's development. As a result of the need to unify legislation applicable to alternative paper forms and methods of transmitting and storing information, the UN General Assembly adopted Resolution A/51/628 in 1997, in which states are encouraged to develop legislation to take into account the provisions of the Model Law (Resolution adopted by the General Assembly, 1997).²

The following key acts were approved as a result of the work of the UN Economic Commission for Europe and the UN Centre for Trade Facilitation and E-business, both of which were focused on resolving e-commerce difficulties at the international level: a model agreement for international commercial use of electronic data exchange (Annex to UN/CEFACT Recommendation No. 26)³, and the UN/CEFACT E-commerce Agreement Recommendation No. 31 (Electronic Commerce Agreement, 2000).⁴

¹ UNITED NATIONS, UNCITRAL Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998, Vienna International Centre.

² United Nations, General Assembly, Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law: resolution, 51st sess, United Nations Digital Library (1996–1997).

³ United Nations, Recommendation No. 26, adopted by the Working Party on Facilitation of International Trade Procedures, Geneva, March 1995, ECE/TRADE/WP_4/R1133/Rev.1 [Edition 96.1].

⁴ United Nations, Recommendation No. 31, adopted by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), Geneva, May 2000, ECE/TRADE/257.

2.5.2.2 World Trade Organization

Since the late 1990s, the WTO has been paying attention to the topic of e-commerce, which is linked to the adoption of the Geneva Ministerial Declaration on Global Electronic Commerce in 1998. When E-Commerce Work Program WT/L/274 was written, it took this Declaration into account. It states that the term “e-commerce” refers to the production and distribution of goods and services by electronic means, only for the purposes of this work programme and not to its results.¹ In December 2017, the XI WTO Ministerial Conference took place, and it ended with a number of ministerial decisions, such as on fishing subsidies and e-commerce taxes, as well as a promise to continue working on all issues (WT/MIN (17)/65-WT/L/1032, 2017).²

2.6 Platforms and providers of e-commerce

An e-commerce platform is a tool for managing an e-commerce business. There are e-commerce platform solutions for clients of various sizes, from tiny businesses to major corporations. These e-commerce platforms include online marketplaces, such as Amazon and eBay, which require little to no IT implementation and only user registration. Another type of e-commerce platform model is software as a service (SaaS), which allows store owners to “rent” space in a cloud-hosted service rather than investing in in-house development or infrastructure. Other e-commerce systems may be open source, requiring a hosting environment (cloud or on premises), as well as complete manual deployment and maintenance.³

2.6.1 Worldwide e-commerce markets

The following are examples of e-commerce markets that operate worldwide:

¹ World Trade Organization, Work Programme on Electronic Commerce, adopted by the General Council, WT/L/274 (30 September 1998) 98-3738.

² World Trade Organization, Work Programme on Electronic Commerce, Ministerial Decision of 13 December 2017. WT/MIN (17)/65 (18 December 2017) WT/L/1032.

³ Chai (n17)

- Amazon, the Amazon Market, which was launched by Jeff Bezos on 5 July 1994 in Seattle, Washington, DC, is the world's largest online retailer by gross sales and market value.¹ The site started as an online library, but soon expanded to sell DVDs, Blu-ray discs, CDs, download and broadcast video, MP3 downloads and broadcasts, and consumer electronics. It is now the world's largest provider of cloud infrastructure services. Target, Walmart, Best Buy, and Costco are among Amazon's retail store competitors.²

- Alibaba is a Chinese company that operates under the name Alibaba Group Holding Limited. It is a Chinese private sector company that was founded in 1999 and is headquartered in Hangzhou in the People's Republic of China. Its founder, Jack Ma, wanted to create an online portal called Ali Baba.com for businesses to connect Chinese manufacturers and traders with consumers and buyers from all over the world, with the majority of its revenues coming from its online business activities. Jack Ma started Taobao in 2003, which is similar to eBay and has about one billion products. Ali Baba Group Holdings' sites account for more than 60% of parcels that are sent to China, and they have approximately one billion products on them.³ Almost half of all electronic payment transactions in China are processed through the Alipay website, which offers a secure online payment service. Alibaba's services account for the vast majority of these transactions. After failing to reach a deal

