



ONLINE RETAIL



A STUDY ON

HONG KONG CONSUMER ATTITUDES,
BUSINESS PRACTICES & LEGAL PROTECTION

Online Retail

A Study on Hong Kong Consumer Attitudes,
Business Practices and Legal Protection

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for the full report and other reference materials.

Table of Contents

Abbreviations	i
Executive Summary	ii
Chapter 1 Overview of Online Retail.....	1
1.1 Background	1
1.2 Risks and Challenges Arising from Online Retail	4
1.3 Objectives	5
1.4 Scope of the Study	6
Chapter 2 Consumer Attitudes to Online Retail	8
2.1 Methodology	8
2.2 Coverage and Data Collection Method of the Study.....	9
2.3 The Extent of Online Retail	10
2.4 Triggers for Online Retail.....	16
2.5 Satisfaction and Trust in Online Purchases.....	22
2.6 Complaints with Online Retail	23
2.7 Protection and Risks.....	27
Chapter 3 Business Setting and Trade Practices of Online Retailers.....	33
3.1 Different Online Business Models.....	33
3.2 Differences in Trade Practices between Online and Offline.....	35
3.3 Differences in Trade Practices between Online Sectors.....	35
3.4 Council's Findings across Sectors	36
3.5 Council's Findings vis-à-vis the Selected Sectors.....	39
3.6 Overview of Core Issues.....	51
3.7 Competition Implications.....	51
3.8 Other Observations.....	53
Chapter 4 Legal Protection against the Hidden Hazards in Online Retail	56
4.1 The Hidden Hazard	57
4.2 Inability to Inspect Goods Online	57
4.3 Misleading Advertising and Other Deceptive Commercial Practices.....	60
4.4 Counterfeit Goods	65
4.5 Digital Content	68
4.6 Sufficiency of Privacy Protection	69

Chapter 5 Consumer Redress in an Online Age.....	72
5.1 Limitation of Legal Action.....	72
5.2 Dispute Resolution	73
5.3 Online Dispute Resolution in Overseas Jurisdictions	74
Chapter 6 Recommendations.....	78
6.1 A Greater Online Retail.....	78
6.2 Recommendations to Business.....	78
6.3 Actions for the Council.....	83
6.4 Recommendations to Government.....	84
6.5 Consumer Alerts to Safeguard Consumer Interests.....	87
6.6 Concluding Remarks	90

Abbreviations

ADR	Alternative Dispute Resolution
BBB Online	Better Business Bureau Online
CCR	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations
CSD	Census and Statistics Department
DFEH	Director of Food and Environmental Hygiene
DPPs	Data Protection Principles
EU	European Union
FIT	Flexible Independent Travels
GDS	Global Distribution System
HKMA	Hong Kong Monetary Authority
ODR	Online Dispute Resolution
OECD	Organisation for Economic Co-operation and Development
OTA	Online Travel Agent
PCPD	Privacy Commissioner for Personal Data
PDPO	Personal Data (Privacy) Ordinance (Cap 486)
SFC	Securities and Futures Commission of Hong Kong
TDO	Trade Descriptions Ordinance (Cap 362)
THS-54	Thematic Household Survey Report No. 54
TICHK	Travel Industry Council of Hong Kong
TICF	Travel Industry Compensation Fund
UNCITRAL	United Nations Commission on International Trade Law

Executive Summary

Online retail is less prevalent in Hong Kong than in many other well developed economies, but it is growing steadily. According to the Government's Census and Statistics Department¹ the "percentage of people that had shopped online in the last 12 months" rose from 7% in 2004 to 16% in 2009 to 23% in 2014. An online shopping penetration of UK (81%), the US (78%), Germany (73%), Japan (69%) and Mainland China (67%). In these countries growth in online retail has arisen because online retailers, especially the large platforms like Taobao or Amazon, offer a wider range of products that are often cheaper than on-street shops. Once consumers become accustomed to shopping online they experiment with a wider variety of goods and services, and tell their friends and families about their good experiences.

In these countries there are a number of sectors where online retail is already dominant, such as air travel and hotels and computers and electrical appliances. Innovations by online retail are changing the way people shop in these sectors, for instance allowing consumers to access information on airplane seating availability in real-time. Underpinning this are profound changes in commercial arrangements between production and distribution especially the growth of large, often global, online retailers and platforms.

With globalisation such trends will no doubt increasingly occur in Hong Kong. Therefore, it is important to understand consumers' and retailers' experience of online shopping so far, and their readiness to adapt to the future trends. Another motivation for this study is to understand how the current regulatory framework, which was designed prior to the emergence of the online retail environment, can be adjusted to make it suitable for the new challenges that arise for consumers from online retail marketing and transactions.

This report publishes results from the Consumer Council's (The Council's) study on online shopping in Hong Kong. It looks into online shopping's prevalence, any detriments faced by consumers, and the commercial and legal environment in which online retail is conducted. The report puts forward key recommendations to help ensure promote consumer safeguards, as online shopping continues to develop.

The Council conducted a range of different analyses to better understand online shopping in Hong Kong. These included:

- On-street survey of 1,010 people all above the age of 15 who had used the Internet in the past 12 months;
- Review of consumer complaints against online traders received by the Consumer Council between 2013-2015;
- Interviews with 27 entities including one regulatory body, trade associations and firms selling goods and services online;
- Reviews of the websites and terms & conditions of 23 e-retail websites;

¹ Census and Statistics Department, (2015). *Thematic Household Survey Report No. 54*. [online] Available at: <http://www.statistics.gov.hk/pub/B11302542015XXXXB0100.pdf> [Accessed on 4 July 2016](aged 15 and above).

- Mystery shopping of goods/ services from 15 websites to experience the delivery and returns process; and
- Legal review looking at the legal safeguards protecting consumers undertaking online shopping in Hong Kong and several other major economies.

Results from the Survey of Consumers

Hong Kong online shopping is commonest amongst the highly educated and the young and middle aged. For example, 51% of post-secondary educated people, but only 1% of people educated to primary level shop online. With regard to age, 35% of people aged 35 – 44 shop online, but only 4% of people aged 55 and above do the same. For people that shop online, median spending is \$3,600 per year and average spending is \$15,250. Total average spending for all forms of shopping (excluding housing expense) per Hong Kong person aged over 15 is \$81,800. In total, only 23% of people shop online and online spending accounts for 4% of the aggregate non-housing spending in Hong Kong. A comparable figure for the Mainland is around 12%.

Half the people who shop online engage in that form of shopping at least once a month or more frequently. "Non-branded clothes" is the most commonly purchased sector bought by 89% of online shoppers, the next highest is "books/ toys" purchased by 53% of online shoppers. The sector in which online purchases is most dominant over on-street purchases is "software/ games/ apps" where 42% of shoppers who buy these goods say they *always* buy online, as opposed to *sometimes* buy online. With regard to "non-branded clothes", 23% of online clothes shoppers saying they *always* buy online as opposed to *sometimes*.

Online shoppers were asked about which websites they purchased from, and of which they knew. The platforms Taobao, Yahoo! and Groupon were the most commonly cited. Platforms allow retailers to capitalise on massive traffic to access customers without investing heavily to market products on their own websites. Some well-known on-street retailers are present and widely recognised by the online shopping community; but this might not necessarily translate into high online sales for those retailers.

Online consumers were asked what initially attracted them to shop online. The responses included: "Recommendations from friends and relatives" which was the most popular reason, especially for women (50% women, 35% men); followed by it being "quick and convenient", and "cheaper than on-street". Reasons such as "availability", "lack of time to shop on-street", "variety of products" were much less important motivations for those consumers first trying online shopping.

Non-online shoppers were asked what inhibited them from shopping online. "Fear of leakage of personal data" was the commonest reason for 30% of respondents and "lack of confidence in the product quality" was the next highest, at 22% of respondents. Direct preference for on-street shopping was observed less frequently. For example, 15% of respondents said they "don't need" online shopping; 11% said they "enjoy on-street shopping" and 9% said "convenience of on-street". Around 13% suggested "lack of knowledge" was the reason inhibiting online purchasing. Non-online shoppers were asked what change might motivate them to try shopping online. Of the three commonest factors they mentioned 48% said "guarantee of after-sales refunds/ returns".

29% said "better transparency of terms and conditions" and 24% said "more payment options".

Digital security is an important potential risk of online shopping. Consumers were asked what steps they took to protect their personal data. Some relatively simple and effective measures such as only using retailers with SSL encryption, avoiding the use of public computers or unencrypted wireless networks had low levels of adoption. Consumers also had fairly low awareness of consumer protection measures offered by online retail sites. When asked on their awareness, about half responded "don't know", with about a quarter being aware of the store's after-sales refund or exchange policies. Of disgruntled consumers 47% said they were most likely to complain to the website, 31% would never use the site again while 14% would contact the Consumer Council.

Overall 79% of consumers said they were *confident* or *very confident* in the online markets they had experienced. The level of confidence was highest in sectors where the penetration of online was high such as "air tickets" and "events/ concerts". Satisfaction levels were also very high with 98% of consumers saying they were either *satisfied* or *very satisfied* with the overall experience. Popular reasons customers gave for being satisfied with online shopping included: "goods were cheaper than on-street", "goods met expectations" and "goods arrived on time". There were also high levels of satisfaction with the convenience of online shopping and user friendliness of the sites.

Seen together these results represent a significant commercial challenge for on-street retail. As yet only a minority of Hong Kong consumers shop online, and those only spend a small proportion of their overall retail budget. The high level of satisfaction and confidence suggests penetration of online shopping will continue to rise as it has in some countries. Online purchasing habits, once gained, can be transmitted to friends and family through the sharing of favourable experiences.

Why people go and don't go online



Go online

Recommendations from friends & relatives

43%



Quick and convenient

36%

Others : availability, lack of time to shop on-street, variety of products

9%



Cheaper than on-street

30%

98%

Satisfaction rate

ON TIME



20%

Goods arrived on time



50%

Goods were cheaper than on-street



32%

Goods met expectations



Don't go online:



30%

Worry about leakage of personal data



22%

Have no confidence in the product quality



15%

Don't need



11%

Enjoy on-street shopping



9%

Convenience of on-street



13%

Lack of knowledge

Complaints Received by the Council from Online Shoppers

The Council reviewed its complaints data for the last 3 years to detect the extent and type of problems experienced by online consumers. There were between 3,300 and 5,600 complaints against online transactions per year; representing between 11% and 18% of the total complaints received by the Council. Complaints about online spending are highly concentrated among complaints corresponding to a higher level of expenditure. One reason for this high concentration of complaints might be because the online purchases concerned are in sectors where individual transactions are high value such as plane tickets (39% of complaints), electronic goods or mobile phones (13%). The high value means that if a customer is unable to obtain redress from the trader the customer is more likely to pursue redress; typically through the Council.

Typical complaints that arose against on-line retailers were related to matters such as difficulties in securing online bookings of plane tickets because of problems with the website, failure of mobile telephone companies to supply handsets within a reasonable time, and difficulties consumers faced in redeeming coupons purchased from group purchasing sites due to booking/ reservation problems. There were also generic problems about late or non-delivery of products.

Different Online Business Models

Consumers typically make online purchases from two types of sites: vendor-specific online shops, such as KFC online, and platforms such as Taobao. Amongst the top 20 largest global online retail sites by revenue, 18 are platforms and 2 are online shops.

Online business transactions, especially those secured through platforms, involve interactions between more companies than a typical on-street purchase. Buying from a platform may involve transactions with an overseas supplier, use of a payment gateway and perhaps a cross-border delivery company. The purchase of a plane ticket or hotel booking through a price comparison site, or an aggregator of price comparison sites, similarly involves real time data flows between a customer, the Online Travel Agent (OTA) and the supplier of the travel service's booking system. The scope for confusion by the customer and error in the chain of suppliers could potentially be greater than in the on-street purchasing environment.

The Council interviewed online retailers and undertook 'sweeps' of websites to develop its understanding of how this complexity impacted on consumers and how any problems experienced by consumers might be mitigated. Attention was focused on four sectors: Airlines and Travel; Food and Beverages; Clothing and Beauty Care; Computer and Electronic Products.

General issues: there are generic concerns about online retail shopping that consumers need to be wary of. The complexity in the commercial arrangements between platforms, merchants and delivery companies could conceivably cause problems by making it difficult to resolve complaints or because errors or delays occur when data is passed between parties.

Airline and Travel: OTAs have become an increasingly important source of bookings for airlines and hotels. OTAs use a self-serve model where consumers have to enter trip information and research itineraries for themselves. Consumers are responsible for any input errors - quite different to the personalised service offered by traditional travel agencies. Price comparison sites present air-ticket prices differently i.e. net price versus total price inclusive of other required charges, could confuse the consumers for a well-informed decision. Also traditional customer protections such as found through the Travel Industry Compensation Fund may or may not apply if the OTA is not a registered agent in Hong Kong.

The industry makes increased use of real-time databases such as the *Global Distribution Systems* containing data on flight and room availability. These are not necessarily directly available to smaller on-street travel agencies who instead rely on wholesalers to make bookings on their behalf. In the airline and hotels sector OTAs already have a large share of the travel booking market and could possibly be exerting considerable market power over smaller hotels; and might restrict their ability to market rooms at lower prices.

Crucially, the responsibility for supplying the services of the “contract” to the customer transfers between the OTA and the airline/ hotel over the course of discharging the booking. Sometimes data supplied to the OTAs by customers is not passed in full onto the supplier, leading to a confusion of responsibilities in case dispute happens.

Food and Beverages: online sales of Food and Beverages only accounts for a small proportion of the overall Food and Beverage market. The sector is highly regulated with different licensing arrangements for food manufacture, importation, distribution and retailing to protect public health. The Council found that although supermarkets and specialist food stores provide their customers with delivery services, from previous survey failed to disclose on their websites how the order was to be delivered in a proper and safe manner. It is important that online food companies observe the same standards and regulatory requirements as their on-street competitors.

Consumers can order prepared food online from restaurants. Websites are maintained and delivery is organised either by the restaurants themselves or by specialist food ordering/ delivery companies that supply food ordering online. Such online food platforms enter into contracts with many on-street restaurants, clustered around the firm's delivery infrastructure. Such platforms can improve restaurant profitability by allowing higher utilisation rates of the kitchen and cooking staff.

Apart from complying with the new licensing conditions, challenges for the sector also include the allocation of responsibility between restaurants or stores and delivery companies to ensure the food reaches the consumer in proper condition and time.

Clothing and Beauty Care: non-branded clothing is the most frequently purchased online sector. In its interviews the Council found the clothing industry used the Internet in markedly different ways. Luxury brands use the Internet largely to promote rather than transact their goods. They prefer to draw customers into stores where the ambience and highly personalised service can be served to deliver its premium value proposition to consumers. Less exclusive clothing and beauty care brands use online for marketing and also making transactions. Some shops will sometime distort colour of the clothing through lighting, by different size standards and a model's appearance to persuade consumers to purchase the clothing. Since the price of non-branded clothing is relatively low, one major worry from sustainability aspect is consumers who find them not fit to

wear will not bother to return the clothing and unless given away to others they could simply end up as landfill waste.

One tactic to boost confidence and to facilitate product return is the case where one cosmetic trader dispatches 'tester samples' to allow the shopper to test the colour of the cosmetic before breaking the packaging of the purchase itself. On the other hand, consumers have complained about tactics adopted by some skin-care retailers or beauty shops where consumers who come to the store to redeem coupons they obtained online are subjected to high pressure sales tactics to 'up-sell' expensive additional treatments.

Computer and Electronic Products: Online retailing in this sector is still quite limited with the major Hong Kong retailers making limited investment in their online retail stores. In some countries there is a much higher penetration of online sales of electronic products.

The Council has received complaints from overseas customers who buy from Hong Kong registered online stores that fail to supply goods as promised. There have also been problems with mobile phone companies failing to supply handsets within a reasonable time and refusing to repay customers the deposit of money they had paid.

Legal Protections in the Online World

An effective legal framework can assure consumers that their interests are protected by setting out minimum acceptable standards of behaviour; identifying unacceptable practices; and providing a mechanism for obtaining redress if all other channels fail. This study discusses whether Hong Kong's consumer law is fit-for-purpose to protect online consumers' interests, and reviews several other jurisdictions which have adopted new regulations specifically for the online shopping environment.

A key difference between online shopping and on-street shopping is that consumers cannot physically inspect the product prior to purchase. Online shoppers make purchase decisions based on how the product is presented through word, graphic, or video; perhaps through reviews posted on the Internet, or through the views of their contacts through social media. In many cases this information does not describe a product adequately. In our consumer survey 22% of non-online shoppers cited "No confidence in the product quality/ not conforming to specifications" as a reason for not shopping online. Some online traders have developed their own "goodwill" returns policies offering exchange, replacement, credit notes or refund. Such practices strengthen consumer confidence and should be encouraged.

In some jurisdiction legislation has created a statutory right for consumers to return goods within a prescribed period of time, without having to give a reason so long as the good is returned in a state it can be resold. There are exclusions for perishable, or time limited goods (like newspapers) or where the packaging has to be returned intact, such as medicines.

For example: the European Union (EU) Directive on Consumer Rights (2011/83/EC) allows consumers to exercise a right to withdraw from online transactions within 14 days; the Consumer Protection Law of Mainland China includes a statutory right-of-return for online purchases for up to 7 days; and the Consumer Protection Act of Taiwan allows consumers to return the goods or rescind a contract within 7 days of receipt.

As noted, consumers shopping online can be more susceptible to misleading and deceptive practices than those shopping in on-street stores. Consumers buying online cannot inspect the goods and ensure they are genuine, and contracts are concluded instantaneously with the click of the button, without any opportunity to clarify or bargain over the price. This can be an issue if the final price includes unexpected surcharges.

The Council observed several common types of unacceptable behaviour taking place in the online world. Businesses might use “drip” or “partition” pricing to attract consumers. Misleading advertising has included the use of quality labels that the businesses are not eligible to use, test results which are outdated, or labels that create the impression that the businesses have fulfilled some special quality requirements, whereas the labels have only simply fulfilled legal requirements.

Misleading and deceptive commercial practices made online in Hong Kong are subject to the same regulation and criminal sanctions, such as those conducted in the physical environment under the Trade Descriptions Ordinance (Cap 362) (TDO).

In other jurisdiction specific legislation requires e-traders to provide certain information to consumers before the contract is entered into. For example, below is some information required to be provided under the UK law:

- The main characteristics of the goods or services;
- The total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- Any additional delivery charges and other costs;
- In the case of a contract of indeterminate duration, or a contract containing a subscription, the total costs per billing period;
- The duration of the contract, or the conditions for terminating the contract; and
- The minimum duration of the consumer’s obligations under the contract.

There are also provisions for the trader to provide information about themselves such as their name and contact details.

Despite the increasing popularity of digital content products in Hong Kong, there is no specific legislation providing rights and remedies for the purchase of digital content products. Neither the Sale of Goods Ordinance (Cap 26) nor the Supply of Service (Implied Terms) Ordinance (Cap 457) specifically provide for any legal rights to consumers who buy digital content products. In the absence of clear judicial guidance, it is unclear if the rights and remedies provided under the above legislation can be counted upon in case of dispute. Consumers in foreign jurisdictions also face the same problem. The Organisation for Economic Co-operation and Development (OECD) points out that in most OECD countries legal and private-sector voluntary remedies are often not applicable to digital content products.

In the Council's survey, consumers who do not shop online cited "lack of confidence in the product description" as the second most common reason for not shopping online. This can include concerns about counterfeit products. The greater anonymity for suppliers operating over the Internet allows counterfeiters to more easily mislead

consumers into thinking they are buying genuine products. Counterfeit drugs are a particular concern as they can endanger consumers.

