

Unclassified

English - Or. English

8 June 2021

**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INNOVATION
COMMITTEE ON CONSUMER POLICY**

Going Digital policy note

The role of online marketplaces in enhancing consumer protection

JT03477806

This policy note was written by Thyme Burdon under the supervision of Brigitte Acoca of the OECD Secretariat. It was reviewed and approved by the Committee on Consumer Policy by written procedure on 25 January 2021 and was prepared for publication by the OECD Secretariat.

This Toolkit note is a contribution to the OECD Going Digital project, which aims to provide policy makers with the tools they need to help their economies and societies thrive in an increasingly digital and data-driven world.

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Note to Delegations:

Please cite this publication as:

Burdon T. (2021), “The role of online marketplaces in enhancing consumer protection”,
Going Digital Toolkit Note, No. 5,
https://goingdigital.oecd.org/data/notes/No7_ToolkitNote_ConsumerProtection.pdf

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Table of contents

<i>The role of online marketplaces in enhancing consumer protection</i>	4
Towards a common understanding of online marketplaces	4
Market trends and potential consumer benefits	6
Key consumer protection concerns and responses	7
The growing challenge of dark commercial patterns on online marketplaces	13
Consumer protection in the new era of the service marketplace	14
<i>Annex. A selection of government initiatives to enhance consumer protection on online marketplaces</i>	18
<i>References</i>	20

The role of online marketplaces in enhancing consumer protection

This policy note identifies market trends and potential consumer benefits and discusses the key challenges for consumer protection on online marketplaces, including examples of how government authorities and online marketplaces are seeking to address them. It also explores growing challenges associated with dark commercial patterns on online marketplaces, and the continued expansion of the service marketplace. The Annex provides a selection of government initiatives to enhance consumer protection on online marketplaces.

This policy note builds on the OECD publication “An Introduction to Online Platforms and their Role in the Digital Transformation” (2019) and results from a survey carried out by the Committee on Consumer Policy on “Trust in peer platform markets” (2017).

A significant and growing number of consumers today engage in e-commerce through online marketplaces matching buyers and third party sellers, attracted by benefits such as convenient search and payment mechanisms and broad product and seller choice. There are, however, questions about the role that may be played by online marketplaces in protecting digital consumers from challenges such as false or misleading ratings and reviews, scams, as well as counterfeit and unsafe products. Coupled with the regulatory difficulties posed by cross-border transactions, if not addressed, these issues have the potential to undermine consumer trust in online marketplaces and e-commerce more broadly.

Towards a common understanding of online marketplaces

Online marketplaces are a type of online platform, along with, for example, search engines, social media app stores and payment systems (OECD, 2019^[1]). The OECD has previously defined an online platform as “a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the Internet” (OECD, 2019^[1]).

Online marketplaces typically exhibit common characteristics such as a wide variety of third party sellers and products as well as the ability to regulate their users’ behaviour and to harness digital tools such as artificial intelligence (AI) given the wide availability of user data. These typical characteristics are described in Box 1 below.

Box 1. Typical characteristics of online marketplaces

Product scope and scale. Successful online marketplaces offer a huge number of products across a range of categories. Some however, particularly those that are new and emerging, may target markets for particular types of goods, for example second-hand goods, motor vehicles, electronics or clothing.

Variety of third party sellers. Online marketplaces typically feature a range of third party sellers, ranging from large established retail businesses to small businesses and micro-enterprises. Some marketplaces may also allow sales by private individuals and

even specialise in such sales. Some online platforms may also sell directly to consumers, but in so doing act as an online retailer and not an online marketplace.

Use of ratings and reviews. Such tools are frequently used by consumers on online marketplaces to share feedback about products and sellers and enable other consumers to make faster and more informed decisions (OECD, 2019^[2]). There have been instances however where ratings and reviews have been exploited by sellers to obtain more positive reviews (e.g. via fake or undisclosed incentivised reviews, or not giving all consumers an equal opportunity to leave a review). Online marketplaces have to be mindful of this risk when designing their rating and review systems, and include measures to avoid such manipulation.

Oversight of marketplace participants and dispute resolution. Online marketplaces typically set policies, generally outlined in their terms of service, about who can participate as a buyer and third party seller and their responsibilities once active. Online marketplaces may also take a role in resolving disputes between buyers and third party sellers, increasingly through fully or partially automated dispute resolution mechanisms. Despite the control described above, some online marketplaces face practical challenges in identifying all actions that may infringe consumer protection laws. New technologies present great potential for marketplaces to enhance their oversight and dispute resolution capabilities.

Use of data and AI. Online marketplaces are able collect extensive data about their users through events such as account creation, search and purchase history. This allows them to provide valuable real-time information to consumers about the products for sale on the marketplace, including information about product availability, shipping times, and feedback from other users. By analysing these data through the use of AI, online marketplaces may also be able to identify emerging consumer trends, and use these insights to ensure their product range keeps up with consumer demand. AI may also be used by online marketplaces to target promotions to individual consumers and recommend products. It may also be used to improve the quality of search tools and power chatbots to assist with consumer enquiries, to engage in fraud detection (including identification of counterfeit and other illicit goods, as well as “fake” consumer reviews), and to assist with dispute resolution.

Despite these common traits, developing a common understanding of an “online marketplace” remains difficult due to the wide variety of online marketplaces in existence.¹ For example, online marketplaces may feature an integrated payment system or leave payment methods up to buyers and sellers after they match; they may operate on a worldwide basis or be limited to users based in particular countries or regions; they may facilitate business to consumer transactions, consumer to consumer transactions or a combination; or they may even be part of a broader platform eco-system, for example through the integration of social media platforms, digital wallets or virtual assistants. In addition, some marketplaces may facilitate give-aways or bartering of goods, which presents challenges in some jurisdictions where consumer law protections may not apply to non-monetary transactions.