¹ Avery Hartmans, 'Jeff Bezos originally wanted to name Amazon 'Cadabra,' and 14 other little-known facts about the early days of the e-commerce giant' (*FLIPBOARD*, 2017) <<https://flipboard.com/@businessinsider/tech-insider-km6gng0uz/jeff-bezos-originally-wanted-to-name-amazon-cadabra-and-14-other-little-known/a-9PHZ9popQkCE2ONi3KqEQ%3Aa%3A48159484-ce154c7cdd%2Fbusinessinsider.com>> accessed 20 July 2021

² Troy Segal, 'Who Are Amazon's (AMZN) Main Competitors?' (*Investopedia*, 2017) <<https://www.investopedia.com/ask/answers/120314/who-are-amazons-amzn-main-competitors.asp>> accessed 20 July 2021

³ Arjun Kharpal, 'Jack Ma steps down as Alibaba's chairman. Here are key moments in the company's history' (*CNBC*, 2019) <<https://www.cnbc.com/2019/09/10/jack-ma-steps-down-as-alibaba-baba-chairman-history-of-the-company.html>> accessed 18 May 2020.

with organizers in Hong Kong, the group plans to launch the Abel Dover service in the United States.¹

- Also known are eBay, Walmart, Marketplace, Chewy, Wayfair, Newegg, Etsy, Overstock, Rakuten, etc.

2.6.2 Other online shopping sites

The following vendors provide e-commerce platform services to clients who run their own online shopping sites:

- Shopify
- WooCommerce
- Magento
- Squarespace
- BigCommerce
- Eciwd
- Salesforce Commerce Cloud (Salesforce) (B2B and B2C options)
- Oracle SuiteCommerce²

2.7 Electronic arbitration

the rapid rise in B2C electronic transactions over the past few years has produced a number of concerns for businesses and consumers. One of the major issues is that traditional dispute resolution through court proceedings is unsuitable for the many problems that arise in e-commerce due to the nature of the internet. Cross-border online shopping is confronted with issues (including misrepresentation, non-delivery of goods, and the difficulty of receiving refunds), and such internet-based transactions cause legal uncertainty over which jurisdiction is competent. The lack of effective consumer redress when the parties are located in different countries is a major barrier to consumer

¹ Aaron Klein, 'China's Digital Payment Revolution' (*READKONG*, 2020)

<<https://www.readkong.com/page/china-s-digital-payment-revolution-aaron-klein-fellow-1266069>> accessed 19 May 2020

² Chai (n64)

confidence in dealing with all but the most well-known and trusted brands. Therefore, in order to develop e-commerce, all parties (businesses, consumers, and governments) should recognize that consumer confidence must be strengthened. Thus, the problem of cross-border disputes must be resolved.¹ In these circumstances, the global arena is witnessing a departure from the traditional process of dispute resolution to online dispute resolution (ODR) in its various forms.²

In practice, private companies (such as Cybersettle and SquareTrade) were formed specifically to provide ODR services. For example, Cybersettle claims to have enabled 100,000 transactions totalling over \$750 million in settlements. However, Electronic Consumer Dispute Resolution (ECODIR), the ICC, the Internet Corporation for Assigned Names and Numbers (ICANN), and the North American Free Trade Agreement (NAFTA) are just a few examples of public and private groups that also set standards for how e-commerce companies should use ODR in their business.³

A-arbitration as a Type of online dispute resolution also known as online arbitration, cyber arbitration, cyberspace arbitration, virtual arbitration, and arbitration using online techniques. There is no doubt that e-arbitration is one of the signs and results of the IT revolution.⁴ Unlike state court procedures, arbitration allows for a great deal of procedural flexibility, allowing it to adapt to technological advancements considerably more quickly than other domestic dispute resolution methods. Apart from a few technologically advanced national

¹ Bruno and Yannick Gabuthy Deffains, 'Efficiency of online dispute resolution: a case study' (2005) 60 Communications and Strategies 201,202

² LawTeacher, 'Cyber Arbitration and Effective Dispute Resolution' (*LawTeacher*, 2019) <<https://www.lawteacher.net/free-law-essays/commercial-law/cyber-arbitration-and-effective-dispute-resolution-commercial-law-essay.php?vref=1>> accessed 20 August 2019.