At present no pharmacies in Hong Kong are permitted to sell controlled medicine via the Internet so consumers who like the convenience or lower prices of buying pharmaceutical products online are actually putting their health at risk.

Online shoppers entrust large amounts of personal data about themselves to e-retailers including credit card details, email address, names and residential addresses. Potential problems consumers could experience include excessive collection of personal data, misuse or unauthorised disclosure of personal data (be it inadvertent or intentional) and criminal or fraudulent use of personal data. This leads to consumers facing an on-going problem of nuisance from unwanted marketing emails and phone calls. The Privacy Commissioner for Personal Data regulates misuse of data by online e-retailers applying the six Data Protection Principles.

Consumer Redress in an Online Age

In most cases when there is a dispute between a consumer and a business, the consumer will make use of the company's customer services or complaints procedure to resolve the issue, applying whatever means of redress are available. The Council can also help conciliate between consumers and traders if there is a dispute. Because of the small value of most online transactions suing a trader through the courts system will usually not be viewed as a practical or cost-effective means of obtaining redress.

The Council has found through dealing with online consumer disputes that conciliation is often cumbersome when the trader is located outside Hong Kong. An effective mechanism that can help consumers identify the party answerable to the complaint and facilitate an out-of-court settlement in a low cost, fast and fair manner would be a valuable tool for resolving online consumer disputes. Online dispute resolution (ODR) has become a growing international trend. ODR is defined as a "mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology"².

The United Nations Commission on International Trade Law (UNCITRAL) encourages the use of ODR, which has the potential to provide a simple, fast, flexible and effective option for the resolution of disputes particularly arising from cross-border low-value online transactions. The EU passed the Regulation on Online Dispute Resolution for Consumer Disputes in May 2013. The ODR platform is a web-based tool which accepts electronic complaints in prescribed form in any of the 23 official languages of the EU. Commentators that have looked at different ODR highlight some best-practice features: Fairness, Visibility, Accessibility, Timeliness, Finality and Enforceability. Outside the EU, there are quite a number of ODR providers, e.g. Better Business Bureau Online (BBB Online) (based in North America) and Modria (based in the United States and India).

At present, the development of ODR in Asia is in its infancy. There is no single and well established ODR platform which offers a single point of entry that allows consumers and traders in Asia to settle their disputes for both domestic and cross-border online purchases.

² Technical Notes on Online Dispute Resolution UNCITRAL Working Group III, A/CN.9WGIII/XXXII/C.R.P3, para.25.

Recommendations to Business

Better Observance of Legal Obligations

Some of the common complaints the Council receives from online shoppers concern matters such as late or non-delivery of goods which are already covered by existing law. Businesses should proactively engage with customers if an agreed delivery date cannot be met, informing consumers of the revised date of delivery and offering customers an exchange of goods or a refund if this delivery date is unacceptable. The Council recommends that if there is any delay in receipt of goods/ services outside that period agreed, consumers should have the right of a refund of the full cost of their order, or if applicable, their deposit.

Consumers regularly complain about unwanted marketing emails and phone calls. Businesses should comply with the Personal Data (Privacy) Ordinance (Cap 486) (PDPO), and data should not be misused for non-operational purposes such as marketing without consent.

Industry Should Voluntarily Adopt Industry Best Practices

The OECD recently produced a report providing a definitive description of *best practice* in information provision that enables consumers to purchase confidently. These best practices elaborate on and often go beyond the *mandatory* information provisions which have already been described. The Council would like to see Hong Kong businesses fully and voluntarily adopt the recommendations made by the OECD.

There are good practices that business should adopt. A summary of these is given below:

- *Fair price comparison:* Hong Kong businesses should follow the lead set by other countries and display all mandatory charges in price comparisons on a "what you see is what you pay" basis.
- *Clear statement about online business policies:* Businesses should clearly set out their policies, and make and adhere to performance pledges that enhance consumers' confidence. For example: refund under what conditions.
- *Secure handling of customer data:* Businesses should implement security measures to mitigate adverse security impacts on consumers participating in e-commerce.
- *Summarising terms & conditions (T&Cs) and making complex T&Cs easier to navigate:*
- *More than one payment option:* To make online shop more inclusive for consumers who do not have a credit card or choose not to use one for online purchases, businesses should strive to provide payment options other than by credit card.
- *Confused accountability:* The Council recommends that retailers provide clear and accurate information and contacts for all firms that have been subcontracted to supply services e.g. delivery, credit, payment handling. Overall responsibility for any problems should remain with the retailer.

Sector Specific Recommendations

- *Travel and Hotels – More customer friendly websites:* Online travel agents need to invest in improving the customer experience when using websites and provide an easy to access mechanism to correct errors. With regard to *data sharing between OTAs and airlines/ hotels*, there should also be clear signposting about who is responsible for handling issues close to the time of contract execution (flight/ check-in time) and a local phone number to contact if any problems are encountered.
- *Food and restaurants – Online display of mandatory licences:* The Council urges the suppliers to fully comply with the new licensing requirements and on their websites, clearly display evidence of up-to-date licences or permits or registered number that relates to their business activities (manufacture, retail distribution of food and importing food).
- *Clothing and Beauty Care – Baiting:* Attracting customers to retail shops and using high pressure sales techniques is likely to annoy most customers. Bait advertising and aggressive commercial practices are also forbidden by the TDO.

Actions for the Council

Integrating Work on Online Transactions into the Council's Regular Activities

The Council will continue on-going work examining trade practices in online commerce to ensure terms and conditions are fair and trade practices are not unreasonable. The Council will continue to survey and publish articles on different online markets and consumer satisfaction. The Council also proposes to use various channels to increase awareness and supply factual information to generally help consumers in understanding how to safely engage in online shopping.

Development of an Online Dispute Resolution

The Council will support initiatives by business or with sister organisations in greater China and East Asia on the development of a faster channel to settle online consumer disputes without recourse to the courts. The Council is open-minded as to whether industry or a consumer body takes a lead in this role.

Recommendations to the Government

New Regulations to Protect Consumers in Online and On-street Markets

Right to withdraw and mandatory information provision: The Council recommends that the Government investigate the merits of developing legislation to provide consumers with statutory cooling off periods for different types of consumer contracts. With exemptions for some classes of (perishable) goods and in this wider consumer right, there might be a specific right-of-withdrawal for online purchases that can be exercised for a short duration after allowing consumers to properly inspect the goods. At the same time, to improve transparency, retailers should be required to provide information to ensure full disclosure of essential information. This information should include the total price of the goods or services, inclusive of delivery charges, taxes and any other costs; the full identity and contact details of the trader; the duration of the contract; details about the right-to-withdraw; and the complaints handling policy.

Digital content: The Council recommends that proper consideration be given to exploring the legislative options of specifying the legal rights and remedies for purchasing digital content products. As noted earlier, in Hong Kong, neither the Sale of Goods Ordinance (Cap 26) nor the Supply of Service (Implied Terms) Ordinance (Cap 457) specifically provide for any legal rights to consumers who buy digital content products. As a result, it is unclear if they are in fact applicable to contracts for supply of digital content and doubts therefore arise as to whether the rights and remedies related to quality of goods, fitness for purpose or damage arising from product deficiencies are available for these consumers.

Research on Online Markets

Competition issues: The Government should monitor how online platforms develop, and how they exercise their growing market power. Many large Internet platforms such as Google, Facebook, Taobao and Amazon, including some large sector specific players, have a strong presence in Hong Kong. Their business conduct and strategies have provoked discussion overseas regarding their competitive harm. The Government should monitor and review international best practice in developing remedies for any problems that are being encountered. Due to the rapid development and fast changing landscape of Internet businesses, a pre-emptive approach could help in designing measures that are able to tackle the misuse of market power which may lead to raised prices, restrictions in choice and anticompetitive discriminatory treatment between consumers and small downstream businesses.

Big data: Government agencies need to understand any risks that Big Data causes to customers. For instance, whether "depersonalised" aggregated data (Big Data) is being used to the disadvantage of consumers such as setting differential pricing to different classes of customers.

Online sales of pharmaceutical and health products: There is also a need for the Government to review problems in the online pharmaceutical and health product markets. The Government should tightly enforce existing regulations, and from time to time review the existing situation to determine whether there is a need for change if consumers are buying a significant amount of counterfeit drugs or dangerous or harmful health products via the Internet.

Reducing Security Risks from Online Shopping

The Council encourages HKCERT (www.hkcert.org) or InfoSec (www.infosec.gov.hk) to adopt a more prominent role in informing the general consuming public as to immediate security risks and the current solutions that exist when shopping online.

Strengthen and Ensure Enforcement Meets Needs

The PDPO prohibits personal data being used for purposes other than the purpose for which it was collected. While 80% of the websites the Council investigated sought the customer's permission for data to be used for marketing purposes, it is unclear if and how the remaining 20% of firms used any customer data they may have collected. The Council is unaware how the data provided by consumers to the traders was ultimately used. Though it may not be illegal, it seems Hong Kong consumers are often at the receiving end of unwanted marketing phone calls and emails. The Council recommends

the law prohibiting personal data being misused for marketing should be tightly enforced. All websites should ask permission if the company wishes to use any data collected for marketing purposes.

It is also necessary for the Customs and Excise Department to take proactive investigations into malpractices by online retailers. Any misleading or deceptive conducts online or on-street are regulated by the Trade Descriptions Ordinance. As more consumers shop online, the enforcement strength should proportionately step up in reflecting the trend to safeguard consumer interests.

The Way Ahead

The online shopping marketplace has evolved rapidly in recent years. Analysing how consumers participate in the market is crucial to understanding the evolution of online retail sales within any economy. At the same time it is essential to ensure that a fit-for-purpose framework of consumer protection exists and that fair competition is safeguarded. Good business practices such as appropriate information disclosures; payment protections; dispute resolution mechanisms; and education are necessary ingredients in building an online market that satisfies the needs of consumers and the economy as a whole.

This Study highlights the fact that some ground work is urgently needs to be done by business, consumer bodies and the Government. The foundation work set out in the Council's recommendations will allow Hong Kong to better prepare itself for emerging challenges, including those associated with the use of consumer data; the making of consumer ratings and reviews; digital competence and digital content issues; fair competition; and transacting mobile phone payments in the new purchasing marketplace.

The Council envisages returning to the subject of online retail in future reports. Mobile phone retailing is a fast growing segment of online retail. Technologies such as digital wallets (e.g. Apple Pay, Android Pay) allow consumers to conveniently shop using their mobile phones' security systems. Online shopping, especially for cheaper disposable goods, might also change the amount of goods being bought and readily discarded with subsequent detrimental impacts on sustainability. An important future research for the Council is to integrate online shopping to promote sustainable consumption.

Chapter 1 Overview of Online Retail

Highlights

Online retail is less prevalent in Hong Kong than in many other well developed economies, but it is growing steadily. According to Government's data only 23% of adults shopped online in 2014. In the Mainland the figure is more like 70%; and similar levels are witnessed in Europe, Japan and US.

Online retail, while generally safe, can expose consumers to new risks. Platforms like Taobao or Amazon, typically involve a more complex set of commercial interactions than on-street purchases. As well as the platforms themselves, delivery companies and payment companies are also involved in the transaction. This complexity exposes customers to greater uncertainties, in particular when a problem arises.

This study seeks to understand the state of online retail in Hong Kong from the perspective of Hong Kong consumers buying from online retailers. It also proposes areas of further work or improvements that might be made to enhance the protection and satisfaction of consumers from online purchase.

This Study's subsequent chapters cover the consumer experiences of online retail, trade practices of online traders and lastly pertaining to legal issues that deserve attention by the Government and the public.

1.1 Background

Online retail grows in popularity all around the world. Despite the convenience and ubiquity of its on-street retail outlets, the same is true in Hong Kong. According to the Census and Statistics Department³ (CSD) the "*percentage of people (aged 15 – 64) that had shopped online in the last 12 months*" has been rising steadily from 7% in 2004 to 16% in 2009 to 23% in 2014. Some 1,415,600 people made online purchase of products/ services for personal matters in 2014⁴.

Figure 1 shows the online retail penetration rate in the US⁵, Mainland China, Japan⁶, some major European countries⁷ in 2015 and in Hong Kong in 2014. The UK has the highest online retail penetration (81%), followed by the US (78%), Germany (73%), Japan (69%) and Mainland China (67%). As shown above, the penetration rate of Hong Kong is far below than the rate of these countries. If Hong Kong catches up with the current overseas trajectory, it is expected that online retail will grow rapidly in coming years.

³ Census and Statistics Department, (2015). *Thematic Household Survey Report No. 54*. [online] Available at: <http://www.statistics.gov.hk/pub/B11302542015XXXXB0100.pdf> [Accessed 4 Jul. 2016].

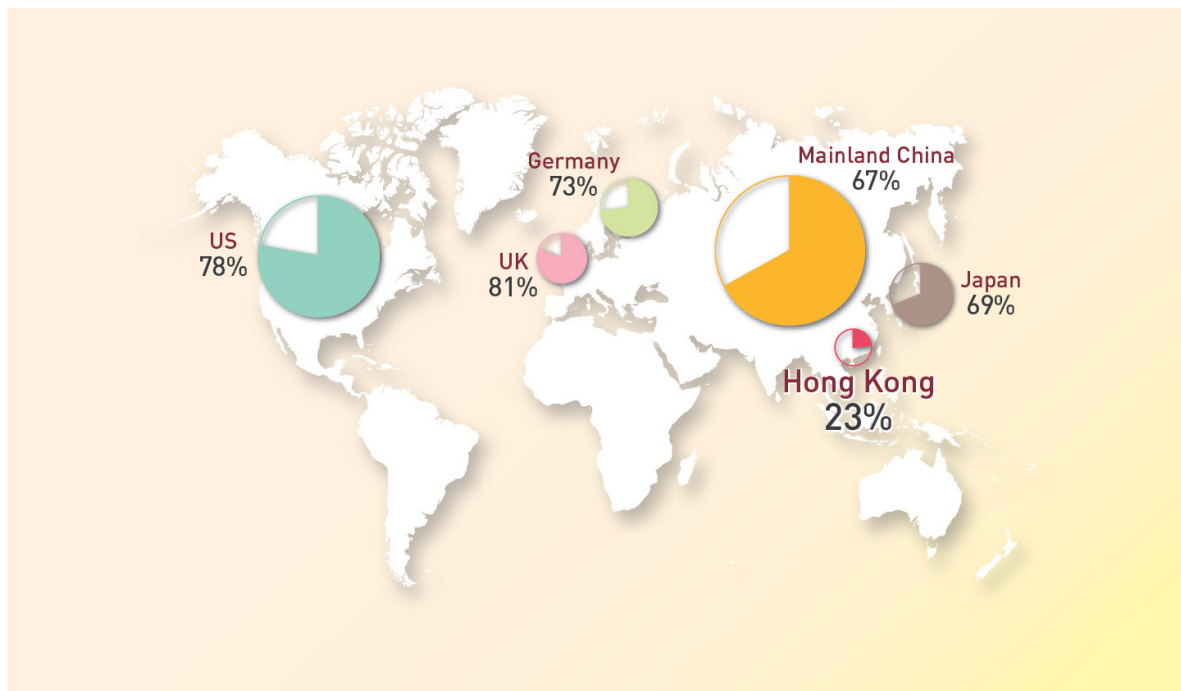
⁴ There were different estimates about the percentage of online shopping population in 2014: 84% estimated by MasterCard; 86% estimated by VISA; and 29% estimated by UPS, which based on different sampling method and selection criteria.

⁵ The Statistics Portal, (2016). *Number of digital shoppers in the United States from 2014 to 2019. (in millions)* [online] Available at: <http://www.statista.com/statistics/183755/number-of-us-internet-shoppers-since-2009/> [Accessed 8 Sep. 2016].

⁶ The Statistics Portal, (2016). *Digital buyer penetration in Japan from 2014 to 2018*. [online] Available at: <http://www.statista.com/statistics/261650/digital-buyer-penetration-in-japan/> [Accessed 8 Sep. 2016].

⁷ Eurostat, (2015). *E-commerce by individuals*. [online] Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#Data_sources_and_availability [Accessed 20 Jun. 2016].

Figure 1: Online retail penetration rates in Mainland China, selected EU countries, the US, Japan and HK⁸



Consumers in Mainland China have embraced online retail. According to the National Bureau of Statistics of China, the total of online retail purchase accounts for RMB3.877 trillion with a penetration rate of 67% in 2015⁹. A 2015 survey by McKinsey & Co found that online retail in the Mainland accounted for 14% of all retail spending¹⁰, higher than any other country except the UK. According to research conducted by PwC, shoppers in Mainland China were amongst the most committed online shoppers along with shoppers in the UK and US¹¹. 70% of the respondents from Mainland China stated they buy from at least 10 categories. Purchasing clothing and footwear online is high (60%).

There are various reasons why online shopping has been adopted by consumers. These reasons vary between individuals and between markets¹². In a study of US consumers lower prices were cited by 24% of consumers especially for products such as books, electronics and entertainment, but better selection was more commonly chosen for Food and Beverages, and free shipping for some commodity items like cleaning products and paper towels.

The online retail boom in Mainland China is also likely to drive the growth of online retail here in Hong Kong too. Chinese language websites are relatively easy for Hong Kong

⁸ Respondents were asked if they have purchased goods or services in the last 3 months for Mainland China and the US and the last 12 months for the rest of the cities/ countries. Respondents are aged 15 and above in Mainland China and Hong Kong, aged 16-74 in EU countries, Japan and the US. Figures collected in other countries reflect situation in 2015 while that of Hong Kong is in 2014.

⁹ Internet Retailer, (2016). *China's Online Retail Sales Grow a Third to \$589 Billion in 2015*. [online] Available at: <https://www.internetretailer.com/2016/01/27/chinas-online-retail-sales-grow-third-589-billion-2015> [Accessed 8 Aug. 2016].

¹⁰ McKinsey & Co, (2015). *China iConsumer 2015*. [online] Available at: <http://www.iberchina.org/files/Chinas-iConsumer.pdf> [Accessed 4 Jul. 2016].

¹¹ PwC, (2012). *Understanding How US Online Shoppers are Reshaping the Retail Experience*. [online] Available at: <https://www.pwc.com/us/en/retail-consumer/publications/assets/pwc-us-multichannel-shopping-survey.pdf> [Accessed 4 Jul. 2016].

¹² Forbes, (2013) New Study Reveals Why Consumers Really Shop Online (Surprise: It Isn't Low Prices) Available at: <http://www.forbes.com/sites/barbarathau/2013/10/08/why-consumers-really-shop-online/#51366e414ab5> [Accessed 12 Oct. 2016].

people to use¹³. Favourable shopping experiences using Mainland websites will encourage other Hong Kong consumers in making online purchase. There are reports that online sales in the clothing, furniture and appliances sectors in Hong Kong record most of the revenue generated from Mainland China in 2016 when compared globally¹⁴.

Though the goods and brands sold online appear familiar to consumers, there are important differences beneath the bonnet between online and offline sales, especially if the online transaction is conducted through a platform. The customer pays the supplier who maintains commercial relationships with a number of entities, i.e. search engines directing consumers to the online shop or platform; the platform for its marketing service; delivery companies; payment gateways; and/or bank and credit card companies for payment settlement. These links may span many different countries and legal jurisdictions. Usually the process can be completed successfully and hidden from view. But in the event that problems pop up, it can be difficult and frustrating for customers to obtain redress.