Nevertheless, in essence, all online marketplaces are intermediaries facilitating transactions by matching buyers and sellers (OECD, 2019^[1]). This intermediary role presents some overarching consumer protection challenges setting marketplaces apart from online

¹ While this policy note predominantly focuses on consumer protection challenges regarding online marketplaces for goods, it also briefly includes a discussion on issues associated with online marketplaces for services.

retailers and brick and mortar stores because domestic legal frameworks may not extend legal liability to marketplaces for problems experienced by their users due to the actions of their third party sellers. There are at least two sets of legal issues that lead to this situation. First, consumer protection laws in some OECD jurisdictions apply only to businesses selling products directly to consumers, and not to intermediaries (or peer platform sellers). Second, in some countries consumer laws may apply to intermediaries only in certain circumstances, depending on their level of involvement in, and control over, a transaction or awareness about illegal conduct and level of action in response (OECD, 2019^[1]). In practice, however, the lines between online retailers and online marketplaces continue to blur as many online marketplaces move beyond the business of passively facilitating transactions to activities such as selling their own products through their marketplace or offering fulfilment services where they store, pack and ship third party sellers' products.

For the purposes of this policy note, “online marketplace” refers generally to a type of online platform that facilitates e-commerce transactions between third party sellers and consumers (B2C) and/or between consumers (C2C). When online platforms sell products directly to consumers, they are no longer considered a marketplace but an online retailer in regard to those particular transactions. In reality however, as noted above, there are a number of online marketplaces that facilitate transactions between buyers and sellers and sell directly to consumers, using their same platform infrastructure and associated services.

Market trends and potential consumer benefits

Online marketplaces play an increasingly important role in the digital transformation as consumers seek convenient ways to search for, and purchase, products online. In particular, consumers are increasingly turning to online marketplaces to access everyday items, with online marketplaces seen as convenient one-stop shops providing access to a wide variety of products and sellers. These trends include both marketplaces facilitating business to consumer transactions and those facilitating consumer to consumer transactions, also referred to as peer platforms. A consumer survey conducted by the OECD in 2017 indicated that consumers were already increasingly using peer platform markets for a variety of transactions (OECD, 2017^[3]). Online marketplaces rank amongst the most popular websites and mobile applications in the world. Seven online marketplaces ranked within the top 50 most visited websites in the world for July 2020, three of which are Amazon sites (SimilarWeb, 2020^[4]) and Amazon Shopping was one of the most popular iOS mobile applications for 2019 (Apple, 2019^[5]). The world's largest social media platforms, Facebook and WeChat, have also integrated their own marketplaces into their applications and websites.

The COVID-19 crisis has undoubtedly accelerated these general shifts as consumer preferences for online consumption have increased due to the risk of virus transmission in public places. Importantly, online marketplaces, along with online retailers, have been able to provide consumers with safe and convenient access to essential goods while brick and mortar retailers were forced to close or impose capacity restrictions. The crisis has undeniably further cemented online marketplaces' importance in the consumer landscape, particularly those that were already household names before the crisis. For example, in Q2/2020 eBay reported a 24% increase in revenue from its global marketplace platforms (eBay, 2020^[6]) and Amazon also reported a 49% increase in revenue from its online stores (Amazon, 2020^[7]). The crisis has had a similar effect in marketplaces with a more regional focus. In Q2/2020, Mercado Libre reported a year-over-year increase of 61% in revenue and 45% growth in unique active users (Mercado Libre, 2020^[8]). Many other online marketplaces have also seen an increase in the number of active sellers and consumers since the beginning of the global pandemic in 2020.

As outlined in Box 2 below, online marketplaces present a wide range of potential consumer benefits, including greater product and seller choice, increased convenience, opportunities to harness underused capital (e.g. selling unwanted goods) and reduced transaction costs (e.g. quicker search times). OECD survey work has shown that consumers generally appreciate these benefits and widely trust online marketplaces (OECD, 2017^[3]).

Box 2. Potential consumer benefits of online marketplaces

Greater product and seller choice: Online marketplaces typically offer a broad range of products in each category and consumers can choose from a range of sellers. Many online marketplaces also offer both new and second-hand goods.

Increased convenience: Shopping in an online marketplace may reduce search costs for consumers, by allowing them to quickly and easily find and purchase the products they need (OECD, 2019^[1]). Online marketplaces generally also allow consumers to purchase items from multiple traders in one transaction, using a variety of payment methods and allow for shopping on the go via mobile applications or even voice-activated digital assistants.

Opportunities to harness underused capital: Many online marketplaces also allow consumers to generate income from unused or underused capital (e.g. hiring out their motor vehicle when not needed or reselling unwanted goods).

Reduced transaction costs: Large online marketplaces may also be able to harness economies of scale that may be passed on to consumers in the form of lower prices for goods and faster or free shipping.

Key consumer protection concerns and responses

Despite the various potential benefits to consumers outlined above, online marketplaces present a number of consumer protection challenges. In particular, there remain significant problems with some third party businesses in marketplaces engaging in fraudulent, misleading or unfair conduct against consumers despite marketplace rules and policies. The online marketplace's role as intermediary presents particular complexities for policy makers seeking to address widespread problematic conduct by third party businesses on online marketplaces. Key challenges include the availability of unsafe products, fake or misleading ratings and reviews, scams and counterfeit products. Given their easy facilitation of cross-border transactions, online marketplaces also pose particular challenges for regulators investigating and enforcing consumer protection laws against traders based in other countries. There are also a number of specific challenges in regard to service marketplaces, which continue to grow in popularity, as well as growing challenges in addressing dark commercial patterns used by some online marketplaces.