³ Deffains (n70)

⁴ Jacalyn Crecelius J.D., 'New Technology and Its Impact on the Practice of Law' (*Expert Institute*, 2017) <<https://www.expertinstitute.com/resources/insights/new-technology-and-its-impact-on-the-practice-of-law/>> accessed 6 July 2021

court systems, such as China¹ or Canada, there are not many.² The most significant has an effect on technological know-how and can be seen in arbitral proceedings.³ Recently, established terms such as electronic arbitration or e-arbitration have been used to describe varieties of arbitration that entirely or at least heavily rely on IT.⁴ Overall, due to the novelty of electronic arbitration, jurists have not yet determined the legal nature of e-arbitration: whether it is an integral part of the legal system or conducted on the terms of traditional arbitration, differing only in respect of means.⁵ As IT, particularly e-communication, is widely used in arbitration, it might be difficult to define the concept. Any definition should, therefore, distinguish between what is currently called traditional arbitration, which includes the increasing use of technology, and genuine e-arbitration.⁶

2.7.1 Differentiating between E-arbitration and other types of ODR

As one of the ODR methods, e-arbitration offers all the advantages of ODR, including convenience, flexibility, and time and cost savings. Some claim that ODR is “the only financially feasible settlement option”.⁷ However, among the

¹ M. Locklear, 'China's online court heard its first case today' (*engadget*, 2017) <<https://www.engadget.com/2017-08-18-chinas-online-court-first-case.html>> accessed 8 February 2019

² Jane and Jacquelyn Burkell Bailey, 'Implementing technology in the justice sector: A Canadian perspective' (2013) 11 *Canadian Journal of Law and Technology* 253,253.

³ MIRKO OLMOS, 'Efficiency in International Arbitration: A Matter of Technology' (*ARBITRATOR iNTELLIGENCE*, 2020) <<https://arbitratorintelligence.com/efficiency-in-international-arbitration-a-matter-of-technology/>> accessed 15 February 2020

⁴ Mohamed S. Abdel Wahab, 'ODR and e-Arbitration – Trends & Challenges' (*Mediate*, 2013) <<https://www.mediate.com/articles/ODRTheoryandPractice18.cfm>> accessed 5 May 2019.

⁵ Mohamed S. Abdel Wshab, M. Ethan Kats and Danil Rainey, *Online Dispute Resolution: Theory and Practice : a Treatise on Technology and Dispute Resolution* (Eleven International Pub. 2012)402

⁶ Lars Markert and Jan Burghardt, 'Navigating the Digital Maze-Pertinent Issues in E-Arbitration' (2017) 27 *J Arb Stud* 1

⁷ Charlotte Austin, *Online dispute resolution: An introduction to online dispute resolution (ODR), and its benefits and drawbacks* (Wellington: Government Centre for Dispute Resolution 2017)1,32

ODR methods, e-arbitration has some distinguishing characteristics that set it apart from the others. In comparison with other ODR, e-arbitration has significant benefits. Mechanisms relate to the third neutral's decision-making authority, the result's binding nature, and the procedure's dependence on recorded proof, such as “(eBay) with no or limited decision-making power”,¹ to the binding nature of the result and to the reliance of the process on documentary evidence.

The fact that the dispute is resolved by a third party leads to a faster resolution of the dispute because the parties do not have to spend countless hours exchanging proposals and counterproposals in order to reach a mutually acceptable solution, which may or may not be reached at all at the end of the procedure. In contrast with online negotiation and mediation, the parties in e-arbitration can be confident that their disagreements will be settled by a third party who will make a decision based on the merits of their claims.² Finally, because of its increased reliance on proof of documents, e-arbitration appears to be better suited for the online environment than voluntary and non-binding ODR techniques.³

E-arbitration primarily involves the parties exchanging information, documents, exhibits, and other evidence. Therefore, e-arbitration is best suited for asynchronous communication because the asynchronous interactions in e-arbitration allow the parties to publish and carefully study briefs, affidavits, documents, and other evidentiary submissions on their own schedules. It does not require the same level of interaction as non-binding dispute resolution alternatives.⁴

¹ Fabrizio Cafaggi, *Enforcement of Transnational Regulation: Ensuring Compliance in a Global World* (Edward Elgar 2012)297

² Schmitz Amy J., 'Drive-thru arbitration in the digital age: Empowering consumers through binding ODR' (2010) 62 *Baylor L Rev* 178,201

³ Badii Farzaneh, 'Using online arbitration in e-commerce disputes: a study on B2B, B2C and C2C disputes' (2015) 2 *IJODR* 1,1.