The Consumer Council (Council) conducted this in-depth study on online retail looking into patterns of online purchase of Hong Kong consumers, development of trade practice, any detriment faced by consumers, and possible improvements to safeguard consumer interest.

In addition, the increased use of smartphones is fuelling the growth of online retail by permitting consumers to shop anytime and anywhere, without the restrictions of having to undertake online transactions from a 'desk top'. However, mobile shopping is still not as common as desktop based online retail. Therefore the emerging issues that are specifically arising from mobile shopping and mobile payment are not covered in this present Study. As the use of mobile device grows in popularity in the future, the Council may decide to dedicate effort to this new area. The popularity of mobile device shopping might increase as developments in digital wallets like Android Pay and Apple Pay make it more convenient to make purchases within apps, utilising a smartphone's security features. The greater availability of cheaper non-branded goods, especially clothing, online might also cause consumers to adopt a more throw-away attitude to their purchases. Therefore, work could also be done in the future on whether online retail is having negative impacts on sustainability.

A number of commentators have looked into Hong Kong and international trends in online retail. According to the latest MasterCard Online Retail Survey¹⁵ released in April 2015, the most common spending categories online in Hong Kong are clothing/accessories (46%), followed by travel (41%), airlines (39%) and home appliances/electronic products (38%). For mobile shopping the most frequently bought items are clothing and other fashion accessories (29%), followed by personal care products (16%) and mobile apps (14%).

¹³ It is noted that 94% of aged 6 to 65 perceived competence in written English in Hong Kong as reported in Census and Statistics Department (2016) Thematic Household Survey Report No. 59.

¹⁴ Statistics Inc., (2016). *E-Commerce*. [online] Available at: <https://www.statista.com/outlook/243/118/e-commerce/hong-kong> [Accessed 15 Aug. 2016].

¹⁵ MasterCard, (2015). *Online Shopping Trending Now in Hong Kong: Nine in 10 Hongkongers Now Shop Online, MasterCard Survey Reveals*. [online] Available at: https://www.mastercard.com/hk/consumer/assets/press-center/HK_MasterCard%20Online%20Shopping%20Survey_E_final.pdf [Accessed 17 Aug. 2016].

Visa recently undertook its annual online survey of Hong Kong who access the Internet at least once a week¹⁶. Of the 733 sample size 68% paid bills, 58% booked movies and 56% booked travel online. Visa reported a 23% year-on-year growth of 2014 in people using their mobile phones for e-commerce. It notes while many people like to browse on their mobile phone (79%), far fewer actually complete their purchase on their smartphone (58%). 28% of people say their mobile is the main way they shop online. The Visa survey also suggests there has been an internationalisation of retail as a result of online retail: there has been a 22% annual growth in e-retail from overseas websites; and 75% of online shoppers say they have purchased from an overseas website in the past 12 months. The reasons why Hong Kong consumers prefer overseas sites over local sites is said to be because goods offered in overseas sites are cheaper than those in local sites (27%), or cheaper than sold in physical stores (29%).

In the study by UPS¹⁷, online shoppers are said to have used their mobile devices to research products before they go to a physical store or while they are in a store; and 17% of surveyed Hong Kong consumers search online and made purchases in store. Hong Kong recorded the lowest percentage of consumers (29%) among Mainland China, Japan, Singapore and South Korea who search and purchase online (the average in Asia is 40%). It was pointed out that online shops do not always supply sufficient information to allow shoppers to make their decision. For example, the lack of images, necessary customer services information such as contact details and return policies. While Hong Kong has the lowest proportion of online shoppers in Asia, it has the highest proportion (17%) who will search online but buy in store (whereas in Asia, the average is 13%). Among Asian shoppers surveyed in the study, 46% of all shoppers were satisfied with their online shopping experience, whilst 43% were satisfied with in-store shopping.

1.2 Risks and Challenges Arising from Online Retail

These studies demonstrate the increasing prevalence and opportunities for businesses and consumers to benefit from online retail. However, not all shoppers are able to take advantage of the benefits as, some lack access to the equipment or a reliable Internet connection; some lack the necessary computer skills; or some do not possess the credit cards needed by many online retail sites. Accordingly, they choose to exclude themselves from online retail, and are generally referred to as comprising the 'digitally excluded'.

Online retail leaves a vast trail of digital information about customers, for example their shopping habits and finances, to the chain of operators involved, namely the shopping portal, the retailers, payment gateways and any other possible third parties. Intelligent exploitation of the myriad different sources of information, i.e. big data analytics – has the potential to target the right product mix to the right consumers working towards benefitting the consumer benefits. However data might also be used for unconsented purposes that consumer may not want and may cause consumers nuisance.

¹⁶ Visa Inc., (2015). *Visa Survey: Hongkongers Choosing Mobile to Browse and Purchase Online*. [online] Available at: http://www.visa.com.hk/en_HK/aboutvisa/mediacenter/nr_hk_20112015_HKeCommsurveyrelease1_Eng.html [Accessed 4 Jul. 2016].

¹⁷ United Parcel Service of America, Inc., (2015). *UPS Pulse of the Online Shopper – A Customer Experience Study*. [online] Available at: <https://www.ups.com/media/en/2014-UPS-Pulse-of-the-Online-Shopper.pdf> [Accessed 8 Sep. 2016].

The Council notes that platform traders differ in their business models, marketing tactics, and operation of consumer redress mechanisms. There are differences in the contractual relationships and legal responsibilities among different parties involved in marketing, procurement, payment, order fulfilment and aftersales services. This leaves open the question as to how easy it is for a consumer to identify the party liable for misleading information or misrepresentation.

Online transactions can sometimes straddle international borders without consumers being aware of who it is they are dealing with. Customer data might be held in one country, the website might be hosted in a second country and the payment gateway might be sited in a third country. Consumer redress is often impeded by the fact that traders or traders' agents are situated outside Hong Kong. In these circumstances, there may be no practical ways a customer can obtain redress if something goes wrong.

Online retailers, especially in the new group purchasing websites, make use of coupons or time limited offers to attract consumers. Consumers need to be careful about reading the terms and conditions to ensure they will actually benefit from the often attractive discounts.

The development of online retail should not be hampered by unscrupulous traders who attract shoppers with low prices that never materialise, or through misleading product reviews and ratings that are falsely made. The incidence of misleading reviews on online retailers on their sites or through social media or platforms varies across different industries and service sectors. Consumers should use their common sense and be careful when reading product reviews, or other endorsements in social media¹⁸.

1.3 Objectives

The objectives of this report are:

- to understand the state of online retail behaviour; to assess consumers' satisfaction with online retail and what draws them online; and to identify the characteristics of the people who are digitally excluded from engaging in this form of shopping;
- to identify the various trade practice that online service providers in Hong Kong are engaging in, and to review the scope and the relevance of legal protection provided by local laws and regulations for online shoppers;
- to make recommendations to the trade and the Government that will enhance the effectiveness of self-regulatory and legal measures to address consumer concerns with on online retail. The recommendation will draw on best practice from other jurisdictions that are dealing with consumer protection in online shopping, and the Council's observations of what is required to meet any Hong Kong specific characteristics that exist. The Council hopes that such improvements in the online trading environment, will benefit consumers and businesses alike by improving consumers' perceived and actual safety so that a rising proportion of Hong Kong consumers can participate in this growing form of online retail consumption.

¹⁸ Gallivan, R. (2014). Amid fake reviews, Consumers are sceptical of social media marketing, *The Wall Street Journal*. [online] Available at: <http://blogs.wsj.com/digits/2014/06/03/amid-fake-reviews-consumers-skeptical-of-social-media-marketing/> [Accessed 13 Sep. 2016].

1.4 Scope of the Study

The scope of this study is confined to the investigation of major online platform traders (inclusive of aggregators) and selected categories of multichannel traders. Online banking and investment services are excluded from this research, as the regulation of these services falls within the ambit of specific regulatory bodies and legislation.

It is noted that 83% of Hong Kong people aged 10 and above had a smartphone in 2014¹⁹ and there has also been a subsequent growth in mobile commerce with consumers making purchases through apps, or via browsers from their smartphones. While the 'mobile' aspect of online transactions is important, this study does not specifically look into the security and payment characteristics of this fast growing area of mobile commerce. There are specific issues about security and payment methods associated with mobile commerce that are still evolving, and which will form part of a future study that will inevitably follow in the years to come as this form of shopping continues to evolve.

Online retail makes it easier for consumers to buy new and cheap goods from other countries. This may well result in *more* products being bought than what would normally be the case if consumers were restricted to purchasing locally from on street retail. Accordingly, it is conceivable that more products could end up being purchased than strictly necessary, and then being thrown away before they need be. If this scenario develops to a great extent, there could be important environmental side-effects of online retail related to sustainability issue for the environment. While this is important, it also is still an evolving issue and will not be covered in the Study.

This study consists of three parts: (i) the online purchasing behaviour of consumers, (ii) the trade practices of online service providers in Hong Kong, and (iii) the legal, regulatory and other remedial mechanisms currently available and possible improvements.

Online Purchase Behaviours

It is anticipated that the behaviour of online shoppers will vary depending on their experience with online retail, their spending power and their demographic profile. The extent to which shoppers safeguard their personal data when shopping online will also vary. This part of the study will identify consumers' different behavioural patterns, their expectations from online purchase, their awareness of the potential risks and their satisfaction with online transactions.

The section will also draws on the Council's complaints data to assess recent trends and patterns in complaints against online businesses. It is assumed that the data may well only represent just the "tip of the iceberg" as most complaints can be expected to be either resolved between the trader and the consumer directly or not pursued by the consumer.

¹⁹ Census and Statistics Department, (2016). *Thematic Household Survey Report No. 59*. [online] Available at: <http://www.statistics.gov.hk/pub/B11302592016XXXXB0100.pdf> [Accessed 3 Sep. 2016].

Online Trade Practices

The questions being posed in this part are whether online retail trade practices meet consumer expectations of fairness in meeting their contractual obligations; how online traders see their responsibilities vis-a-vis multi-supplier platforms and other links in the supply chain; and what recommendations can be made to the consumers, the trade and relevant regulatory bodies to improve the multi-party arrangements existing between parties involved in the online environment.

The Council has chosen to investigate trade practices in four sectors. The choice of sectors was based on the complaint statistics and recent surveys of online retail conducted by Visa and MasterCard. The sectors are: (1) Airlines and Travel, (2) Food and Beverages, (3) Computer and Electronic Products and (4) Clothing and Beauty Care.

The findings in this part of the Study will highlight the differences in business processes between traders emphasising online services' delivery, information disclosed by online traders about the division of responsibilities between the different service providers in an online purchase, and the compliance with mandatory regulatory requirements applicable to both on-street retailers and online traders.

Giant Mainland China and US Internet companies such as Amazon, Baidu, Facebook, Google, Taobao and Tencent operate on a national or global level with a dominant online presence. Emerging online shopping platforms and online shops familiar to Hong Kong consumers are, for example: booking.com in travel booking services sector; foodpanda.hk in food delivery service sector; strawberrynet.com in the cosmetic product retail sector and mydress.com in the clothing retail sector. The influence these platforms have on the current state of competition in the marketplace is an important issue.

The Council will consider looking into the implication of these practices on competition in the online shopping marketplace in detail in the future. For now, basic emerging competition issues are discussed in Chapter 3 and experiences are drawn on how they are being dealt with in other competition law jurisdictions.

Legal and Other Remedies

The third part of the study is on legal and other remedies. One important question is whether existing consumer legal protection based on conventional retail shopping can be applied to online transactions. While most of the consumer protection legislation in Hong Kong can apply to the online environment, the development of the law needs to keep abreast with changing technology and the consequential changes of business operation if it is to maintain the confidence of traders and online shoppers. This part of the study identifies some probable gaps in the local legal framework and makes suggestions for improvement.

Unlike shops in the physical world, the location and identity of an online shop is often unclear where, there are implicit delivery delays and layers of additional complication arise if a problem happens. In these circumstances, where consumers cannot entirely rely on legal remedies, this study provides practical tips to consumers to mitigate the risks associated with online retail, and considers the development and role of formal online dispute resolution measures in resolving cross border disputes.

Chapter 2 Consumer Attitudes to Online Retail

Highlights

The proportion of Hong Kong adults that participate in online retail is growing but remains low by international standards, i.e., it rose from 16% in 2009 to 23% in 2014. The Council estimates the median online shopper spends \$3,600 per year and the overall online spend accounts for less than 5% of non-housing spending. "Non-branded clothes" is the most commonly used sector, the next highest is "Books/ toys".

Based on Council survey results, 79% of consumers said they were confident or very confident in the online market they had experienced. Similarly satisfaction levels were very high with 98% of consumers saying they were either satisfied or very satisfied with the overall experience. They were satisfied because online retailers delivered what consumers hoped for: goods were cheaper; quality met expectations and they arrived on time. The Council reviewed three years of complaints statistics to detect the extent and type of problems experienced by online consumers. The number of complaints received against online retail was 11% of the total number of complaints. There were common sector specific issues such failure to secure discount plane tickets. There were also common problems about late or non-delivery of products.

Consumers were asked about which e-retail websites they purchased from, and Taobao, Yahoo! and Groupon were the most commonly cited. Some well-known on-street retailers' websites were also widely recognised but this did not necessarily translate into high usage.

Consumers were initially attracted to online retail either through recommendations from friends and relatives; the convenience or because it was cheaper than on-street. Customers were deterred from shopping online because of fear of leakage of personal data; lack of confidence in the product quality; or accuracy of description. Consumers also had fairly low awareness of the consumer protection offered by online retail sites.

Seen together, these results represent a significant commercial challenge to on-street retail. Presently only a minority of Hong Kong consumers shop online, and their purchases are relatively modest but the Council's survey suggests satisfaction levels with online retail are very high and growing. There is plausible reason to believe that in the long run the take-up of online retail in Hong Kong may reach levels experienced in other developed economies.

2.1 Methodology

This chapter publishes findings from a behavioural survey of Hong Kong consumers about their online purchases. The survey aimed to find out consumers' attitudes, experience and confidence in online retail. The Council commissioned a research company to conduct the online purchase behavioural survey (the Survey). Specifically, the objectives of the Survey were as follows:

- To gauge the levels of awareness and capability of consumers in protecting themselves across major touchpoints of the online purchase, including their understanding of the terms and conditions for the online transactions;
- To explore the determining factors in choosing online shops and the categories of goods or services consumers usually buy through the online channels; and

- To look into the level of consumer satisfaction with their purchase experience. This might include but not be limited to condition of goods or quality of services received, conformity in quality, safety and accuracy of trade description.

2.2 Coverage and Data Collection Method of the Study

The Study consists of two phases of data collection, namely, the on-street survey (Phase I) and the online survey (Phase II). A total of 1,010 interviews were completed between 30 January and 8 February 2015 in the on-street survey (Phase I), while another 1,547 responses were collected from the online survey from 23 March to 2 April 2015 (Phase II). The questionnaire used in this Study was developed with reference to the literature on online purchase behaviour and these are appended at Annex. The results from the online survey (Phase 2) were not used in this Study.

The details are highlighted as follows:

On-street Survey (Phase I)

The on-street survey covered persons aged 15 or above who had used an Internet service during the 12 months before enumeration in Hong Kong. On-street face-to-face interviews were conducted with the Computer Assisted Personal Interviews (CAPI) system. The interviews were carried out in 14 locations in Hong Kong, covering all Hong Kong Island, Kowloon and the New Territories.

Quota sampling was adopted to ensure there was a sample composition that could represent the online population. The quota was set with reference to the proportion of online population published in CSD's Thematic Household Survey Report No. 54 (THS-54), based on age, gender, education level, economic status, and whether they had purchased online in the last 12 months. Among those who had purchased online, quotas were further set on the frequency of online purchase (i.e. frequent online purchaser who conducted an online purchase at least once a month versus occasional purchaser who had made an online purchase less than once a month) and a variety of online purchases (i.e. those who had ever purchased four or less types of goods or services or those who had purchased five or more types of goods or services) to ensure the representativeness of the samples. A thorough analysis and interpretation on the dataset had been conducted. This chapter will elicit key findings of the on-street interview.

Online Survey (Phase II)

The online survey covered active Internet users²⁰ in Hong Kong. An online self-administered questionnaire hosted by the research company was adopted to collect views from the respondents.

The information collected was weighted by whether or not they had shopped online, based on age group (15-24, 25-34, 35-44, 45-54, 55-64 and 65 or above), gender (male and female) and education level (primary, secondary and post-secondary). This was undertaken in accordance with the corresponding population figures of persons aged 15

²⁰ Active Internet users are those who have active participation in online consumer panel.

or above who had used Internet services in the past 12 months²¹ in Hong Kong as at April 2015.

The Visa and MasterCard online surveys mentioned earlier report a much higher incidence of online retail than the face-to-face survey carried out by the CSD. Other surveys of Hong Kong online retail propensity (Nielsen 2014) similarly use online sampling and suffer from the same tendency to overstate incidence of online retail compared to face-to-face surveys.

The Council's view is that online surveys are less representative of the situation for the overall Hong Kong population, since people participating in online surveys are likely to have a far higher propensity to shop online than what might be the case for the general population. A subsequent review of the online survey data suggested that participants in the online survey were much better educated and younger than the average Hong Kong person and given the bias that this would apply to the overall situation amongst the general population, it was decided not to completely rely on the results from the online survey in making general observations.

2.3 The Extent of Online Retail

According to the Thematic Household Survey Report No. 54 (THS-54), 23% of the Hong Kong population aged 15 and over had used online purchasing services for personal matters during a 12-month period ("online shoppers") while 77% had not²² ("non-online shoppers"). Figure 2 presents the distribution of their age, gender, education and economic status. To make the Council's findings representative for the Hong Kong population, the data collected from the on-street survey by the Council was weighted according to the distribution of age, gender and education level from the THS-54.

The rate of having used online purchasing services is much higher for online shoppers aged between 25 and 34 years old (46%), post-secondary educated (51%), and economically active (31%) than the corresponding counterparts. One study has indicated that Asian consumers prefer using online retail's full websites when shopping. However, this preference is highest among Japanese consumers (66%) and lowest amongst consumers in Hong Kong (42%)²³.

²¹ Census and Statistics Department, (2015). *Thematic Household Survey Report No. 54*. [online] Available at: <http://www.statistics.gov.hk/pub/B11302542015XXXXB0100.pdf> [Accessed 4 Jul. 2016].

²² Ibid.

²³ United Parcel Service of America, Inc., (2015). *UPS Pulse of the Online Shopper – A Customer Experience Study*. [online] Available at: <https://www.ups.com/media/en/2014-UPS-Pulse-of-the-Online-Shopper.pdf> [Accessed 19 Sep. 2016].