There are also broader challenges involving online marketplaces' use of new technologies, particularly AI applications such as voice recognition, Internet of Things (IoT) systems combining machine learning and robotic programming, and autonomous devices like drones. For example, there are concerns that these contexts may present opportunities for preferencing of products sold by the marketplaces themselves or affiliates which may reduce competition and consumer choice, particularly if these relationships are not made clear to consumers (OECD, 2019^[9]). A number of jurisdictions are examining these kinds of issues, including the European Commission in its sector inquiry into IoT (EC, 2020^[10]) and proposed Digital Markets Act (EC, 2020^[11]). In addition, the increase in consumer to consumer commerce facilitated by online marketplaces poses a number of specific policy

and regulatory challenges given the fact that in some countries consumer to consumer transactions are not covered under consumer protection laws (OECD, 2017_[3])

The COVID-19 crisis has exacerbated some of these challenges, as well as introducing some new ones, by changing consumer preferences and exacerbating some common consumer behavioural biases (OECD, 2020_[12]). Consumer policy issues arising on online marketplaces during the crisis have also overlapped with other policy areas. As competition, privacy, consumer and product safety regulation become more intertwined, governments may sometimes have different tools available to address the same issues. For example, a number of competition and consumer protection agencies have examined allegations of price gouging during the crisis by sellers on online marketplaces under competition and consumer laws (OECD, 2020_[13]).

The pandemic has also resulted in a blurring of regulatory lines in other issue areas, such as health protection. For example, many consumer protection and product safety authorities have challenged non-compliant personal protective equipment and misleading virus prevention or treatment claims for products sold on online marketplaces (OECD, 2020_[12]). Traditionally, some of these products have been regulated by agencies with oversight over medicine, drugs, and medical devices. The pandemic may lead to a longer-term rethinking of regulatory responsibilities and increased cross-regulatory cooperation.

The following discusses some of these challenges and highlights examples of ways in which online marketplaces and government are working, often together, to address them.

Fake or misleading ratings and reviews

In an era when consumers increasingly rely on online reviews and ratings when making online purchasing decisions, fake or misleading ratings and reviews present a significant threat to consumer trust on online marketplaces (OECD, 2019_[2]). UK consumer body Which? released a study showing that fake reviews make consumers more than twice as likely to choose poor-quality products (Which?, 2020_[14]). Online ratings and reviews that influence consumer decisions may include direct feedback and comments about a product, star ratings, as well as more subtle forms of ratings such as page likes or views.

Unfortunately, consumer protection authorities around the world continue to identify instances of fake or misleading reviews appearing on online platforms, including online marketplaces (OECD, 2019_[15]). Fake or misleading reviews are a widespread problem due to the incentives some sellers have to mislead consumers into purchasing their products (OECD, 2019_[16]). Where rankings are used to optimise search results, the use of fake reviews may also give traders an unfair advantage over their competitors.

Misleading practices may include the editing, filtering or undisclosed incentivising of reviews and other practices that distort overall reviews and ratings, such as the suppression of negative reviews. Some businesses may write their own reviews, presenting them as authentic consumer reviews, or compensate individuals or third parties that did not genuinely purchase or use the product in exchange for positive reviews. Amazon, eBay and Instagram recently agreed to better identify, investigate and respond to fake and misleading reviews and endorsements following investigation by the United Kingdom's (UK) Competition and Markets Authority (CMA) (CMA, 2020_[17]) (CMA, 2020_[18]). Amazon recently deleted 20 000 product reviews from 7 of its top 10 UK product reviewers as part of its commitment to address fake reviews (Lee, 2020_[19]).

As many major online marketplaces only allow a buyer to leave a review once a product has been shipped and received, sellers sometimes procure fake reviews by creating fictitious purchases from fake buyer accounts created using stolen contact information to lend credibility, a practice referred to as "brushing". By sending products worth only a few

cents to a real person who has not ordered anything, the seller can give themselves positive reviews and boost their ranking on the marketplace. This practice attracted attention in 2020 after reports around the world of consumers receiving unsolicited seed packets from Amazon sellers in China (Emont, 2020_[20]).

Online marketplaces can play an important role in shielding their review systems from misuse and thereby increase consumer trust. Online marketplaces have the ability to increase the relevance of reviews with additional information for consumers about sellers and products, including consumer complaints and return rates, or improving their methods of calculating ratings (OECD, 2019_[16]). For example, Amazon has recently introduced an easier one-tap product review process to increase overall customer feedback and minimise the impact of fake reviews from overall ratings (Del Rey, 2020_[21]). New technologies, such as blockchain, may also present future opportunities for online marketplaces to strengthen the integrity of their review processes (Johnson, 2020_[22]).

International organisations and networks have an important role to play in sharing best practice on how online marketplaces can minimise fake ratings and reviews on their platforms. The OECD has recently produced best practice guidance for businesses on online consumer ratings and reviews which outlines how businesses can legitimately use ratings and reviews to promote their business online (OECD, 2019_[15]). The International Consumer Protection and Enforcement Network (ICPEN) has also developed similar guidelines specifically for digital influencers (ICPEN, 2016_[23]).