⁴ Amy J.(n82) p201

The lack of face-to-face interaction, and thus the loss of body language and non-verbal clues, is one of the most commonly claimed arguments against ODR in general.¹ Firstly, today's advances in ICT tools make it easy and cheap to hold teleconferences with a wide range of software programs.² Face-to-face engagement is particularly vital in consensual and non-binding procedures, such as negotiation and mediation, where face-to-face interaction can assist in building an atmosphere of collaboration and lead to the consensual settlement necessary for dispute resolution.³ In contrast, in e-arbitration, the dispute is resolved not via a voluntary agreement between the parties, but through a third-party decision based on the parties' claims presentations and not through their cooperation.⁴ In most cases, e-arbitration is used. It is a far less sophisticated communication process than online mediation and, as a result, the equipment and software required for online arbitration will be less complicated.⁵

Arbitration is better suited to the online environment than consensual methods since communication is usually less intensive, proceedings are primarily written, and there is rarely a need for more than email and secure communications to use arbitration for dispute resolution.⁶ Furthermore, the finality of the resolution of the dispute is ensured by the binding character of e-arbitration (binding online arbitration).⁷ E-arbitration brings a dispute to an end

¹ Daisuke Bekki Takashi Onoda, Eric Mc Cready, *New Frontiers in Artificial Intelligence: JSAI-isAI 2010 Workshops, LENLS, JURISIN, AMBN, ISS, Tokyo, Japan, November 18-19, 2010, Revised Selected Papers* (Springer Berlin Heidelberg 2012)125

² Lawrence ATomei, *ICTs for Modern Educational and Instructional Advancement: New Approaches to Teaching: New Approaches to Teaching* (Information Science Reference 2009) xxviii

³ William L. D. Barrett, *Alternative Dispute Resolution: What the Business Lawyer Needs to Know, 1999* (Practising Law Institute 1999)623

⁴ Joanne Cox, *Business Law* (Oxford University Press 2015)399

⁵ Roberto M Rodriguez, 'ON-LINE ARBITRATION' (2011) World Mediation Centre 1, 3

⁶ Thomas Schultz, Bonnet, Vincent, Boudaoud, Karima, Harms, Jürgen, Langer, Dirk, *Electronic communication issues related to online dispute resolution systems* (2002)1,3.

⁷ Amy J.(n84)p185

without having to use other ODR procedures or spend a lot of time appealing.¹ This is especially crucial in e-commerce disputes, because the typically modest value of the dispute necessitates a quick and financially proportional resolution to avoid the issue dragging on.² In international arbitration dealing with cross-border disputes, the arbitral award frequently proves less difficult to enforce than court judgments, at least in the nations that have signed the 1958 (about 150 nations) United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.³ This is also recognized as the New York Convention. However, because it was signed more than 50 years ago, the NYC may not be up to the task of supporting and enforcing e-arbitration and awards.

Because e-arbitration still operates under rules meant for traditional arbitration, the NYC, at the absolute least, would have to be broadly interpreted to avoid differences in interpretation, recognition, and enforcement arising in current practice⁴ in light of electronic communication.⁵ However, “while a broad interpretation of its provisions may be helpful, it is ideally required to modernize and change them in order to keep up with the advances of modern society”.⁶

¹ United Nations, 'Conference' (Trade and Development, Dispute Settlement International Commercial Arbitration 59 Electronic Arbitration (Geneva 2005))47

² United Nations Commission on International Trade Law', Yearbook 2014 (Vol XLV, 2014) 223.

³ M Lu - Ariz, 'The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards: analysis of the seven defenses to oppose enforcement in the United States and England' (2005) 23 J Int'l & Comp L 1,2.

⁴ DIAMOND McCARTHY, 'Is there a need to reform the New York Convention of 10 June 1958' (*DIAMOND McCARTHY*, 2018) <<https://www.diamondmccarthy.com/is-there-a-need-to-reform-the-new-york-convention-of-10-june-1958/>> accessed 6 May 2020

⁵ Giuditta Cordero Moss, 'Form of arbitration agreements: current developments within UNCITRAL and the writing requirement of the New York Convention' (2011) Int'l Comm Arb Rev 1,3.

⁶ Jana Herboczková, 'Certain aspects of online arbitration' (2001) 1 Journal of American Arbitration 1,11.

Conclusion:

In recent years, e-commerce has grown quickly, which has opened up new ways for the modern international trading system to work. At the same time, public relations in the field of e-commerce that use global information networks require their legal regulation. However, all countries' economies can benefit from electronic commerce. In the short term, most of the gains are likely to go to developed countries, but in the long term, developing countries will gain more. Through e-commerce, there will be more international trade. In addition, e-arbitration can help e-commerce grow at a faster rate. Especially, when there is a fair process to which e-arbitration solutions are subjected.

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