Figure 2: Demographic profile of online and non-online shoppers by age, gender, education and economic status

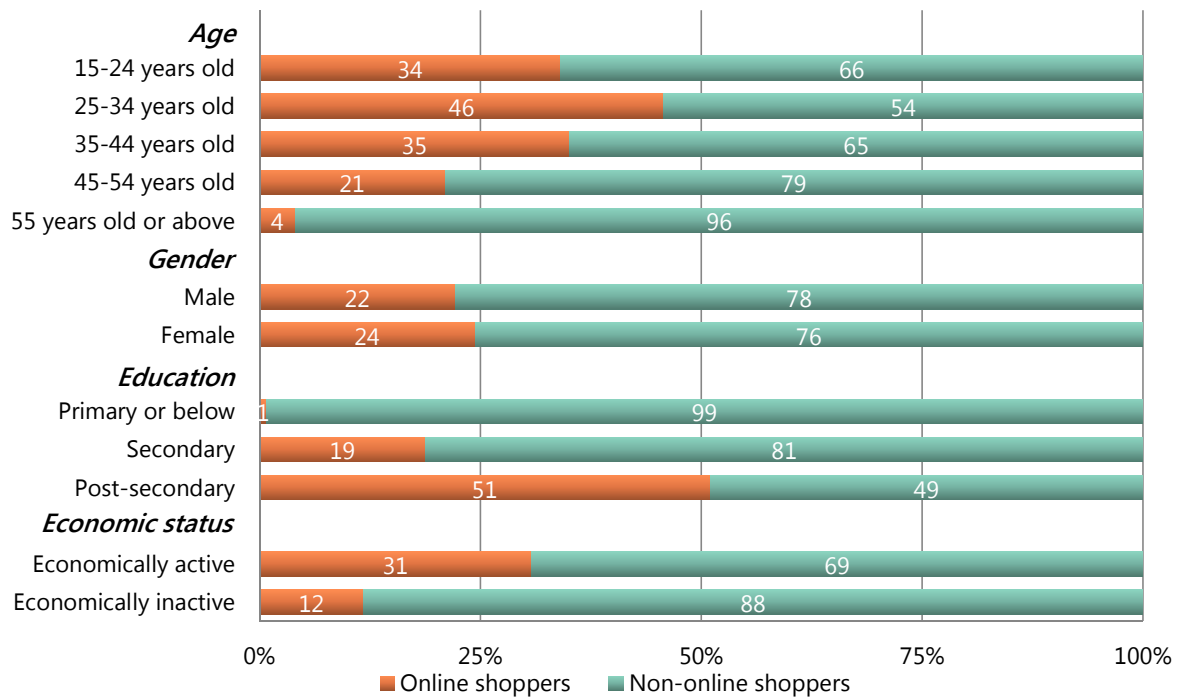
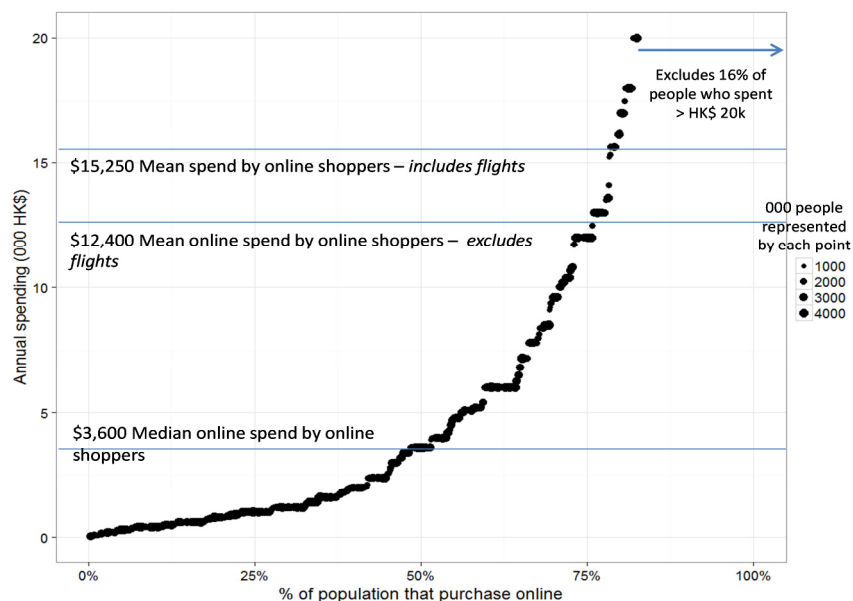


Figure 3 shows the distribution of annual online spending across Hong Kong's online shoppers for the 605 respondents that said they shop online. This was not asked directly and had to be inferred from questions asking how much respondents spent on their most recent online purchases with a question about how frequently they shopped online. The size of each point is in proportion to the number of people represented by the sample respondent. The figure truncates the Y axis at \$20,000/ year removing 100 of the 605 respondents, or 16% of the weighted population. 84 of the 605 respondents spent between \$20,000 and \$100,000 a year, while 16 appear to spend more than \$100,000 online.

Figure 3: Distribution of annual spending on online retail across the Hong Kong population (excludes outliers with very high spending)

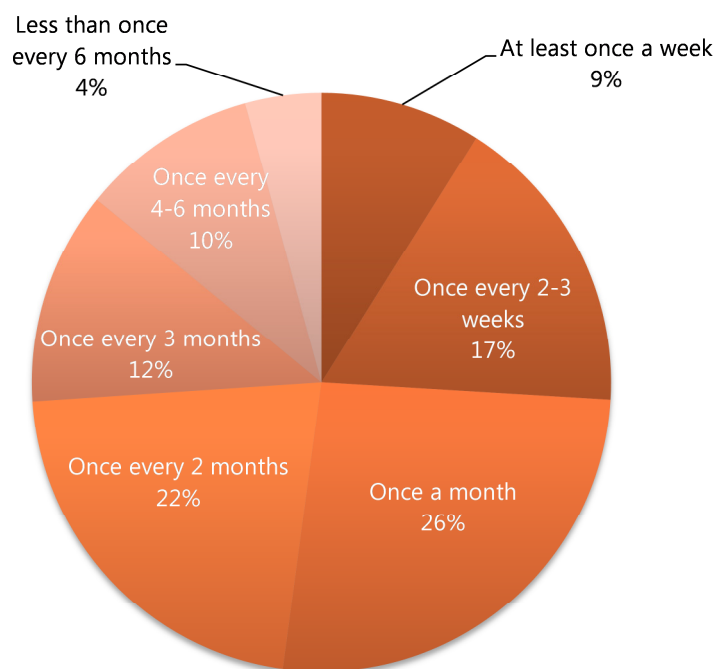


The average annual spend per online shopper, including flights and hotel bookings, is \$15,250 (US\$1,970/year). This figure is affected by the inclusion of spending in the "air tickets and hotel bookings" sector. If this sector is excluded the average is reduced to \$12,400 (US\$1,600/year). Spending is highly skewed across the sample. Annual spending by online shoppers varied from around \$25/year to \$930,000/year. A more reasonable estimate of the spending amount of a typical online retail consumer is the median annual spend of online of \$3,600/year (US\$460/year)²⁴.

This suggests that a minority of people have embraced online retail but a large majority of people in Hong Kong only use online retail for a small proportion of their annual spending. For the 23% of people that shop online, online spending is around 4% of their overall non-housing spending of \$81,800²⁵. In the business sector, e-commerce sales also only account for 5% of total business receipts of establishments²⁶.

Figure 4 shows the frequency of online retail amongst people. Just over half of online shoppers make an online purchase one or more times per month; while 9% of online shoppers shop online at least every week.

Figure 4: Frequency of online retail for online shoppers



²⁴ A recent study reported in Statista estimated average spending (where the US online shopper's annual spending is US\$1,804, the UK is US\$1,629, Germany is US\$1,064 and Japan is US\$968) of online shopper across different economies. Source: The Statistics Portal, (2015). *How Much Online Shoppers Around the World Are Spending*. [online] Available at: <https://www.statista.com/chart/3790/e-commerce-revenue-per-online-shopper/> [Accessed 8 Sep. 2016].

²⁵ The average personal non-housing spending of age over 15 is estimated by the household expenditure excluding housing spending <http://www.censtatd.gov.hk/hkstat/sub/sp290.jsp?tableID=54D&ID=0&productType=8>, divided by average household size of 2.6, which is calculated from the age population table in <http://www.gov.hk/en/about/about/hk/factsheets/docs/population.pdf> and the number of households from <http://www.census2011.gov.hk/en/main-table/D103.html> [Accessed 12 Sep. 2016].

²⁶ HKTDC, (2016). *Internet Industry in Hong Kong*. [online] Available at <http://hong-kong-economy-research.hktdc.com/business-news/article/Hong-Kong-Industry-Profiles/Internet-Industry-in-Hong-Kong/hkip/en/1/1X000000/1X0060U6.htm> [Accessed 22 Aug. 2016].

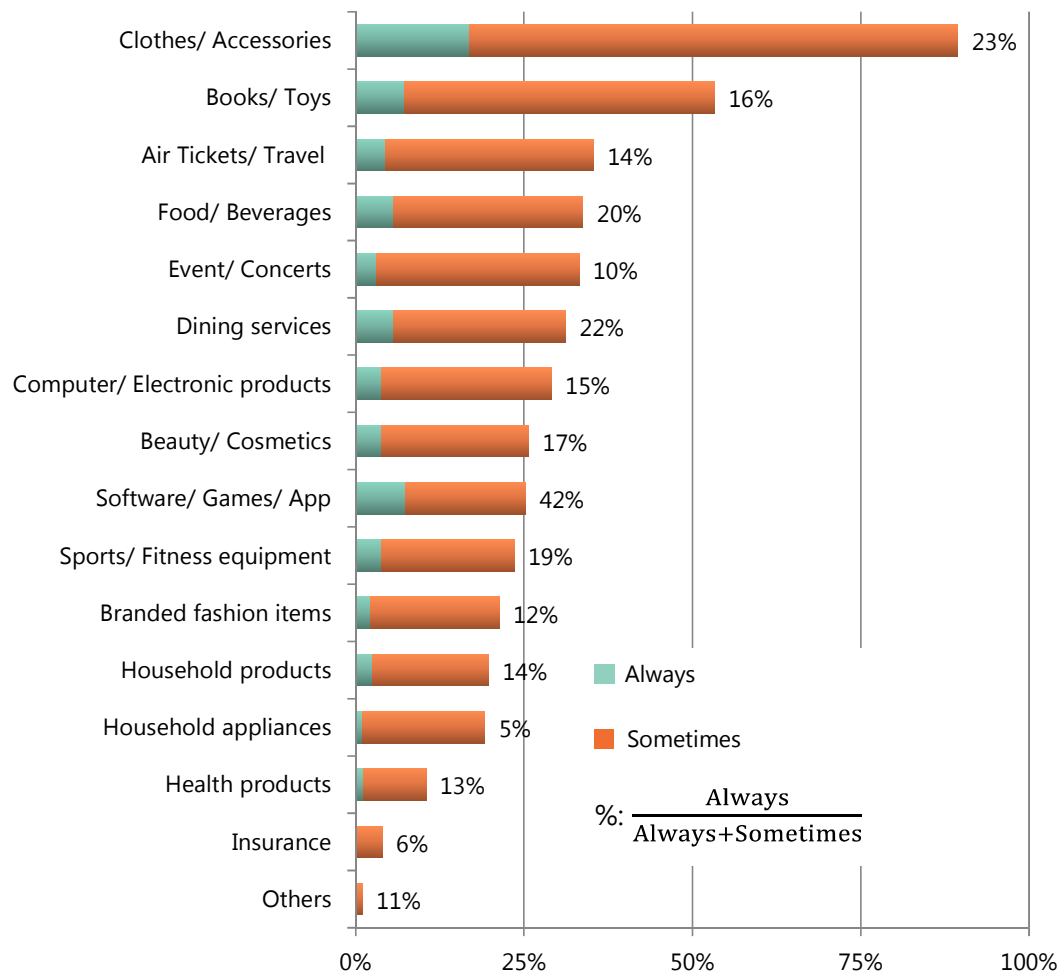
The degree of penetration differs between sectors. Figure 5 shows the extent to which online shoppers reported that they *sometimes* or *always* purchased from 15 named sectors or "Other sectors". The bars are sorted according to the proportion of people who experienced the online market. The highest level of online experience is in "Non-branded clothes" which 89% of online shoppers have used. The next highest sector is "Books/ toys" where 53% of online shoppers have bought from this sector – the vast majority stating it was only *sometimes*.

The percentage figures on the graph shows the people who say they always shop online as a proportion of the total number of people that have shopped online (including always and sometimes shop online) in that sector. Not too surprisingly this figure is highest for "Software/ games/ app" where 42% people *always* purchase online either indicating their shopping habit or the shortage of the on-street supply. This may indicate the dominance of platforms like Apple App Store and Google Play Store within this sector.

It is possible the reason why some sectors have very low penetration of *always* shoppers such as "Household appliances" – with just 5% is because of the fact that some of the best known "Household appliances" retailers do not support online retail and their websites merely promote new offers and direct customers to their stores. Many Hong Kong retail chains have made little investment in mobile apps or indeed online retail. There is a similar story in sectors such as insurance. These firms prefer direct sales through agents, and there is a corresponding small share of people who *always* buy online compared to *sometimes*. In other countries there are multiple price comparison sites allowing easy online comparison between products. These have not been substantially developed in Hong Kong²⁷.

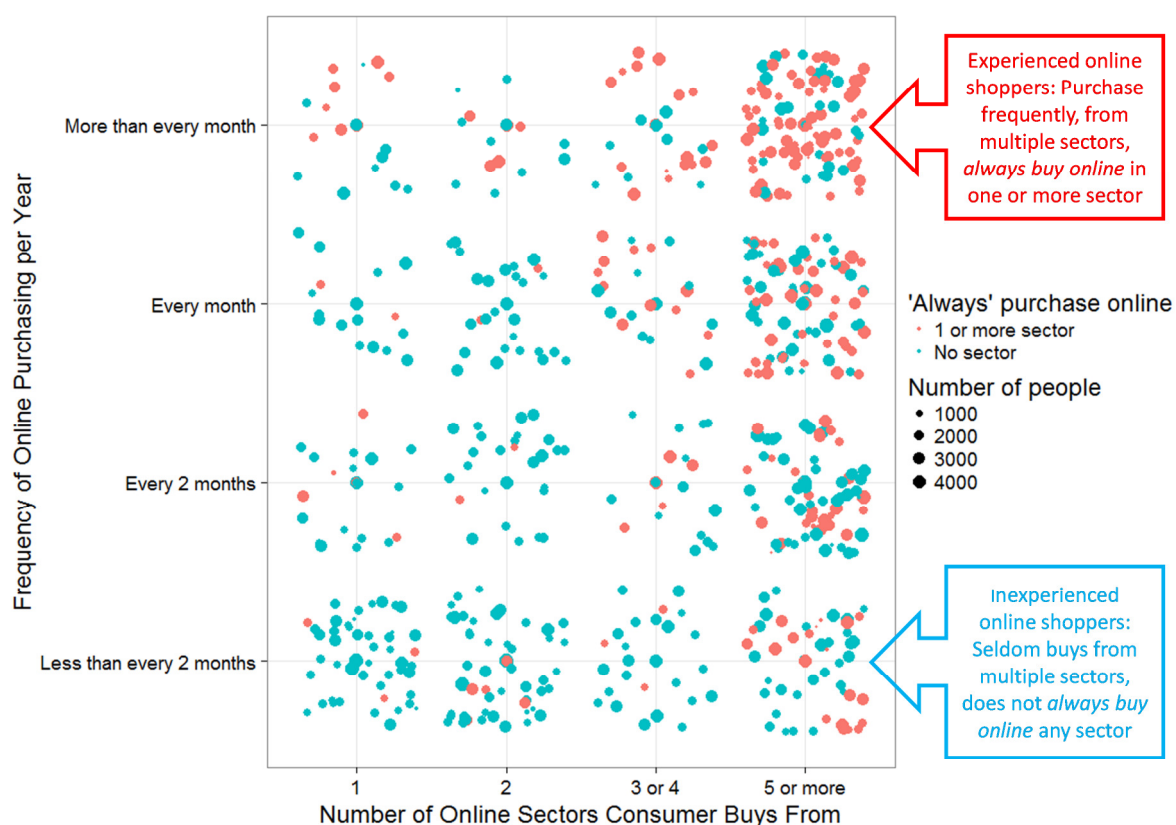
²⁷ UPS Asia survey (UPS Pulse of the Online Shopper – A Customer Experience Study) found that the most frequently cited sectors in which shoppers purchased are apparel (59%), grocery (45%), cosmetics/ personal care (43%), books/ music/ movies (39%), shoes (39%), accessories (28%) and small home appliances (27%).

Figure 5: Proportion of online shoppers that sometimes or always buy online from different online sectors



As well as being asked about their online retail frequency, respondents' online diversity was calculated by counting how many of the 15 different goods and service sectors they had experienced. Figure 6 indicates each of the 605 respondents' frequency and diversity in online retail. People who said they *always* purchase online from one or more sectors are marked in red to mark out individuals with greatest depth in their online retail habits. Frequency and diversity are closely related to habitual/addictive behaviour to online market. The red dots are clustered in the upper right hand side. This indicates the deepest online shoppers tend to display high diversity and frequency.

Figure 6: Breadth and frequency of online retail experience



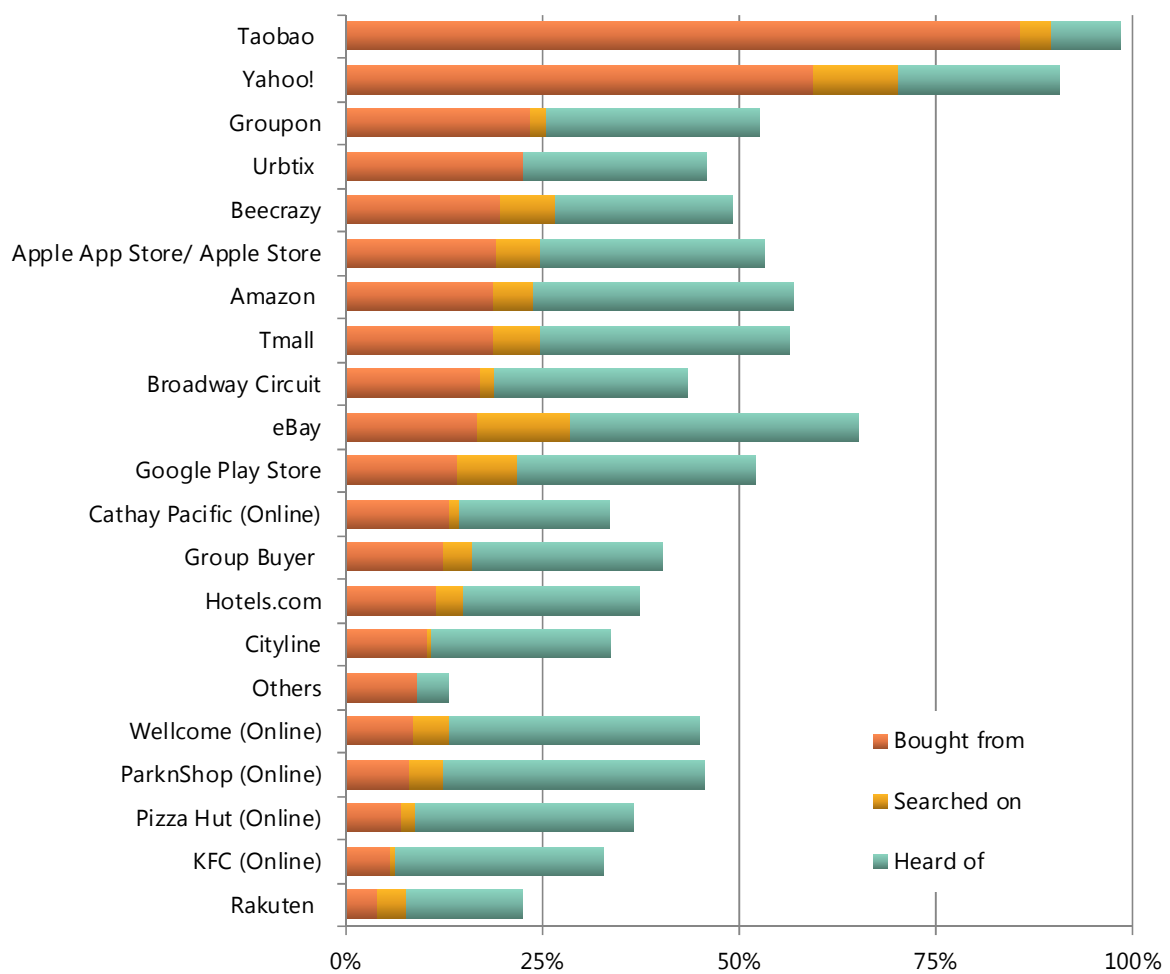
The red dots in the top right hand side of the scatter represent the minority of Hong Kong people that have embraced online retail, buying frequently from a wide range of sectors and in at least one of these sectors always buying online.