Scams and counterfeit products

Scams and counterfeit products continue to be significant problems in online marketplaces. A variety of scams in online marketplaces entice consumers with low costs for popular goods, encourage non-reversible payments, and then send inferior or damaged goods, or nothing at all. Fraudulent advertisements also divert unsuspecting consumers to websites featuring counterfeits. A recent investigation by the Wall Street Journal found that social media platforms and online marketplaces are more lucrative than robocalls for scammers (Hayashi, 2019_[24]). A recent European Commission survey also found that 23% of consumer fraud related to buying scams (EC, 2020_[25]). Such fraudulent activity targeting consumers through social media also poses a significant threat to consumer trust given its potential for financial detriment (FTC, 2020_[26]).

There have been a number of scams targeting changed consumer preferences and vulnerabilities as a result of the COVID-19 pandemic. For example, the Australian Competition and Consumer Commission warned consumers about puppy scams operating via social media and online marketplaces during Australia's COVID-19 lock-down when more consumers were looking to purchase pets for companionship (ACCC, 2020_[27]). A number of authorities have also taken action in regard to scams falsely marketing certain products in marketplaces as curing or preventing coronavirus infection. In April 2020, the Colombian Superintendence of Industry and Commerce (SIC) issued 23 administrative orders to businesses, including online marketplace Mercado Libre, for the withdrawal of advertisements implying that certain products prevented coronavirus infection (SIC, 2020_[28]). The United States Federal Trade Commission (US FTC) also sent over 400 warning letters (including some jointly with the US Food and Drug Administration) to businesses in the United States (US) and abroad on coronavirus-related claims (FTC, 2020_[29]). The European Commission has also warned consumers about scams operating on online marketplaces promoting products falsely purporting to prevent or cure coronavirus (EC, 2020_[30]). Authorities have broadly recognised the need to educate consumers about the prevalence of these scams in the digital environment and how to protect themselves. For example, the US FTC has a website that contains information and

advice on a wide range of coronavirus-related scams including fake contact tracers and false offers for COVID-19 vaccinations and test kits (FTC, 2020_[31]).

Online marketplaces have acknowledged the problems with scams operating via their platforms and many are attempting to improve protections for consumers. For example, Amazon is reportedly trialling a new system to validate the identity of its third party sellers via video-conferencing, which may deter traders that seek to hide their true identity from consumers in order to exploit them without fear of being caught (Perez, 2020_[32]).

A number of marketplaces have also taken steps to educate consumers about common scams and warn them of the risk of engaging with traders outside of the marketplace where the marketplace may not be able to assist if anything goes wrong. For example, eBay's website warns users not to complete sales outside of its platform due to the potential for fraud, and includes information about how to recognise fake eBay web pages and emails and common types of scams (eBay, 2020_[33]).

The use of an integrated payment system may enhance consumer trust by assisting to deter some types of scams from an online marketplace. By making payment through the marketplace, the risk of financial information theft is lessened as personal financial information is not made available to individual sellers. Despite the benefits of integrating a payment system, there are a number of marketplaces that do not facilitate payment, more commonly those focusing more on C2C sales. However, there may be certain business reasons for these choices, for example it may have the potential to affect a marketplace's legal liability in some circumstances.

Promoting the unknowing purchase of counterfeit goods is another form of fraudulent activity taking place in online marketplaces, with many consumers misled into thinking they are buying genuine items. Online marketplaces provide ideal storefronts for counterfeits, providing counterfeiters with large numbers of potential buyers (OECD, 2018_[34]). According to available data, counterfeit and pirated goods amount to as much as 3.3% of world trade and 6.8% of European Union (EU) imports from third countries (OECD/EUIPO, 2019_[35]). Whilst not all counterfeit products are unsafe they can present safety risks, particularly where products are presented as complying with relevant safety standards when they have not been tested like an original.

Efforts to increase cooperation and information-sharing between online marketplaces and intellectual property (IP) rights holders can assist in ensuring that listings for counterfeit products can be identified and quickly removed. One example is the European Commission's memorandum of understanding on the sale of counterfeit goods via the Internet between a number of consumer goods IP rights holders, such as Apple and Duracell, and a number of online marketplaces, including Alibaba Group, Allegro, Amazon, eBay, Facebook Marketplace, Priceminister and Rakuten (EC, 2016_[36]).

Online marketplaces have more recently developed a number of initiatives to target counterfeit products and increase co-operation with IP rights holders and enforcement authorities. For example, eBay recently launched the eBay Authenticate program to assist consumers shopping for luxury and collectible items. Goods that are sold under this program have been inspected by an expert and are guaranteed by eBay as authentic (eBay, 2019_[37]). Facebook has also introduced a number of initiatives to prevent counterfeit activity, including automated review of marketplace listings and excluding accounts that repeatedly list counterfeit products from accessing advertising on its sites (Facebook, 2020_[38]). Amazon has also developed a number of tools to help combat counterfeit products, including Brand Registry (Amazon, 2020_[39]), a trademark and copyright protection system, Transparency (Amazon, 2020_[40]), a system that uses unique codes to track individual units and Project Zero (Amazon, 2020_[41]), which allows authorised brands

to remove counterfeit listings from Amazon themselves. Mercado Libre also offers IP rights holders a brand protection program to remove counterfeits, including penalties for third party sellers with repeat offences (Mercado Libre, 2020_[42]). Alibaba Group has also launched an anti-counterfeiting alliance with hundreds of IP rights holders to increase co-operation in stopping counterfeits sold via its marketplaces (Alibaba Group, 2020_[43]).

