

**Comments on Senate Bill No. 1591 (An Act Protecting Consumers and Merchants Engaged in Internet Transactions, Creating for this Purpose the Ecommerce Bureau and Appropriating Funds Therefor) and Senate Bill No. 1818 (An Act Promoting Online Transactions, Safeguarding the Rights of Consumers and Merchants, and for other Purposes)**

*Prepared by Ramonette B. Serafica<sup>1</sup>*

October 21, 2020

This builds on the comments of Dr. Cuenca of PIDS submitted on 02 September 2020.

Industry development and industry regulation are two important functions of the government.<sup>2</sup> However, it may not be prudent to vest these two functions in the Ecommerce bureau as these functions will be competing for resources and attention within the bureau reducing its effectiveness, efficiency or both. The bureau could also face situations where conflicting interests of industry, consumers, and the government will need to be considered. As explained in OECD (2014), clarity of purpose is essential for good regulation. It is important that the legislation establishing a regulatory scheme or framework be written so that the purpose of the regulator and the objectives of the scheme are clear to the regulator's staff and various stakeholders. It adds that the role of the regulator should be clearly defined in terms of its objectives, functions and coordination with other entities.

Moreover, it appears that the bills seek to separate consumer protection functions within the DTI on the basis of the sales and distribution channel or platform (i.e. online transactions will be the responsibility of the Ecommerce bureau which is in charge of implementing the provisions of the Act while traditional retail or offline transactions will remain with the Consumer Protection Group). In reality, merchants or sellers are utilizing different channels referred to as either omnichannel or multichannel strategies (composed of both offline and online channels such as marketplaces, social media, and messaging). At the implementation level, it might be confusing for everyone concerned (and eventually burdensome) to have two entities in the DTI for consumer protection related matters. Various services with their respective regulators are already part of the e-commerce ecosystem or are being made available through digital platforms (e.g. transport and logistics, financial payments, travel, education, health) further adding to the complexity of the regulatory environment.

The bills also provide for the development of the Online Dispute Resolution platform, which seem to cater to online disputes only. In the 2017 UNCITRAL Technical Notes on

---

<sup>1</sup> Dr. Ramonette B. Serafica, Senior Research Fellow, Philippine Institute for Development Studies (PIDS)

<sup>2</sup> Although these should be exercised in varying degrees and forms given alternative approaches such as market-based incentive mechanisms.

Online Dispute Resolution, the ODR is defined as a “mechanism for resolving disputes through the use of electronic communications and other information and communication technology”. As a method of resolution, the ODR platform should be made available to all types of disputes, whether arising from online or offline transactions as long as the parties can communicate electronically. This is another reason why it may not be prudent to separate consumer protection functions within the DTI based on the sales channel.

There is no disagreement that the digital economy will require a review and updating of consumer protection frameworks primarily the Consumer Act of the Philippines. Below are the policy recommendations for effective consumer protection online (UNCTAD 2020):

- (a) Ensure that consumer protection laws and policies are technology neutral to allow for future technological development;
- (b) Enforce the liability and responsibility regimes of platforms in breaches of consumer protection laws depending on their level of involvement in the provision of goods or services;
- (c) Protect consumer privacy through a combination of appropriate control, security, transparency and consent mechanisms related to the collection and use of the personal data of consumers;
- (d) Harness new technologies to maximize the impact of product recalls and deal with the distribution of hazardous and unsafe products, in particular if they have been recalled in other jurisdictions;
- (e) Design education and information campaigns to increase digital literacy among consumers, introducing behavioural insights to maximize their impact;
- (f) Entrust consumer protection agencies with enforcement powers to conduct online investigations, impose sanctions and engage in cooperation in cross-border investigations;
- (g) Ensure that the necessary resources are devoted to addressing cross-border challenges to consumer protection in the digital economy;
- (h) Continue to guide businesses and encourage voluntary commitments to improving commercial practices and ensuring greater levels of consumer welfare online;
- (i) Encourage businesses to provide online dispute resolution for consumer disputes, in particular online platforms.

#### Bibliography:

OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing. <http://dx.doi.org/10.1787/9789264209015-en>

UNCTAD (2020), Strengthening consumer protection and competition in the digital economy Note by the UNCTAD Secretariat TD/RBP/CONF.9/4