Online shoppers were asked about their awareness and use of different e-commerce websites. The results are shown in Figure 7 – the different websites are ordered according to how frequently consumers said they had purchased from them. It should be noted that consumers were given a closed list of 30 different websites to choose from – the figure only shows those websites that at least 30% of online shoppers said they had heard of. There might be some widely known or widely used websites that were not on the list offered to consumers.

There were three significant findings. First of all the best known and most frequently used websites are platforms. These platforms allow multiple different traders to access their customers. Second some well-known on-street retailers are widely recognised by the online retail community, but not necessarily used. Third the dominant online players have emerged quickly: their popularity could shift easily due to social factors and propositions to consumers²⁸. Consumer preferences about which online shop or platform to buy from differ between people and changes over time as consumers consider personal preferences, shopping needs, price and time taken to deliver.

²⁸ The quick emergence can be demonstrated by the sudden closure of one international online shopping platform, BeeCrazy, in June 2016. Source: Chung, F. (2016). Anger as BeeCrazy buzzes off, *The Standard*, [online] Available at: [\[Accessed 31 Aug. 2016\]](#).

Figure 7: Online shoppers' awareness and use of different websites

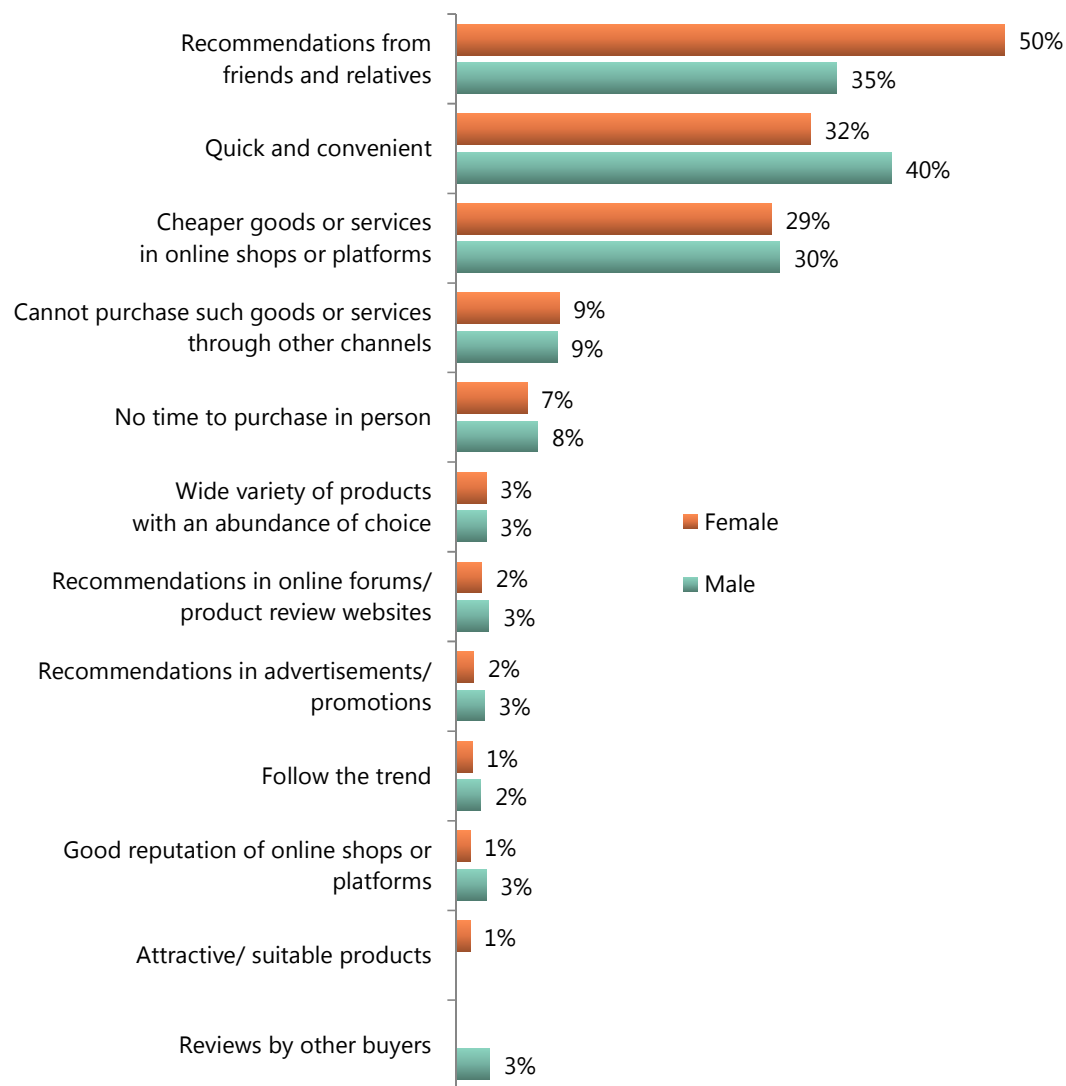


2.4 Triggers for Online Retail

Figure 8 demonstrates that the word of mouth recommendation by friends and relatives is rated as the number one influence driving respondents' first online purchase. "Quick and convenient" and "Cheaper goods or services in online shops or platforms" are also high on the list. It is interesting to note that females are statistically²⁹ significantly more likely to rely on recommendations from acquaintances than males.

²⁹ Weighted Student T test at 5% significance levels.

Figure 8: Online shoppers' reasons for first-time online purchase (n=605)



According to the THS-54, 77% of Hong Kong people do not shop online; a much higher proportion than found in other developed economies. Respondents who did not shop online were asked about what deterred them. Figure 9 indicates that the most commonly cited reason was "Worrying about leakage of their personal information" (30%), followed by "Having no confidence in the product quality" (22%), "Don't have the need to make online purchase" (15%) and "Don't know the sites that allow me to shop online" (13%). The reasons can be grouped as afraid of online retail, lack of knowledge about online retail and do not need online retail.

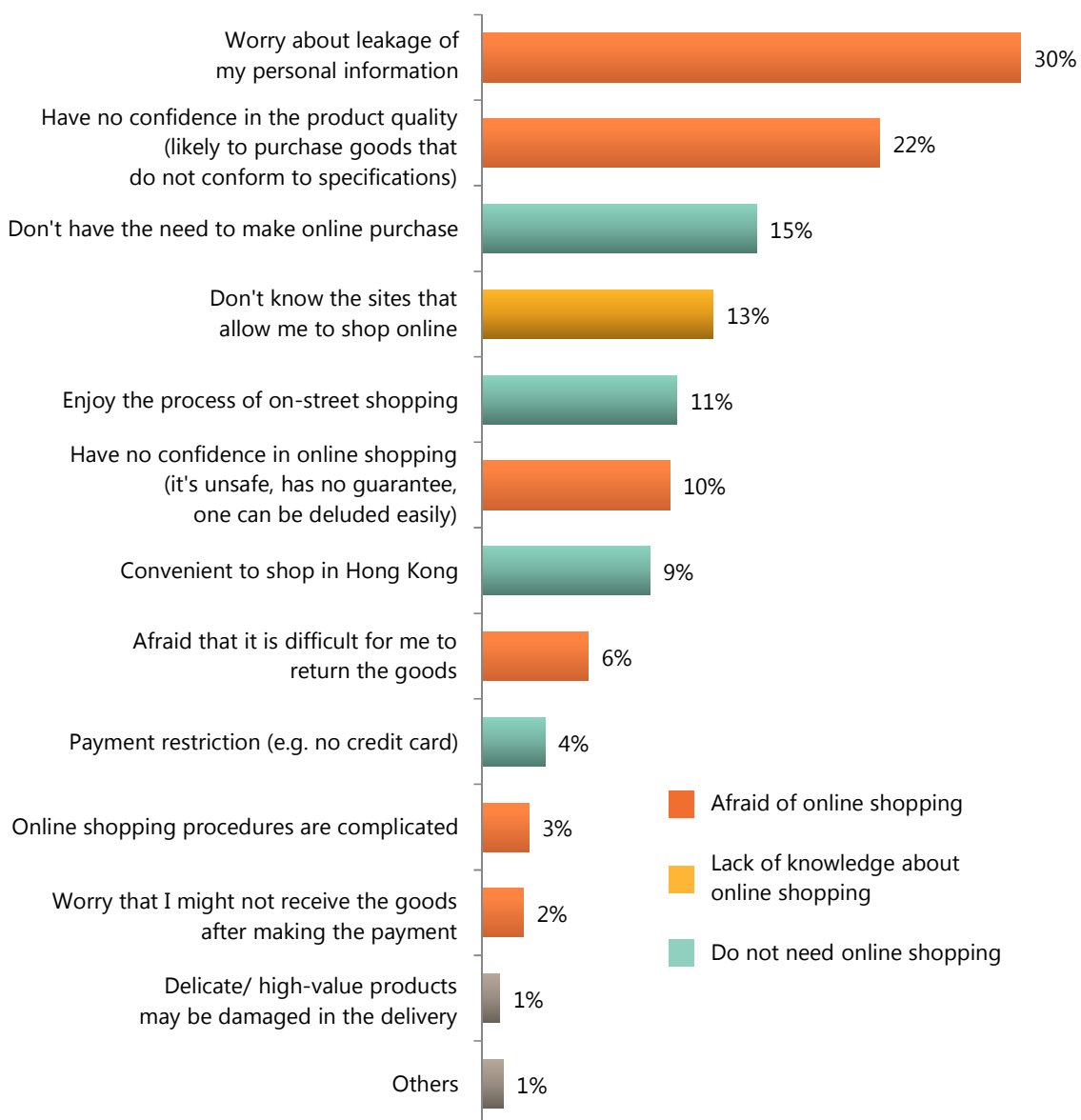
According to The Journal of Business³⁰, website usability, product selection, the extent of customer confidence, and the quality of customer relationships are crucial to the success of online shops. These factors in general would be effective to encourage sustainable online purchase.

³⁰ Kotha, S., Rajgopal, S. and, Venkatachalam, M. (2004). The Role of Online Buying Experience as a Competitive Advantage: Evidence from Third-Party Ratings for E-Commerce Firms. *The Journal of Business*, 77(2), pp. S109-S133.

As only 10% consumers have no confidence in online retail, this barrier to online retail use can be readily tackled by addressing the relevant issues. It is noted that a big group of non-online shoppers have concerns over personal data security (30%) and product quality not meeting their expectation (22%) – the “Product quality” concern usually refers to fake products or inconsistency between photo displayed on the website and actual products, in particular it is not always a straightforward process to locate the owner of an online shop across different jurisdictions and to verify the quality of a product.

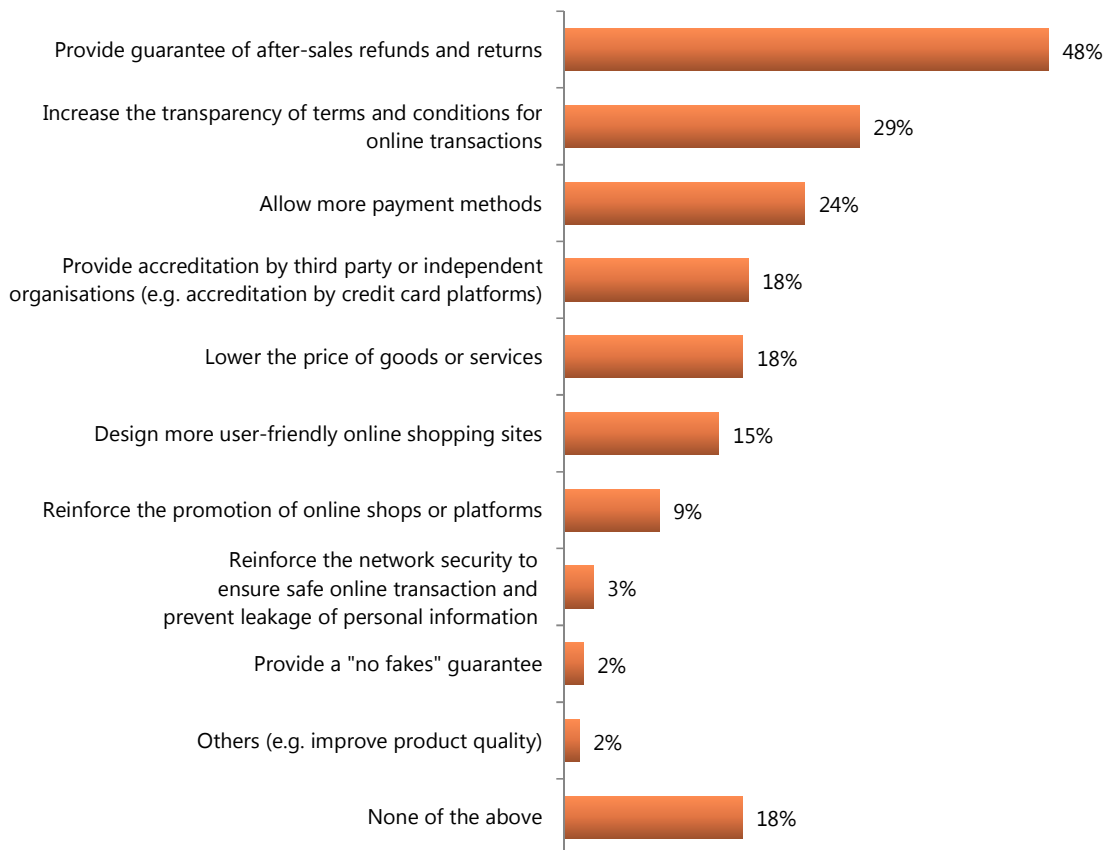
Around 13% of the population say they do not know which sites allow them to shop online. Business can address this issue by promoting their sites more prominently to inexperienced consumers. Only 9% consumers say they do not shop online due to the convenience of on-street shopping in Hong Kong.

Figure 9: Non-online shoppers’ reasons for not making online purchases (n=405)



Non-online shoppers were asked to suggest ways that could encourage them to purchase online. As displayed in Figure 10, the most commonly mentioned encouragement was to "Provide guarantee of after-sales refunds and returns" (48%). Online retailers could offer more customer friendly returns and refunds policies to attract customers. Details of refund and return policies will be discussed in later chapters. Lack of clarity about terms and conditions was the second most important deterrent (29%). Non-online shoppers also specified that they would make online purchases if more variety of payment methods could be provided (24%).

Figure 10: Ways to encourage non-online shoppers making online purchases (n=405)

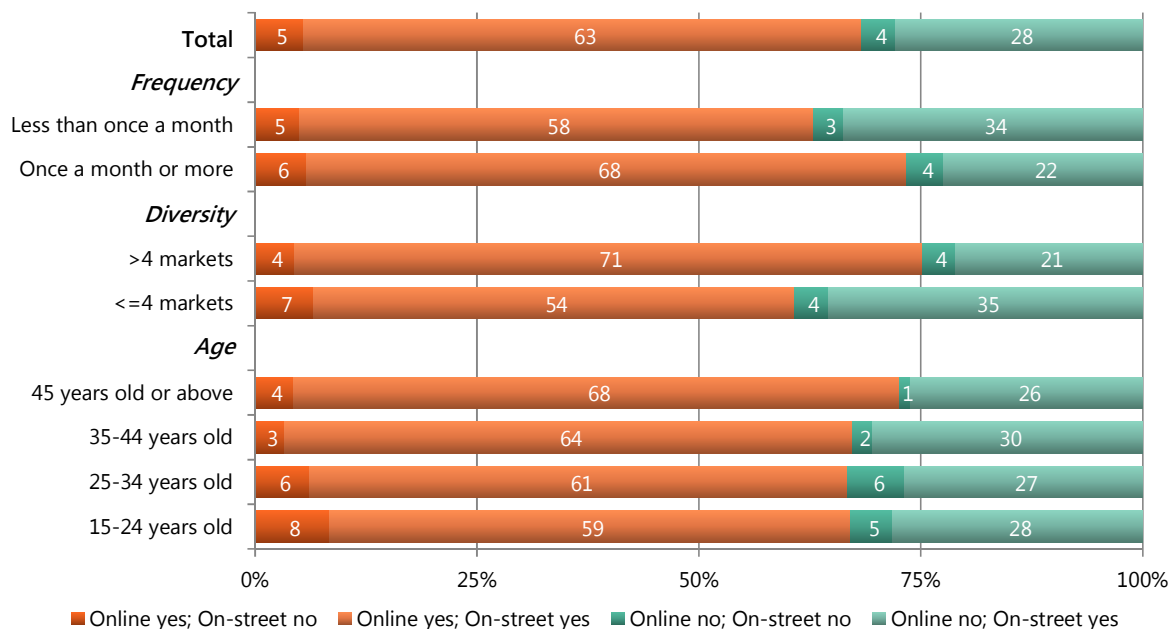


Consumers have indicated that cheaper prices were an important motivation for switching to online retail (18%) as shown in Figure 10. The 605 respondents that *already shopped online* were asked whether they would switch between online and on-street or vice versa if there they could save 5% of the price for the sector. Figure 11 shows the responses. The responses in red are more supportive of online retail: for instance the dark red on the left hand side indicates those who will still purchase online in a sector even if on-street was a little (5%) cheaper. The light green on the right hand side are the most hostile to online retail and will prefer on-street even if it is 5% more expensive.

Overall 68% of people that shop on-street will switch to online market if it is a little cheaper, 91% of online shoppers say they would switch to on-street shopping if it is a little cheaper. This indicates that it is more acceptable for online shoppers to shift to on-street than the other way around for a cheaper price. A small proportion, 4% are wedded to their current mode of shopping and would not change their pattern if either online or on-street were a little cheaper. This showed that the online retailers directly compete with on-street retailers in the same marketplace.

This propensity to switch between online and on-street was assessed for different age groups, between more diverse (using 5 or more sectors) and lesser diverse Internet shoppers, and frequent and infrequent online shoppers. There was a lesser tendency for younger consumers to switch to on-street than older people (only 87 – 88% among aged 15 – 34 while 94% among aged more than 35). More experienced online shoppers (those that shopped online in five or more sectors, or who shopped online more than once a month) showed a greater preparedness to switch from on-street markets to online markets if there was a small price advantage (74 – 75% among experienced online shoppers versus 61 – 63% among less experienced online shoppers). This may be because they have more experience/ information on what to shop for and how to shop online. Because they more often check prices online, they have comparatively less search costs. The implication is that once a person is already an experienced online shopper in several sectors, they are more likely to switch to online in other sectors if there is a small price saving.