Unsafe products

A number of recent studies have highlighted the prevalence of unsafe products available for purchase on online marketplaces. In August 2019, a Wall Street Journal investigation revealed that more than 4 100 products on Amazon’s US marketplace were non-compliant with safety standards, recalled, mislabelled or banned (Berzon, Shifflett and Scheck, 2019_[44]). In February 2020, members of the European consumer organisation BEUC tested 250 products purchased from online marketplaces such as Amazon, AliExpress, eBay and Wish, based on possible safety risks, including electrical goods, toys, cosmetics and other products and found that 66% failed applicable EU safety laws with possible consequences such as electric shock, fire or suffocation (BEUC, 2020_[45]). The European Commission has also observed that many dangerous products notified to its product safety recall system are sold via online marketplaces (EC, 2018_[46]).

Given the risk of death or injury, it is important that consumers can trust that the products they purchase via online marketplaces are not recalled, banned, mislabelled or non-compliant with applicable safety standards. Consumers should have the same consumer product safety protections online as they do in the offline world, as recognised by the recently adopted OECD Recommendation on Consumer Product Safety (OECD, 2020_[47]). This Recommendation is technology neutral and applies to all actors in a supply chain, including online marketplaces.

While online marketplaces may not be liable for supplying unsafe products when they act as an intermediary between a buyer and seller, in some circumstances they may be liable if they become aware of an unsafe product being supplied via their platform but fail to promptly remove it. For instance, in the EU, for online marketplaces to benefit from an exemption from liability for unsafe products sold on their platforms, they must remove infringing listings or disable access to them expeditiously once they have obtained knowledge of the existence of such illegal listings on their platform (OECD, 2019_[11]) (OECD, 2019_[48]). This may not always be a straight-forward exercise given the scale of goods sold via large online marketplaces. In its proposed Digital Services Act, the European Commission has put forward additional obligations for business users on online marketplaces in relation to the traceability of products they sell, in order to help identify sellers of unsafe goods (EC, 2020_[49]). In this legislative package, the European Commission has also proposed that marketplaces take greater measures to counter illegal goods, services and content online, such as a mechanism for users to flag such content and for marketplaces to cooperate with trusted “flaggers” (EC, 2020_[49]).

In order to overcome some of these challenges co-operatively with marketplaces, a number of consumer product safety authorities in OECD countries have also developed voluntary initiatives with online marketplaces to address product safety issues, such as information-sharing networks and voluntary commitments (OECD, 2019_[48]). For example, product safety pledges recently developed in Australia and the EU between product safety authorities and online marketplaces (ACCC, 2020_[50]) (EC, 2018_[51]). These types of initiatives can increase certainty for consumer product safety authorities in regard to take-down times for listings of unsafe products following a notification. If made public, such commitments may also be used by an online marketplace as a signal to consumers that it takes product safety seriously and has agreed to comply with requirements that go beyond

its legal obligations, thereby increasing consumer trust and becoming a competitive advantage for online marketplaces that choose to subscribe to them.

In addition, online marketplaces have themselves introduced a range of measures to prevent the sale of unsafe goods via their platforms. Key examples include:

- automatically blocking the listing of recalled goods by using keyword technology (OECD, 2018^[52]).
- once a product has been removed from the listings of a marketplace, using filtering tools (with key words or images) or AI to identify other similar unsafe products for sale on the marketplace with a view to removing them as well (OECD, 2018^[52]) (OECD, 2019^[48]).
- raising awareness among third party sellers and consumers on their platform about product safety issues. Some marketplaces have, for example, added links on their websites to relevant product safety authorities' websites, relevant laws, and recall databases, such as the OECD's *GlobaRecalls* Portal (OECD, 2018^[52]).

Online marketplaces face challenges in ensuring their initiatives are effective. In particular, they may face difficulties in relation to cross border sales where product safety laws are not aligned in the countries of the seller and the buyer. They may also face challenges with rogue traders that have their seller rights removed following a product safety violation, but re-register as a seller on the marketplace under a different alias or where product names and descriptions are deliberately misspelled to avoid detection by marketplace algorithms. A dedicated contact point and team with specialised training may assist in addressing product safety issues more efficiently. For example, Amazon has a dedicated consumer product safety team that monitors public recall websites and takes action when alerted to a recall affecting products on its marketplace. It reports that when it learns of a recall, it suspends affected product listing and quarantines affected inventory in its warehouses (Amazon, 2020^[53]).

Cross-border issues

Online marketplaces may take different approaches to designing the geographic reach of their platforms. For example, some marketplaces are more community-based, such as Craigslist and Facebook Marketplace, whereas others may regularly facilitate cross-border transactions, such as Amazon, eBay, Etsy, Mercado Libre, Rakuten, TMall and Wish.

Cross-border transactions on online marketplaces often pose significant challenges for authorities in enforcing consumer protection laws, as it may often be difficult to identify third party sellers' identities and locations. In many cases, authorities have to rely on the online marketplace to voluntarily provide contact details for the third party seller and to take action to remove unsafe products or other infringing listings from the platform and restrict seller access rights. Whilst many major online marketplaces co-operate with consumer protection agencies, some authorities report experiencing difficulties engaging with some marketplaces (e.g. delays in responses to notifications regarding unsafe products and requests for seller contact information).

Regular information sharing and joint surveillance activities between authorities can assist in overcoming some of the challenges in cross-border enforcement of consumer protection laws in online marketplaces. International and regional forums and networks are active in this area, including the OECD, United Nations Committee on Trade and Development (UNCTAD), ICPEN, the Association of South East Asian Nations (ASEAN) Committee on Consumer Protection and the Organization of American States and the EU's Consumer Protection Co-operation Network. The OECD has also issued guidance on cross-border

enforcement and fraudulent transactions (OECD, 2018^[54]) and recommendations on cross-border enforcement coordination to assist authorities navigate these issues (OECD, 2003^[55]) (OECD, 2016^[56]). An OECD Toolkit on Legislative Actions for Consumer Protection Enforcement Co-operation is expected to be finalised in 2021.

Having third party sellers and buyers based in multiple different jurisdictions also magnifies challenges for online marketplaces in managing regulatory and policy fragmentation between countries. As mentioned above, different countries may impose different requirements on online marketplaces, which may affect their processes for detecting and removing false or misleading ratings and reviews, unsafe products or scams on their platforms. In a product safety context, regulatory fragmentation may result in a manufacturer recalling defective products in certain jurisdictions, but not initiating recalls of the same defective products in other jurisdictions (OECD, 2018^[52]). This difference will impact on what actions an online marketplace listing the product needs to take in each country. In some cases, marketplaces have chosen to go beyond their legal requirements to protect consumers by banning the sale of an unsafe product from the platform worldwide despite the product still being authorised to be sold in some countries. For example, eBay proactively removed sales of the Samsung Galaxy Note 7 from its marketplace worldwide prior to recalls being commenced in some countries (Charlton, 2016^[57]).

International legal instruments, such as the recently adopted OECD Recommendation on Consumer Product Safety (OECD, 2020^[47]), aim to overcome some of this fragmentation by encouraging convergence in international legal and policy frameworks. The recently adopted UNCTAD Recommendation to Prevent Cross-Border Distribution of Known Unsafe Consumer Products also aims to prevent rogue distributors redirecting unsafe products to markets with fewer product safety protections (UNCTAD, 2020^[58]).

At the same time, there are sometimes legitimate reasons for regulatory differences in product safety that marketplaces also need to be aware of. For example, a product may be recalled in one country because the units supplied to that country were made in a factory where defects originated in the manufacturing process, whereas the same product may not be recalled in another country because the units supplied there were manufactured elsewhere and unaffected by the defect. There may also be certain local reasons why certain products are banned in some countries and not others. For example, sky lanterns are permanently banned from sale in Australia due to their propensity to start bushfires (ACCC, 2011^[59]), but are legally available for sale in many other countries that may not face these same wildfire risks. In this regard, it is important that marketplaces are aware of major recalls, for instance by referring to databases such as the OECD *GlobalRecalls* portal and developing relationships with consumer products safety regulators, to ensure that consumers purchasing via their platform are protected from unsafe recalled products.

The growing challenge of dark commercial patterns on online marketplaces

The OECD recently held a roundtable on dark commercial patterns as a first step in undertaking further work on this topic (OECD, 2021^[60]). Although there is now no universally agreed definition of the concept, dark commercial patterns are understood by some as user interfaces used by some online businesses to lead consumers into making decisions they would not have otherwise made if fully informed and capable of selecting alternatives (Mathur et al., 2019^[61]). Using a mixture of behavioural nudges and user interface-based techniques honed through A/B testing, dark commercial patterns can often lead consumers to do something, such as spending more money or time on a website, or consenting to tracking, that is inconsistent with their informed preferences. In that sense, dark commercial patterns may be contrasted with marketing techniques that simply seek to influence or change consumers' preferences (Luguri and Strahilevitz, 2019^[62]). Online

businesses' ability to collect and use vast amounts of consumer data has also raised concerns about consumers' vulnerability to dark commercial patterns that take advantage of biases and behavioural preferences at the individual consumer level.

Examples include using default settings to, for instance, sneak an additional item into a consumer's basket without consent (e.g. via a checkbox on a prior page); adding new and potentially significant charges when a consumer is just about to complete a purchase; or automatically renewing an original purchase or making it difficult to cancel (e.g. through a hidden subscription trap). Other examples include use of pressure selling, urgency and scarcity cues, misdirection, social proof or obstruction in order to adversely influence consumer decision-making. These practices appear on online marketplaces for both goods (Mathur et al., 2019_[61]) (Valentino-Devries, 2019_[63]) and services, particularly in relation to hotel and accommodation marketplaces, and have resulted in a number of investigations by consumer protection authorities.

Consumer protection authorities have been concerned in particular with a variety of misleading practices relating to the presentation of search results, disclosure of prices or commissions, and unsubstantiated claims on accommodation and travel service marketplaces. These include some dark commercial patterns such as scarcity and urgency cues, and misleading price displays and comparisons designed to induce consumers to act quickly. Consumer protection authorities in the United Kingdom (CMA, 2019_[64]) and Australia (ACCC, 2015_[65]), as well as the European Commission (EC, 2019_[66]), have accepted undertakings in recent years from a number of accommodation platforms to make changes to their practices, including the design of their websites, after the authorities raised concerns about their potential to mislead consumers. The ACCC also obtained a court judgment against accommodation aggregator Trivago for using misleading price displays to trick consumers to think they were getting the cheapest rates (ACCC, 2020_[67]).

Understanding of dark commercial patterns, particularly more subtle techniques and their impact on consumers, continues to evolve, as do policy responses. The Norwegian Consumer Council has recently taken enforcement action against Amazon in relation to allegedly using certain design techniques to make it difficult for consumers to unsubscribe from the Amazon Prime service (Forbrukerradet, 2021_[68]). The Netherlands Authority for Consumers and Markets has recently released guidelines on how it will apply consumer protection rules to a range of behavioural persuasion techniques, including dark patterns, used in online choice architectures (ACM, 2020_[69]). Some jurisdictions are also considering whether to introduce specific regulation for certain types of dark patterns (Warner, 2019_[70]) (EC, 2020_[71]). Further scholarship would assist in understanding the extent of the issue on online marketplaces and identify how marketplaces can ensure their platform design does not take unfair advantage of behavioural biases.