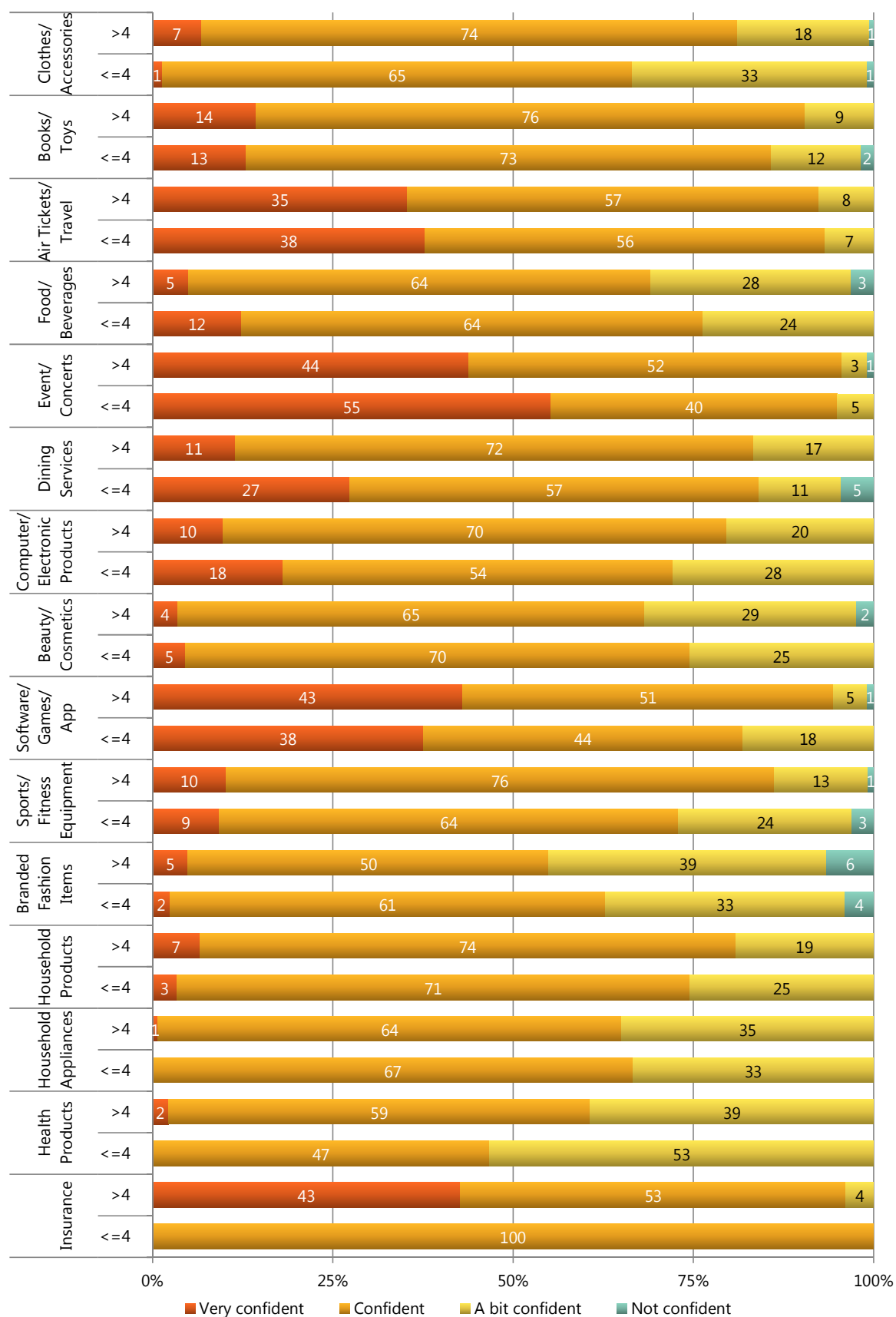
Figure 11: Online shoppers' preparedness to switch from online or on-street or vice versa if there is a 5% price differential



Consumers were asked about their confidence in the online market. Results are displayed in order of their usage i.e. "Clothes/ Accessories" the most used, "Insurance" the least used in Figure 12. More diverse consumers (using 5 or more sectors) are shown separately from the less diverse consumers (using 4 or fewer online sectors). Overall levels of confidence ("confident" or "very confident" greater than 75%) are very high but tend to tail off for the least commonly purchased sectors like "Branded fashion", "Household appliances" and "Health products". 79% of shoppers say they are confident or very confident, i.e. 71% in "Clothes/ Accessories". Overall the proportion of customers saying "not confident" is very low³¹.

³¹ The sector with the highest proportion of response indicated "not confidence" is the dining services.

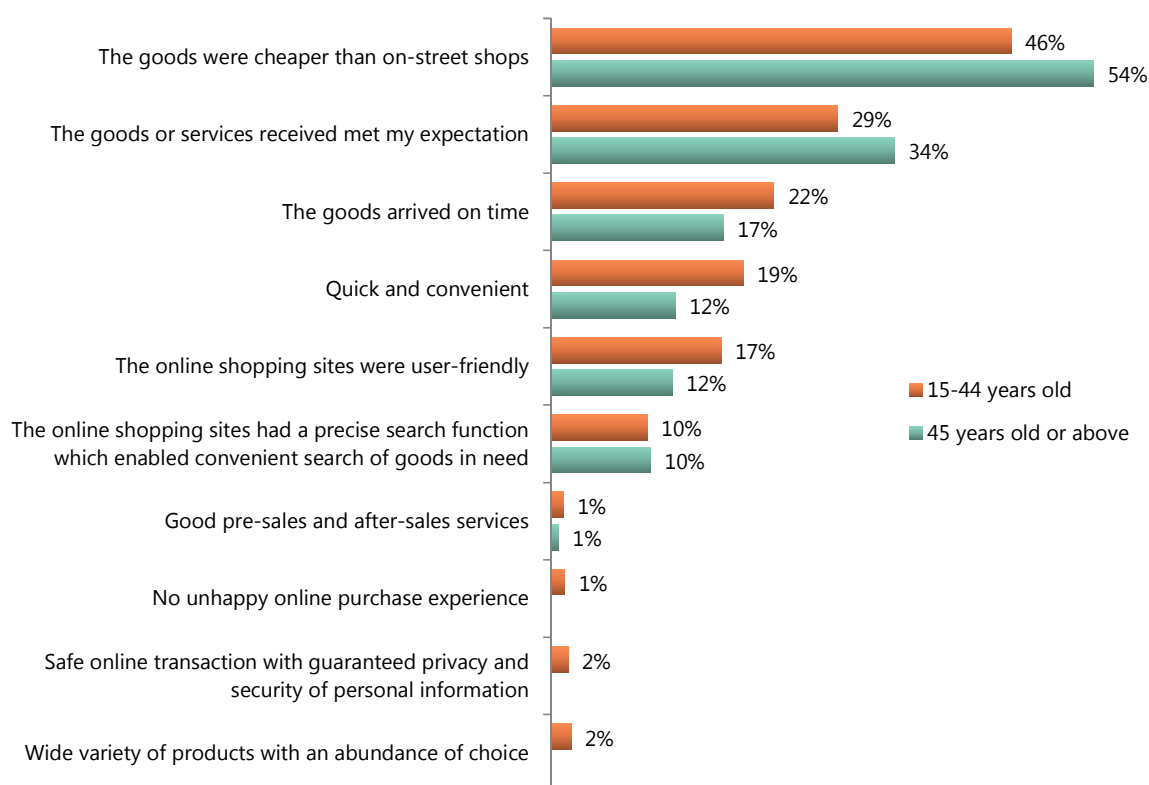
Figure 12: Online shoppers' confidence with fifteen most commonly used online sectors by their diversity of online retail (n=605)



2.5 Satisfaction and Trust in Online Purchases

Respondents who had made online purchases were asked about their satisfaction with various aspects of their online purchase experiences. On the whole, the vast majority were *very satisfied/ satisfied* with the overall online purchase experience (98%). The top three aspects that respondents feel satisfied about were low prices, goods meeting expectations and timely arrival of goods. Despite non-online shoppers' concerns about quality of goods, shoppers who had experienced online retail were by a very wide margin happy about the goods/ services. A much higher proportion of the younger age group (15 – 44 years old) considers timely arrival of goods (22%) an important determinant of satisfaction than that of the older age group (45 years old or above) (17%). Both the younger age group (19%) and the older age group (12%) view "Quick and convenient" as a reason for satisfaction echoing the second most commonly given reason for why they made their first online purchase shown in Figure 8. Last but not least, 17% of the younger age group and 12% of the older age group regard user-friendliness of a website as the trigger for a higher level of satisfaction. A precise search function enabling easy search within the website was seen as a reason for satisfaction for 10% of online shoppers.

Figure 13: Reasons for online shoppers being satisfied with online purchase experience by age (n=595)



The trustworthiness of an e-retail site is important to attract and retain customers. E-retail websites hoping to develop their customer base need to ensure they are perceived as trust-worthy – Figure 14 sets out the main reasons shoppers mention for trusting sites, i.e. good reputation (76%) and good track record of sales (62%). While user-friendliness of a website is one of the reasons for satisfaction, online shoppers also regard it as a reason of trust (37%).

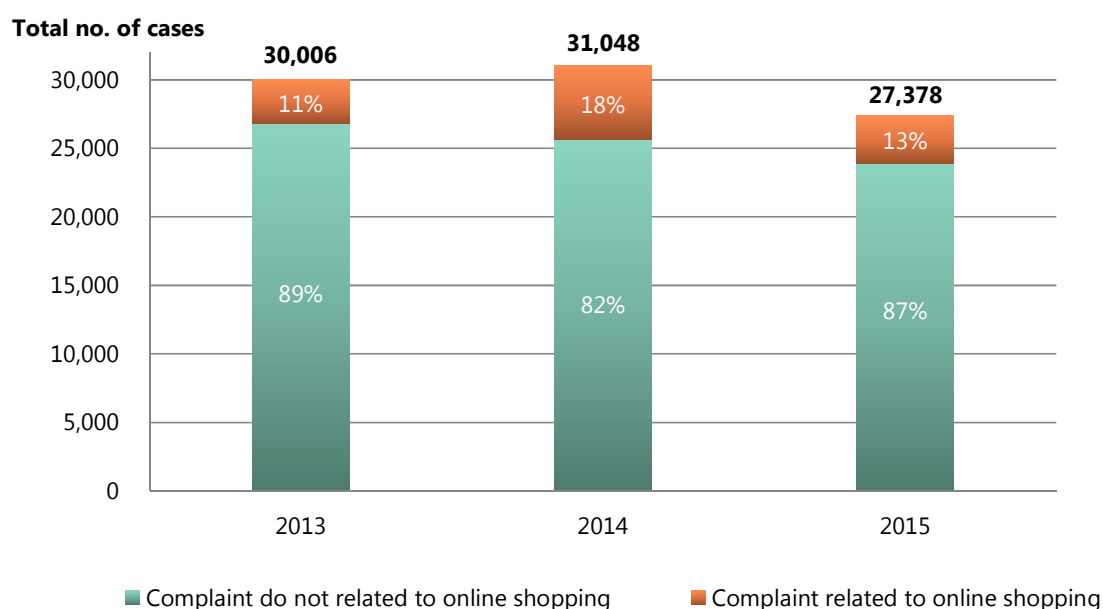
Figure 14: Online shoppers' reasons of trust (n=605)



2.6 Complaints with Online Retail

The Council also undertook analysis of its own complaints database of all the complaints received by the Council to investigate the prevalence of complaints from online customers between 2013 and 2015. Usually a complaint will only reach the Council once the consumer has attempted and failed to obtain satisfaction from the trader and still feels motivated to pursue the case further. The figures therefore can be assumed to represent a low estimate of the complaints consumers have with online retailers.

Figure 15: Number of complaints cases received by the Council 2013 – 2015

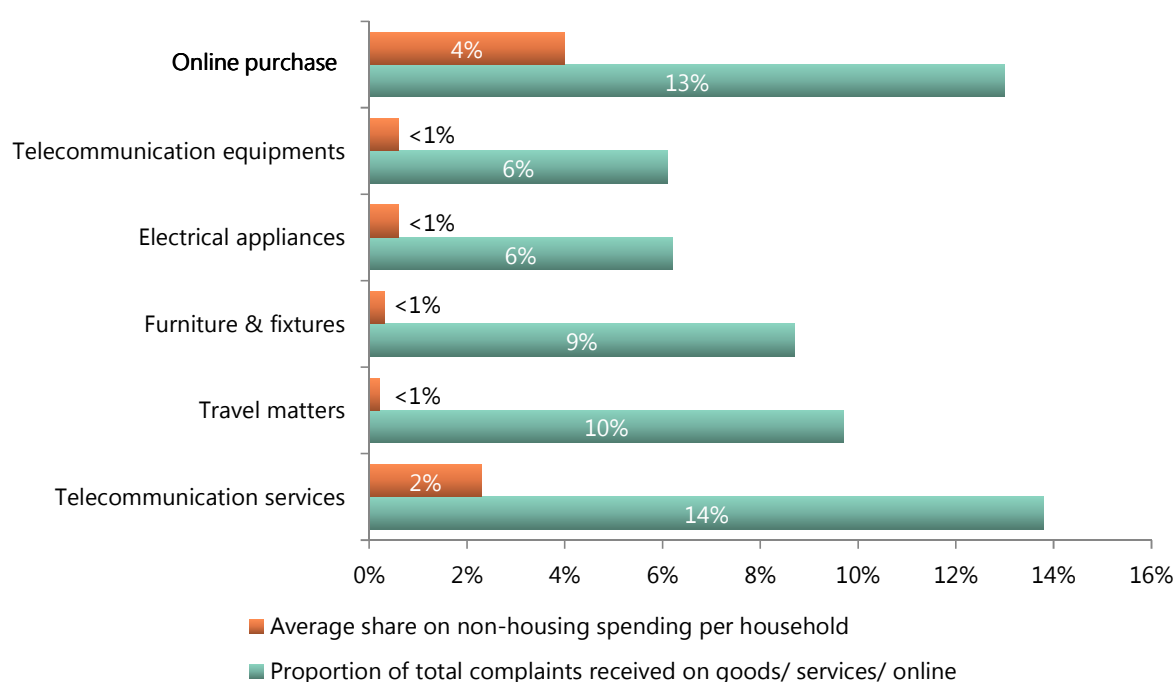


Over the three years period, the share of online retail complaints in the Council's data base rose from 11% of the total cases in 2013 to 13% in 2015. In 2014, the proportion reached a peak of 18%. In each year the Council finds there are "exceptional" items that give rise to a high proportion of the overall complaints received. In 2012 a large number of complaints were received as a result of a restaurant closure, which sold a large

number of online dining coupons that were not honoured. The high-mark in late 2014 arose because of the questionable trade practices of Hong Kong telecommunication operators and their handling of pre-orders for a new smartphone. This attracted over 2,000 consumer complaints. In 2015 there were over 1,000 complaints against a particular budget airline. These major incidents indicate that poor practice by traders can trigger a huge volume of complaints, which affect the reputation and development of the industry. Upholding good sales practices are crucial to sustain consumer confidence.

To provide a better grasp of the situation, Figure 16 shows, for the top 5 complaints categories, the proportion of average Hong Kong household expenditure and complaints received by the Council. This gives an overview on the money possibly involved when consumers are dissatisfied with their purchases.

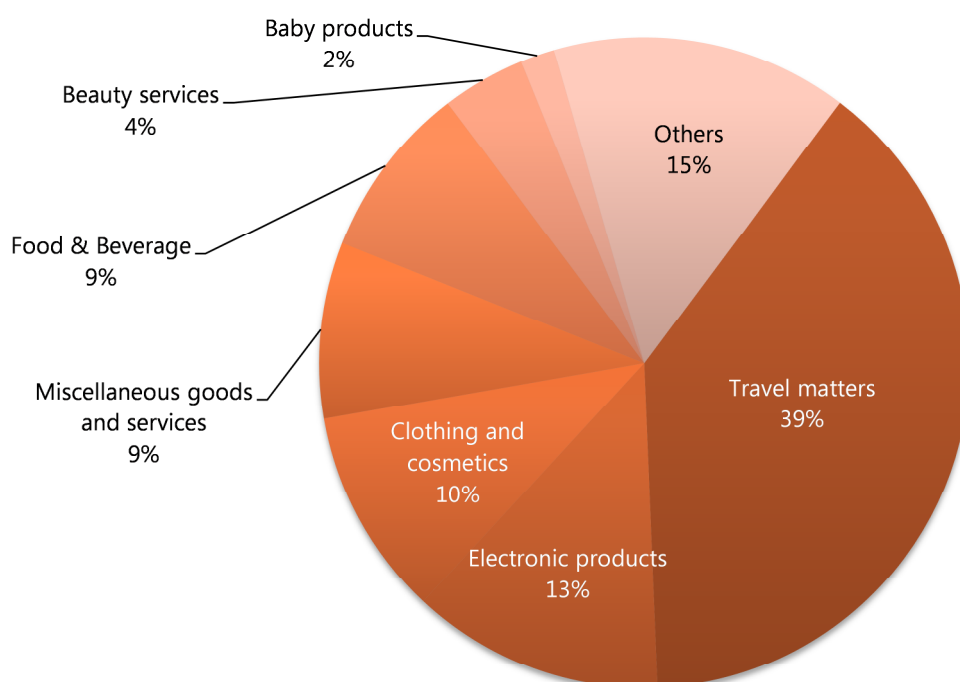
Figure 16: Complaints on online purchase and on the top 5 categories the Council received in 2015



An in-depth study was conducted on complaint cases received during a one-year period starting from September 2014. A total of 5,850 cases related to online retail were analysed.

Apart from complaints related to the incident that involved the launch of a new smartphone and cases classified as miscellaneous goods and services, the top 4 sectors received most complaints were "Travel matters" (39%), "Electronic products" (13%), "Clothing and cosmetic" (10%) and "Food and Beverage" (9%).

Figure 17: The top 8 consumer complaints by sectors in online retail



Travel Matters and Air tickets

Accounting for nearly 40% of online complaints, travel related matters are the most complained about online retail sector in Hong Kong. The overwhelming majority of the cases are related to price/ claim disputes, variation/ termination of contract and late/ non-delivery. A growing proportion of consumers have switched to online platforms, rather than traditional travel agents to book their airline tickets. Since the value of individual purchases is high customers are more inclined to complain if they feel they have been unfairly treated:

Duplicate Booking

Problems have arisen when consumers mistakenly secured two or more airline tickets due to the complexity of using the online booking system. This became a problem when the airline refused to refund because they claimed there was no system error involved. Various reasons led to this situation. For example, during an attempted booking a consumer might be unable to complete the process because an error page has appeared during booking or payment. In these cases, consumers quite reasonably, but incorrectly, assume that their attempted booking has failed. As the airline seat is subject to limited stock and fluctuating price, the consumer rushes to again reserve a ticket, leading to a duplicate booking for the exact same or a similar flight.

Order Confirmation/ Amendment

Upon completion of a transaction, some consumers found that the detailed information of the confirmation email or the e-ticket, including surname or first name of customers, date, time and destination of the flight, are different from their intention, perhaps because of a mistake in typing.

Because the consumer is unable to verify whether they have input the wrong information or the airline's booking system is responsible for the error, the airline generally requires, an extra fee to be paid in order to alter any details of the reservation, or they may not allow any subsequent corrections to be made.

Flight Rescheduling Cancellation

Quite a number of consumer complaints are related to rescheduling or cancellation of flights due to operational rearrangement of the airline or response to other factors, such as an outbound travel alert. In some cases, consumers are dissatisfied with the alternative choice they are offered by the airline's customer support so they ask for a refund.

Hotel and Tour Booking

The majority of the remaining complaints relate to disputes against Online Travel Agent (OTA) and hotel booking websites. A few cases are concerned with the online reservation platform of individual hotels.

In some cases, when the consumer arrives at the designated hotel they have booked online, they have found that their name is not on the guest list, the hotel was closed or it was fully booked. Others complaints have involved OTAs failing to secure the booking even after the consumer has paid for and completed the transaction. They were typically requested to pay extra for an alternative or to cancel their bookings.