Consumer protection in the new era of the service marketplace

Online service marketplaces, like marketplaces for goods, provide new opportunities for consumers but also raise a number of consumer protection challenges. These marketplaces have allowed consumers to compare offers for different services and also spurred new and innovative services, using peer-to-peer matching of buyers and sellers (OECD, 2019_[1]). In the past decade, some accommodation and transport service marketplaces, such as AirBnB and Uber, have grown to become household names. Looking forward there is likely to be further growth in a new cohort of service marketplaces in other areas.

Specialist service marketplaces have already established themselves in areas as diverse as consumer credit (e.g. Prosper, LendingClub, Upstart), travel and leisure (e.g. Booking.com, Trivago, Viator, EatWith), beauty and wellness (e.g. ClassPass, Treatwell) housekeeping

(e.g. Handy, Helpling), childcare (e.g. Care.com, Urbansitter) and events (e.g. Bridestory, Ever Loved, The Knot). There are also a growing number of general service marketplaces where consumers can advertise tasks, ranging from help moving house to building a website. Popular marketplaces in this category include Airtasker, TaskRabbit, and Simbi, the latter allowing users to barter services or exchange them for virtual currency.

The popularity of service marketplaces is likely to grow over the next decade as consumers use and trust them more (OECD, 2017^[3]) and their offerings continue to grow and diversify. This shift towards service marketplaces is likely to have a number of consumer policy impacts, some of which have already emerged. Like marketplaces for goods, service marketplaces present a number of challenges stemming from their role as intermediaries. Generally traders offering their services via online marketplaces are operating as sole traders or independent contractors and are not considered employees of the marketplace (Lane, 2020^[72]), although there are ongoing legal battles in a number of jurisdictions about the categorisation of marketplace workers (Mulvaney and Smith, 2020^[73]).

The designation of a service provider as an employee or an independent contractor has significant implications in regards to a marketplace's liability for the service provider's actions. Consumers may not be able to access adequate redress if they suffer loss or damage as a result of the service provider's acts or omissions if the service provider has inadequate insurance and the consumer has no legal recourse against the marketplace. As with goods marketplaces, it may not always be clear to consumers where responsibility falls between the marketplace and the service provider and whether they are covered by an overarching insurance policy provided by the marketplace.

Initiatives to enhance consumer trust on service marketplaces

Previous OECD work indicates that most consumers have a high level of trust in online peer-to-peer accommodation, ridesharing, and personal tasks marketplaces, eclipsing their trust in conventional businesses in the same service markets (OECD, 2017^[3]). Some consumers, however, have had widely-publicized negative experiences. For example, media outlets have reported on sexual assaults in Uber rides (Abbruzzese, 2019^[74]), guests being unknowingly filmed by AirBnB hosts (Fussell, 2019^[75]) and unlicensed childcare providers being listed on Care.com (Grind, Zuckerman and Shifflett, 2019^[76]). There are also reports of scams (Merlan, 2020^[77]) and racial discrimination against consumers (Bertrand and Weill, 2019^[78]) (Senz, 2020^[79]) on some service marketplaces.

Many service marketplaces, particularly those involved in peer to peer exchanges, already recognise the centrality of trust in their businesses. They have developed a number of initiatives to overcome consumers' hesitation about transacting with strangers and minimise risk. Some examples appear in Box 3 below.

Box 3. Trust mechanisms on service marketplaces

Identification verification: A number of marketplaces such as AirBnB and BlaBlaCar, verify user identity by asking hosts/drivers and guests/riders to scan their ID documents. Uber also asks its drivers to randomly submit real-time photos of themselves, which it then compares to those on file using biometric technology, in order to verify that a driver's accounts is not being used by another person (Uber, n.d.^[80]).

Service verification: AirBnB has announced plans to verify all of its accommodation listings before the end of 2020 in a bid to eliminate scams and misrepresentation (Kastrenakes, 2019^[81]).

Background checks: Handy uses an accredited third party to undertake criminal background checks of its service providers (Handy, n.d.^[82]).

Social connections: AirBnB uses data from Facebook to show mutual connections between hosts and guests to make it easier for users to trust each other (AirBnB, n.d.^[83]). Urbansitter also allows parents to see how they are personally connected to local sitters through Facebook friends, their child's school, parenting and other local groups (Urbansitter, n.d.^[84])

Insurance: AirBnB offers automatic host insurance in the event of third-party claims for injury or property damage up to USD 1million (AirBnB, n.d.^[85]). AirTasker also offers some third party liability insurance for tasks undertaken via their marketplace (AirTasker, n.d.^[86])

Refunds and guarantees: Handy also offers to have a service performed again if customers are dissatisfied with the quality, as well as providing some limited insurance for damage and theft (Handy, n.d.^[87]).

Notably, there are a number of third party businesses developing software for marketplace user identification verification and background checks, such as Jumio, Checkr and Onfido. These can be integrated into online marketplaces to deter rogue traders and instil greater confidence in the legitimacy of service providers operating via their platforms.

There are also opportunities for marketplaces to address more complex consumer protection issues on their platforms, such as discrimination. For example, after a study found evidence of racial discrimination on its marketplace, AirBnB started work on a number of initiatives, including examining its website design, to counter discrimination and unconscious bias by hosts and guests (Senz, 2020^[79]).

Providing education to users about risks related to the particular services being provided may also be useful in enhancing consumer protection. For example, AirBnB holds safety workshops for hosts with experts and will provide a free smoke and carbon monoxide detector to hosts on request (AirBnB, n.d.^[88]).

Whilst a number of online marketplaces for goods have boomed as a result of the COVID-19 crisis, the pandemic has created some particular challenges for service marketplaces. Consumer demand for some services, such as ride-sharing, travel and accommodation, has been reduced due to stay at home orders and travel restrictions, whereas other services, such as food delivery, have seen a marked increase (Rana and Bellon, 2020^[89]). There have also been hygiene challenges for services that require personal interactions between providers and consumers. However, a number of service marketplaces have responded with new initiatives to protect consumer trust. For example, the childcare marketplace Urbansitter has recommended families and care providers use an app where coronavirus tests can be uploaded, symptoms monitored and results shared with users, introduced a filter for service providers to indicate if they are willing to work with one family subject to a weekly hours commitment as well as providing the option for virtual care where possible (e.g. assistance with homework) (Urbansitter, 2020^[90]). Lyft has also required all its users to wear face coverings regardless of local measures, has paused its shared ride service and has also imposed a maximum passenger limit (Lyft, 2020^[91]). Uber has also required drivers to show that they are wearing a mask before they can accept trips (Uber, 2020^[92])

Additional studies about the ways that service marketplaces can enhance consumer trust would be beneficial in order to ensure that consumers are adequately protected as these marketplaces grow.

Annex. A selection of government initiatives to enhance consumer protection on online marketplaces

New laws to ensure greater transparency for consumers about who they are buying from on online marketplaces and what protections they have

Responsible entity: European Commission

Description: The EU has mandated that online marketplaces make clear to consumers the identity of the seller they are purchasing from and whether the trader is a business or an individual, and that, in the case of an item purchased from an individual, consumer rights under EU consumer protection law may not apply to the transaction.

Read more: <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

Changes to marketplace practices following regulatory investigations into “dark commercial patterns” strategies

Responsible entity: United States Federal Trade Commission

Description: In 2021, the FTC settled an administrative complaint against Tapjoy, an online advertising company, after it failed to provide in-game rewards that were promised to users from third-party advertiser partners for completing certain offers. Tapjoy is a mobile advertising platform that connects gamers, game developers, and advertisers. The settlement required Tapjoy to monitor its advertisers to ensure that they follow through on promised rewards, investigate complaints from consumers about not receiving rewards and discipline advertisers who deceive consumers.

Read more: <https://www.ftc.gov/news-events/press-releases/2021/01/ftc-requires-mobile-advertising-company-stop-misleading-users>

Responsible entity: United Kingdom Competition & Markets Authority

Description: In 2019, the CMA obtained commitments from a number of online hotel booking companies to amend design elements on their platforms that it considered misleading. These commitments followed an earlier investigation into hotel booking platforms focusing on promotions, scarcity messages, disclosures around the role of commission affecting the order of search results and hidden charges. The commitments obtained involved including clearer disclosures about the effects of payments on search results, ensuring prices showed the total cost including applicable fees and charges and that popularity and availability statements are clear, appropriately qualified and substantiated.

Read more: <https://www.gov.uk/government/news/hotel-booking-sites-to-make-major-changes-after-cma-probe>

Responsible entity: European Commission

Description: In 2019 and 2020, the European Commission obtained commitments from Airbnb, Booking.com and Expedia to make changes to the way they present offers, discounts and prices on their platforms following concerns from EU consumer protection authorities. Changes included clear disclosure of promoted offers and that payment by

accommodation providers might influence search results, greater transparency that claims such as “last room available” may only apply to specific rooms available on the platforms, not presenting offers as time-limited if the same price would be available later, and ensuring that price comparisons represented as discounts represent genuine savings in comparison to standard prices.

Read more: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2444

Responsible entity: Australian Competition and Consumer Commission

Description: In 2015, the ACCC accepted court-enforceable undertakings from AirBnB and eDreams to amend their platforms following concerns that price representations they made were misleading to consumers. The alleged misleading representations involved headline prices on search results and accommodation listing pages of the platforms not including mandatory fees (service, payment and/or cleaning), which were not disclosed until consumers reached secondary pages after they had selected their accommodation and commenced the booking process.

Read more: <https://www.accc.gov.au/media-release/airbnb-and-edreams-give-undertakings-to-accc-for-improved-pricing-practices>

Voluntary commitments to enhance consumer product safety on online marketplaces that go beyond legal obligations

Responsible entities: Australian Competition and Consumer Commission and European Commission

Description: Both Australia and the EU have developed their own respective product safety pledges that include commitments by online marketplaces to go beyond their legal liabilities in enhancing consumer safety. Both pledges are overarching voluntary commitments to improve product safety open to all online marketplaces offering goods from third party sellers. They both involve 12 specific actions to improve consumer product safety that go beyond online marketplaces’ legal obligations in Australia and the EU respectively. Actions include establishing dedicated contact points for authorities to report unsafe products, reacting to authorities’ notifications about unsafe products within two working days, proactively consulting authorities’ recall alert systems, taking prompt action where unsafe products are identified and cooperating with sellers and authorities to notify consumers and traders about product recalls.

To date both pledges have been signed by a number of large online marketplaces including AliExpress, Allegro (EU only), Amazon, bol.com (EU only), catch.com.au (Australia only), Cdiscount (EU only), eBay, eMAG (EU only), Etsy (EU only), Joom (EU only), Rakuten France (EU only) and Wish (EU only).

Read more:

<https://www.productsafety.gov.au/product-safety-laws/compliance-surveillance/australian-product-safety-pledge>.

https://ec.europa.eu/info/sites/info/files/voluntary_commitment_document_4signatures3-web.pdf.

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