Electronic Products

Electronic products encompass computers, telecommunication equipment and other electronic appliances. The main problems in this sector are late and non-delivery (41%) and also (of particular concern) cases of international consumers who received neither the goods nor a refund from Hong Kong based online shops. Local consumers also had difficulty in redeeming vouchers purchased from a group buying website.

Clothing and Cosmetics

The majority of disputes in clothing, cosmetics and personal care products related to late delivery or non-delivery (42%) and quality of the products (18%). Some consumers failed to receive their order within a reasonable timeframe or were told by the trader that the products were out-of-stock. Subsequently, consumers sometimes encountered difficulty obtaining a refund from the trader.

A number of consumers were dissatisfied with the quality of the online purchase. For example, the goods might differ from their expectations, or in a disproportionate number of case, consumers suspected they had received counterfeit goods. The other issues involved were: cosmetic products received were past the sell-by date, there was an order mismatch, or they were unable to redeem vouchers (from a group buying website).

Some of these complaints were against businesses run by individual or micro-businesses, sometimes operating through a social media or platform. In these cases, consumers need to be careful about verifying the credentials of such sellers, such as checking the identity of the seller and the credibility of the reviews, if available.

Food and Beverages

The majority of complaints related to buying food and beverages through online channels. These stemmed from unsatisfactory order fulfilment (38%), followed by questionable sales practices (15%). Most of these cases related to consumers who bought packaged food from online shops or through restaurant coupons from a group buying website, and were unable to redeem their order.

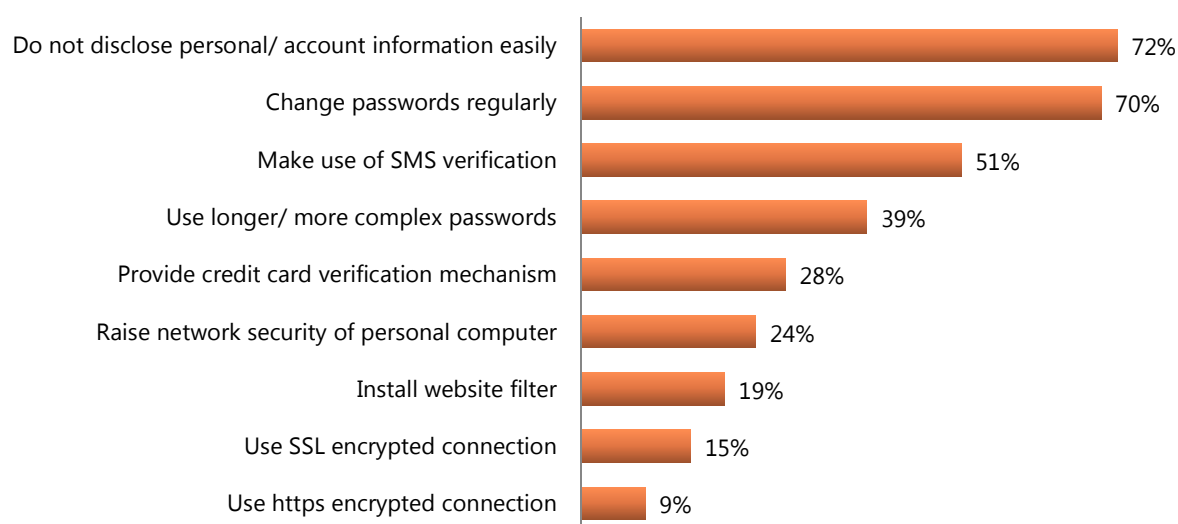
The vouchers offered by group buying websites for restaurant reservations can typically only be redeemed within a limited window of time, and customers are required to make an appointment several days in advance of their bookings to redeem the voucher. Consumers were often unable to redeem the vouchers before the expiry date because the restaurant was either fully booked or they could not reach the customer service hotline.

A handful of cases were against traders that offered an online food delivery service. These cases are essentially the same as traditional telephone ordering based food delivery models. All that has changed is that the ordering process has shifted online with the rest of the process unchanged from before.

2.7 Protection and Risks

Non-online shoppers have reservations about disclosing their personal information online. Figure 18 shows the safety measures that online shoppers are aware of to prevent leakage of personal data. The most widely suggested safety measure they were aware of was not to easily disclose personal/ account information (72%) and changing the password regularly (70%). Effective approaches like using encrypted connections or providing credit card verification were seldom mentioned.

Figure 18: Safety measures to help online shoppers prevent leakage of personal data (n=605)



The Council was interested in the extent to which online consumers took active measures to assure that their personal data were protected during an online retail transaction, against problems like identity theft. The Government conducted a survey on Internet and personal computer users in 2015 and found that 2.7 million persons aged 10 and over who had a PC had carried out security measures for their PC, constituting 87%

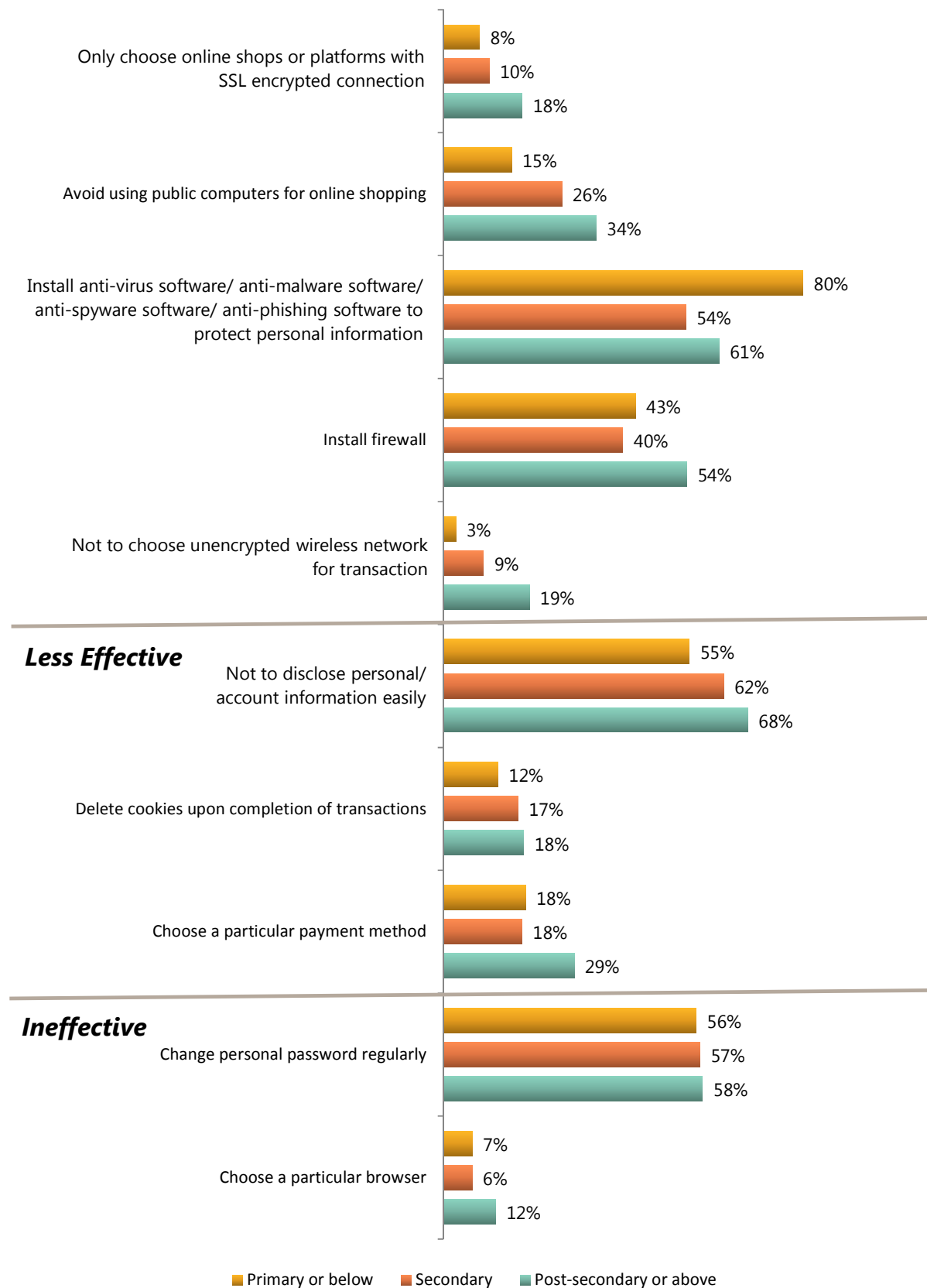
of all persons aged 10 and over who had a PC in Hong Kong. Among them, 93% had installed antivirus software and updated the software regularly, and 93% had installed a personal firewall. Other security measures they taken included "regularly scanning computer with antivirus software" (77%), "regularly backing up files" (75%) and "regularly installing a security patch" (74%)³².

In the survey, online shoppers were also asked about the protection mechanisms they adopted. The information obtained was discussed with an online security expert and listed in accordance with their opinion on degree of effectiveness. The most commonly adopted protection mechanisms by online shoppers were "install anti-virus software/ anti-malware software/ anti-spyware software/ anti-phishing software to protect personal information" and "not to disclose personal/ account information easily". There was a degree of variation in consumers' response depending on their level of education. Interestingly enough online shoppers educated to primary level take more effective measures to protect themselves, compared to shoppers with secondary and post-secondary education. Nonetheless, online shoppers have overall adopted less effective and ineffective mechanisms, thereby exposing themselves to a degree of risk. In fact, those with primary or below education tend to rely on software/ firewall, i.e. third party, to safeguard themselves, but they are less able to make use of other protection mechanism, such as avoiding using public computers for online shopping or not choosing unencrypted wireless network for transaction. In contrast, the more educated shoppers were more reluctant to install anti-virus software but simply chose to behave cautiously.

Contrasting the findings of the Government survey against those of the Council, it seems that the Council's respondents who conducted online shopping are less aware of the security measures against any threats from their browsing or purchasing over Internet.

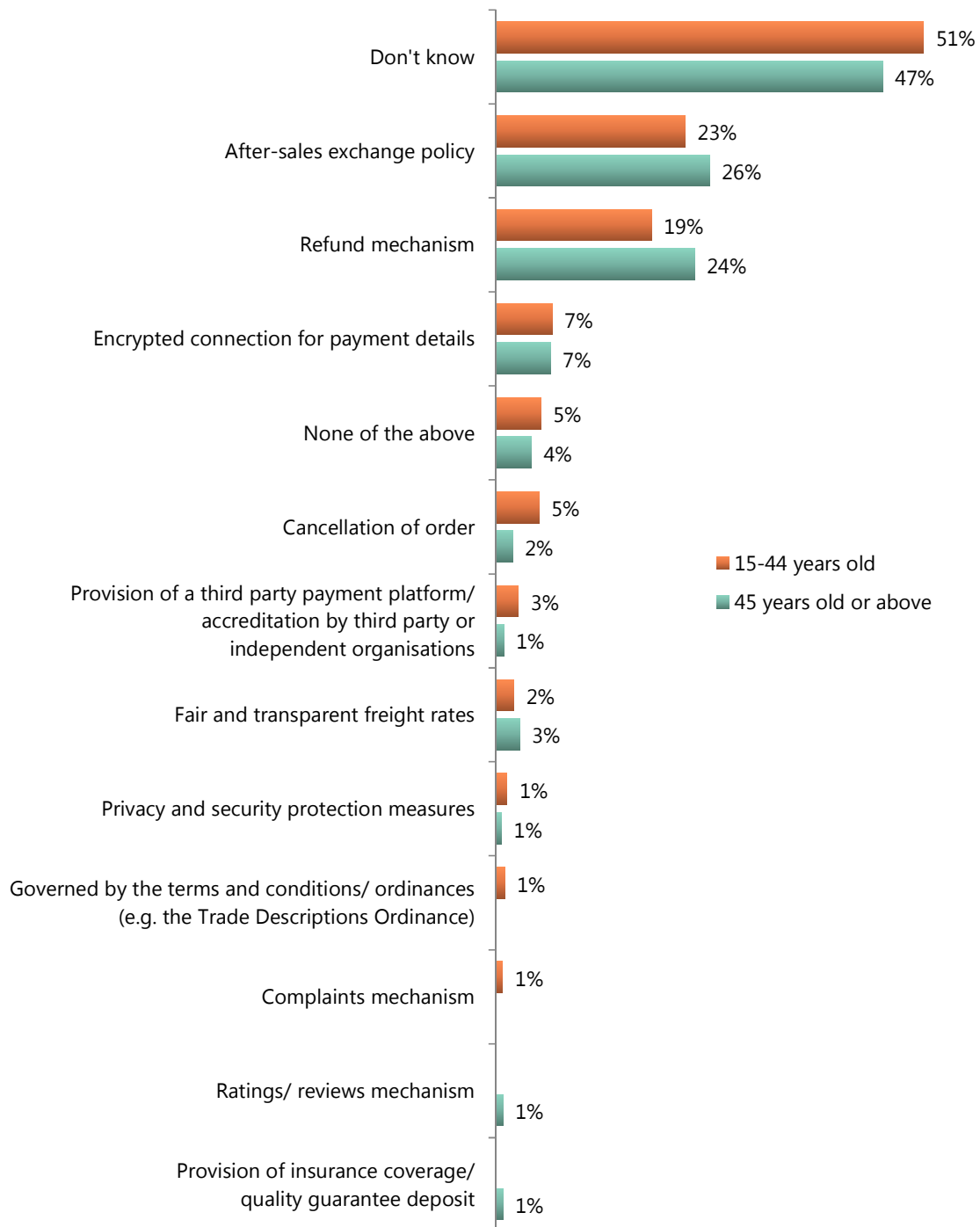
³² Census and Statistics Department, (2016). *Thematic Household Survey Report No. 59* [online] Available at: <http://www.statistics.gov.hk/pub/B11302592016XXXXB0100.pdf> [Accessed 19 Sep. 2016].

Figure 19: Types of consumer protection mechanisms adopted by online purchasers (n=605)



Online shoppers were asked about their awareness of consumer protection mechanisms adopted by online shops or platforms. Around half of the online shoppers (aged 15 – 44: 51%, aged 45 or above: 47%) indicated that they do not know about consumer protection mechanisms set on the trade's side which shows that they have a fairly weak understanding about how they can be protected. The older age group tends to have a higher level of awareness of an after-sales exchange policy (26%) and a refund mechanism (24%) than the younger age group (23%, 19%).

Figure 20: Types of consumer protection mechanisms adopted by online shops or platforms perceived by online shoppers by age (n=605)



Over half of the online shoppers were aware of the relevant terms and conditions (52%). Among those who were aware, nearly half of them would read a certain portion of the terms and condition (48%), and surprisingly around two-fifths claimed they would read all the terms and conditions (43%). Only a very small portion of online shoppers do not read the terms and conditions (9%) and of these 81% claimed the length of terms and conditions makes them reluctant to go through them all.

A vast majority of online shoppers claimed that the reason they read the terms and conditions was to safeguard their rights. Figure 21 shows that younger online shoppers (aged 15 – 44) (75%) were twice as likely as that of the older online shoppers (aged 45 or above) (37%). This is not consistent with the old age group that is more aware of after-sales exchange policy and refund mechanism mentioned in previous section. Similar results are found when shoppers are categorised according to their economic status. Four-fifths of the economically active online shoppers wanted to safeguard their rights by reading terms and conditions (78%) while only one-third of the economically inactive shoppers think the same (32%).

Figure 21: Online shoppers who read the terms and conditions to safeguard their rights (n=247)

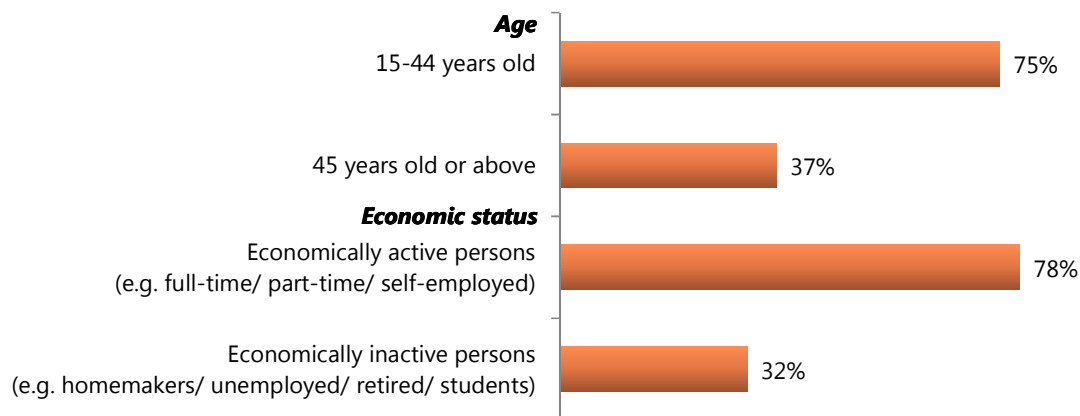
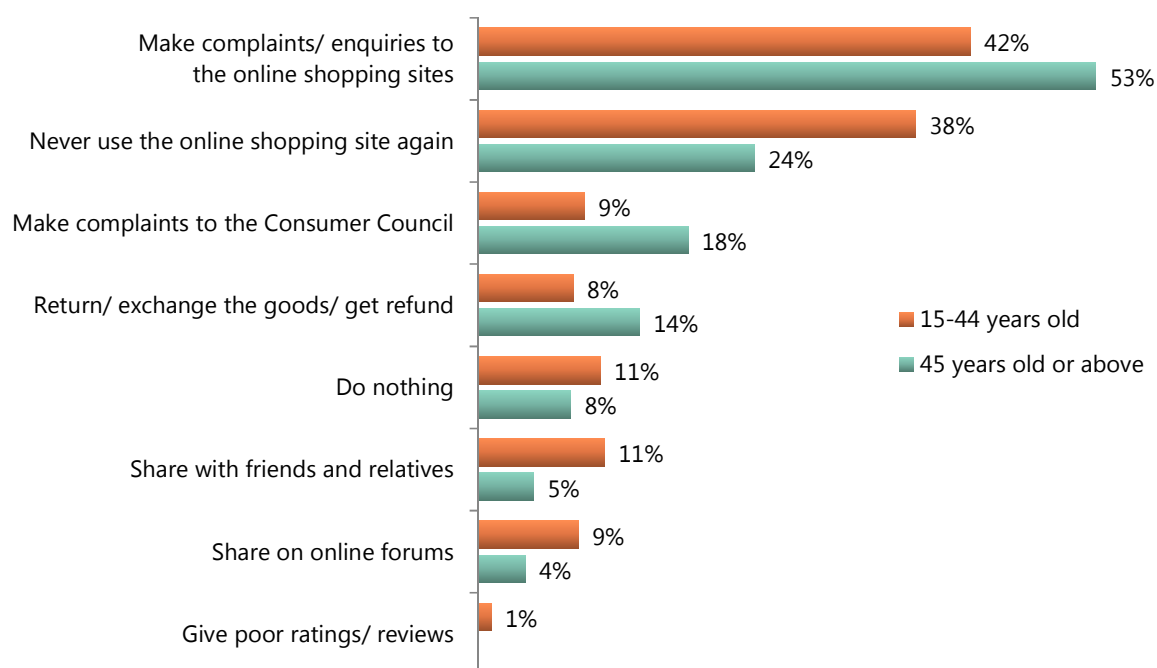


Figure 22 shows online shoppers' most common reactions when they are dissatisfied with an online purchase experience, i.e. making complaints/ enquiries to the online shopping site (53% of 45 and over shoppers and 42% of younger shoppers). Making complaints to the online retail sites and the Consumer Council is less common for younger consumers. It can be hard to contact an overseas trader and it is worth noting that some consumer organisations have signed up to a memorandum of understanding which facilitates cross border dispute settlement. In these circumstances consumers can make their complaints to the consumer organisation where the online shop is registered or where they reside. 38% of the younger age group (15 – 44 years old) stated they will never use the online retail site again which is significantly higher than that of the older age group (45 years old or above) (24%).

Figure 22: Online shoppers' actions to be taken in response to dissatisfying online purchase experience by age (n=605)



10% of young consumers will spread news of their bad experience through social media, and this may have an impact on the reputation of the online shop. According to the findings of a UPS Report³³, one quarter of Hong Kong consumers would complain on social media or post a photo on social media when dissatisfied with a purchase. On other hand, 3 out of 10 shoppers who are satisfied with their purchase would promote the brand/ product on social media and 56% of shoppers say their purchases are influenced by social media in Asia.

³³ United Parcel Service of America, Inc., (2015). *UPS Pulse of the Online Shopper – A Customer Experience Study*. [online] Available at: <https://www.ups.com/media/en/2014-UPS-Pulse-of-the-Online-Shopper.pdf> [Accessed 19 Sep. 2016].

Chapter 3 Business Setting and Trade Practices of Online Retailers

Highlights

Consumers purchase goods and services either from online shops or from platforms with many different merchants, for example the Taobao. Globally, the majority of the largest online retailers by revenue are platforms. The Council interviewed traders and examined online retailers in four sectors to better understand trade practices in the following sectors: Airlines and Travel; Food and Beverages; Clothing and Beauty Care; Computer and Electronic Products.

While most consumers are highly satisfied with online retail, some structural issues in online retail raise concerns. Websites sometimes give a misleading impression of a business's geographic location and hence the likely delivery times and applicable jurisdiction. The complexity in the commercial arrangements between platforms, merchants and delivery companies could cause problems by making it difficult to resolve complaints or because errors or delays occur when data is passed between parties.

There are also sector specific issues in the marketplace. In the airline and hotels sector –OTAs already have a large share of the travel booking market and could be exerting considerable market power over smaller hotels and might restrict their ability to market rooms at lower prices. Price comparison sites can provide incomplete information about air ticket prices preventing consumers making well-informed decisions.

Online retail is less developed in the food market but cooked food ordering and delivery companies are beginning to increase. Food manufacture, transport and the retail regulatory system are highly conducive to maintaining high food hygiene standards. It is important that online food companies observe the same standards. Challenges for the sector are allocating responsibility between the restaurant/ store and the delivery company when the customer finds that the food arrives in an unacceptable condition or unacceptably late.

3.1 Different Online Business Models

The major online retailers are global players. In terms of market penetration (as opposed to value sales), as measured in global Internet reach, there are five dominant players (Alibaba, Amazon, eBay, JD and Apple). Chinese company Alibaba.com was ranked first with a 24% global reach whereas the top retailer (in terms of turnover) Amazon was ranked second with a 22% global reach in 2014³⁴. Of the top 20 largest online retailers in terms of sales revenue in 2014³⁵ nine are US companies, four are British, three are Chinese, two are German, and the remaining two are Brazilian and French. In the online retail environment, consumers can make purchases from either *vendor-specific online retail stores* (or online shops) and *online marketplaces* (or platforms). Amongst the top 20 largest online retailers by revenue 18 are platforms and 2 are shops.

³⁴ The Statistics Portal, (2014). *Global market reach of the largest online retail and auction sites in May 2014*. [online] Available at: <http://www.statista.com/statistics/274709/worldwide-audience-reach-of-online-retail-and-auction-sites/> [Accessed 7 Jul. 2016].

³⁵ The Statistics Portal, (2014). *Leading e-retailers worldwide in 2014, based on retail revenue (in million U.S. dollars)*. [online] Available at: <http://www.statista.com/statistics/287950/leading-e-retailers-worldwide-based-on-revenue/> [Accessed 7 Jul. 2016]. – excluding Alibaba due to lack of proper data.

A *vendor-specific online retail store* (or online shop) may originate from an established physical counterpart, such as some well-known brands like Gap and Apple. Retail stores that retain both online and on-street can provide breadth of stock through the online business environment and also provide personalised and physical customer services through outlets to maximise sales and improve the customer experience. Such mixed models are sometimes called online-to-offline business models. Many established brands have built online stores to project their on-street brand, such as Calvin Klein and McDonald's, while retaining exclusive control over the logistical chain. Operating both channels does however incur high investment costs. Another option is for a retailer to operate an online only model, without any physical stores to order to avoid the high cost of Hong Kong retail space.

An *online marketplace* (or platform), such as Amazon and Tmall, is akin to a department store or shopping mall in the sense that it aggregates products or services from multiple third-party vendors. Some supermarkets for example Tesco and Walmart and some department stores like John Lewis and Home Depot have developed their own online platform businesses.

In the online marketplace most business processes take place digitally without human intervention and the physical handling of the product. It occurs in fulfilment centres far from the customer. The commercial arrangement between the platform and the merchant differs between platforms, and within a single platform between traders. Some platforms charge a fixed fee plus transaction-based commissions. Some platforms also provide ancillary activities along the value-added chain, such as delivery/ fulfilment. Small-and-medium sized manufacturers and retailers that lack the expertise or resources to manage their own websites will rely on the online platforms to host their products and services and help conduct transactions online.

The rise in online platforms has benefited traders and consumers by reducing the search costs of matching seller to buyer. Online shops would prefer customers to be loyal to their websites but often rely on third party online platforms to drive the traffic to their own websites. Engagement of third-party online platforms may give rise to problems that would not arise if the traders were solely responsible for the entire supply chain. However, the involvement of an online platform can increase security and privacy concerns, as the sensitive information about consumers is held on multiple customer information databases, thereby increasing the risk of compromise. Abuse or criminal use of customer databases, unlike credit card fraud, can impact vast numbers of customers simultaneously unlike fraud undertaken by a single merchant.

Peer-to-peer reviews have grown rapidly and are widely used. Social media and online reviews have significant impacts on how consumers view an online shop and its products. Consumers rely more on what other consumers say about a trader than on what the trader itself claims. At present the use of social media by the retail trade is relatively underdeveloped, but a new generation of online shop is becoming more adroit at using the tool. This topic is not covered in this report but could merit further study in the future if its use increases or if there is evidence it is causing consumers significant problems.

3.2 Differences in Trade Practices between Online and Offline

Consumers making purchases with online retailers and physical stores may be unaware of important differences between the two channels. Unbeknownst to the consumer, aspects of the business process might be outsourced to third parties without the consent of, or sufficient notification to consumers. The contractual obligations on the third party to the consumer usually differ from the obligations between the online retailers and their customer.

Consumers can also form their views about online shops through advertising, information on the online shop's website, price levels, as well as the website's ease of use. Post-purchase processes like delivery, order fulfilment, refund and exchange and after sale services, also influence whether consumers' expectations are met.

Most consumers still predominantly shop in physical stores. The trade practices of physical stores are therefore experienced on a regular basis by consumers. The implicit rules and norms that facilitate transactions and ensure consumer interests are protected are well understood. The same is less true of transactions conducted online or through mobile applications. Consumers may assume rules and norms found in the physical marketplace apply to the online environment, and fail to appreciate important differences with online business models. This point is explained further below.

3.3 Differences in Trade Practices between Online Sectors

In 2015 the Council received 3,466 complaints related with online retail. Most of them arose from the following sectors: (1) Airlines and Travel, (2) Food and Beverages, (3) Clothing and Beauty Care, and (4) Computer and Electronic Products (as shown in Chapter 2). This chapter focuses on the trade practices of online shops supplying these four categories of goods and services.

The Council had hoped that interviews with a representative number of online retailers from each of these four sectors would provide valuable information about the competitive market scene and the retailer's trade practices. Around a 100 invitations were sent to online retailers including both online shops and online platforms. Despite repeated attempts to reach out to these traders, the response rate was low and uneven across the four sectors, with no or few interviews obtained from the selected sectors. The number of interviews³⁶ conducted for the various groups were:

1. Airline and Travel: five airlines, three hotels, three travel agencies and one regulatory body;
2. Food and Beverages: three restaurants, two supermarkets, two traders of fresh food and one delivery agent and one representative association;
3. Clothing and Beauty Care: one trader and one representative association; and
4. Computer and Electronic Products: four traders.

For those online sectors where the Council secured few or no interviews, the Council conducted desktop research and obtained evidence from the retail websites. This

³⁶ The majority of interviews are conducted face-to-face, with one over the telephone, and five by return of questionnaires.

involved reviewing the promotional and marketing information and terms and conditions. The purpose of such "sweeping" was to complement the information acquired from the interview. Inevitably it was different. Only limited information was available on the websites, and some information about speed of delivery, refund practices and complaint handling, was not available from websites that were "swept" where no transaction were carried out.

To address these weaknesses the Council decided to deepen its understanding by actually purchasing items from 15 traders to observe and experience their post-purchase processes with a focus on the delivery and returns processes.

Table 1: Number and manner of engagement with online retail stores

	Travel and Airline	Food and Beverage	Clothing and Beauty Care	Computer and Electronic Products
Invited for Interviews	30	30	20	20
Interview alone	11	8	1	1
Interview and purchase	0	0	0	3
Sweeping online shops only	0	8	3	0
Sweeping and purchased	0	0	11	1
Firms engaged (total =47)	11	16	15	5
Specific online retail shops	11	13	12	0
Online platform	0	3	3	5

3.4 Council's Findings across Sectors

The Council's interviews suggest that consumers should expect differences in levels of support between online and on-street customers with more personalised support available to on-street customers. Online customers have similar information to on-street customers but the shopper has to browse the site to find the information³⁷ and to read all the applicable terms and conditions³⁸. Some interviewees told the Council that online consumers were experienced shoppers and did not need so much direct customer service. An airline told the Council some passengers were highly adroit in acquiring quota-sensitive fares. They then shared their experience and tactics with others over online chats. Those less familiar with such tricks and tactics were crowded out of the discount offers and had to pay a higher price.

³⁷ Average time needed to get the Yes/No to 33 questions from 27 online shop sites.

³⁸ It was demonstrated that taking 33 hours to read the terms and conditions when agreed to be a member using some mobile applications. Source: Telegraph Media Group Limited, (2016). *Consumer campaigners read terms and conditions of their mobile phone apps... all 250,000 words*. [online] Available at: <http://www.telegraph.co.uk/technology/2016/05/26/consumer-campaigners-read-terms-and-conditions-of-their-mobile-p/> [Accessed 19 Sep. 2016].

Lack of Transparency about Trader's Geographic Location

It is important that consumers are fully aware of the geographic location and legal jurisdiction governing any online transaction they make. If a dispute occurs with an overseas trader it could escalate to a contractual dispute between parties in different jurisdictions. It is important that the domain of the sites of any online retailer ending with .hk or .com.hk or using any "Hong Kong", "HK" or other similar term to describe itself, provides a geographical address, a local business registration number and details of any applicable licences if, for instance, it is a food seller. All of the 47 sites that the Council interviewed or swept did business with consumers in Hong Kong. Thirty of these online retailers' websites used the domain ".hk" or ".com.hk" to state they are related to "Hong Kong", while the rest of them mentioned in their website that they are a Hong Kong company or provided a Hong Kong address.

Third-party Platforms

To improve traffic to their sites, some traders (especially small-sized traders) use third-party platforms to market or sell their products and services, supplementing the modest traffic their online retail sites generate on an independent basis. All eleven travel and airline online retailer interviewees use online platforms to resell or market their products or services. Some traders selling quality products or services expressed the view that certain third-party platforms are targeting the budget-conscious segment of the market, which is not their customer base. Some viewed the online platforms as becoming more of a competitor than a partner. In particular, platforms tend to guard information about the consumer, and will not share contact details or even the name of the customer with the trader. In the case of airlines the airline might not know the identity of the passenger until they check-in.

Only one online food and beverage retailer (out of 7 interviewees) used online platforms. While the type of engagement with third-party platforms varies among traders, the relationship can give rise to problems to consumers that are not found if the trader were solely responsible for the supply chain. For instance, discrepancies occur in pricing and information about the products between online platforms and online retailers which can confuse consumers.

Third-party Links

Customers making an online purchase are sometimes redirected to third-party providers to purchase ancillary services. These third-party links can be useful as they provide consumers with easy access to useful extra products. For example, *travel insurance* to cover a newly purchased holiday. It must be borne in mind that in such cases, customers are contracting directly with the destination website to which they are redirected. In the course of interviews, some originating service providers were explicit in stating that they would not be responsible for any disputes between the customers and the third parties.

Ambiguities and problems may arise if there is no clear indication to the customer that they are being redirected. Inexperienced customers may simply be unaware that they are no longer contracting with the originating service provider. They may therefore not feel the need to read the terms and conditions of the destination website. None of the interviewed companies said they had links to third-parties. The same was not true of swept sites: 5 sites (out of 26) had third-party links.

Privacy and Right to Be Forgotten

According to the consumer survey, 30% of the non-online purchasers express worry about leakage of personal information, which inhibits them from using online retail. Only 11 out of 26 online sites allowed users to opt-out of their personal data being shared with associated companies; 8 out of 21 interviewed companies claimed they allow opt-out. Most of the engaged online retailers have visible privacy policy.

A couple of interviewees and two-thirds of the swept sites (20 out of 47) required membership registration before proceeding to online purchase. Most firms (38 out of 47) allowed customers to refuse receiving promotional material. It is unclear what use the remaining 9 firms made of any customer data they collected; and only six online retailers explicitly mentioned how quickly they would delete customer's personal information after cancellation of membership.

Payment

Restrictions on payment methods can limit participation in online purchases. All but three accepted credit card payment, but only 20% of the online retailers accepted cash on delivery, bank transfers or cheques. Very few interviewees mentioned they used separate payment gateways or forwarded consumers to separate payment gateway sites.

Price Display, Delivery Arrangement and Refund

All interviewees said that they adopted a uniform pricing policy and do not discriminate between different online consumers by using algorithms to profile individuals. Prices of items were evident on 26 websites but some extra charges, such as delivery, handling, fees and taxes were not apparent at the initial stages of the transaction. Only 6 out of 26 online sites explicitly stated they used third party delivery agents. From the 15 purchases undertaken, it was observed that all delivery services are actually contracted out.

For 15 purchases the Council made, 8 did not offer refunds or only offered refunds with restrictions, such as credit card refund, or only allow refund if the good was acknowledged by the retailer as being sub-standard. The refund policy of the remaining 7 online retailers was very clear and the procedure was user-friendly. Money was credited back to the credit card within the same month.

Peer-to-Peer Reviews

Peer-to-peer reviews are now common and are influential. Consumers often have more confidence in other consumer reviews than the trader's own claims. According to the on-street survey, over half of the respondents would consider reviews (54%) and sellers' ranking/ scores in online retail sites (52 %) before making online purchases.

Amongst interviewees, most (42 out of 47) use social media such as Facebook or Instagram for online marketing. In their use of social media almost all traders (24 out of 26) allow users to leave comments on the page. Many companies out-source the management of the feedback to the third party but some manage their own Facebook pages. None of the retailers interviewed said they paid for "likes" or positive reviews.

Courier and Package Consolidation Services

The popularity of online platform, especially Mainland platforms, has created demands for package consolidation service to reduce postage/ courier costs. The Council carried out a survey of nine package consolidation service providers from Mainland to Hong Kong³⁹. The findings unveil varying practices in courier, storage and delivery charges, and compensation for loss or damage, and the insurance coverage.

- *Courier fee*: Fees are calculated using the higher of the “weight based” and “volumetric” charge rather than just one or the other. This switching in charging basis can cause the price of some parcels to double relative to the alternate basis.
- *Delivery fee*: compensation for loss and damage, insurance coverage and late delivery compensation are not transparent in the market.

There are many sector specific trade practices affecting consumer online purchasing. Selected practices are discussed below sector by sector.

3.5 Council's Findings vis-à-vis the Selected Sectors

Airline and Travel

Consumers already purchase airline, hotel and travel packages or services online. According to the consumer survey reported in Chapter 2, 31% of online retail respondents have purchased air tickets or travel packages⁴⁰ online and 14% of respondents claim that they always purchase online.

In some other jurisdictions, OTAs are overtaking on-street travel agents in popularity. This is not the case in Hong Kong, where offline and online travel agents co-exist side by side. Offline agents are used by many Hong Kong consumers perhaps because many of them value personalised services like packaged tours, or escorted travel. To maintain consumer demand, some travel agents habitually run full-page advertisement in print media such as newspapers to market their packaged tours.

An escorted travel is where travellers follow a pre-determined itinerary, and travel in a group with a tour guide. The appeal of escorted travel is that the planning of transportation, sightseeing, food and entertainment has already been taken care of by the travel agent and the tour company. The package price paid for an escorted tour generally covers most of the necessary expenses for the trip, such as meals, site admissions, transportation and accommodation.

Air-and-hotel booking suits travellers who desire flexibility to manage their own itinerary. Having worked out their own itinerary, consumers very often book their airline tickets and hotels independently from individual service providers and/or through travel agents, online or offline.

³⁹ Hong Kong Consumer Council (2015). 全方位比較內地網購集運到港服務. *CHOICE*, (465), pp.34-36.

⁴⁰ The surveyed categories are air tickets/ travel packages/ hotel booking and travel insurance.

Problems Encountered by Consumers

Customer support services: According to the complaints statistics on travel, grievances about the quality of services account for about a quarter of airline complaints. One of the triggers for grievances is the inability to reach customer support services.

Hotline support: Call centre support is important to online consumers because the value of airline tickets is high, the product has time limited value and because the booking process requires input of a significant amount of information that has to be precise in order to make a valid booking. From the interviews with some airlines, it was found that not all airlines managed their call centres in-house. Some were outsourced to third-party service providers outside Hong Kong, with training provided to the outsourced call centres. It is crucial and expected that third-party hotline staff will be equipped with adequate training, but the complaints statistics suggests that in some cases the service support levels are inadequate. The question to ask is whether consumers are entitled to expect the same level of personalised customer support services, online and offline. At the very least the Council would argue that some basic level of service support should not be compromised.

System capacity: The availability of cheap fares plus promotional offers on a flight is often very limited. The rush to secure these low fares coupled with the website's capacity constraints and user-friendliness can cause consumers significant problems. In its review of complaints against carriers, the Council found consumers sometimes encountered "error page/ no response/ time-out" messages as they were completing a transaction. Such errors were more common when consumers were rushing to secure a promotional offer or a quota-sensitive fare. Consumers sometimes press the "confirm" button repeatedly to ensure they have secured a flight and because the website did not provide feedback the booking had gone through accidentally triggering a second booking. However, if the earlier booking was valid, consumers would then face difficulties in obtaining a refund for a duplicated booking. Airlines which ran promotional offers for discounted tickets, but whose IT systems were not robust enough to support the demand repeatedly caused such problems.

During the interviews airlines remarked they had upgraded their system to reduce the numbers of "system busy" errors during peak times. However a review of recent complaints received by the Council indicated that there is still room for improvement. A carrier intimated that some customers were expert in acquiring quota-sensitive fares. Several passengers travelling together booked tickets simultaneously on different terminals securing a high proportion of the cheap fares, because they realised that the airline restricted how many such tickets could be purchased in a single booking.

Personalised services: The interviews with travel agents focused on those providing packaged tours and advising flexible independent travels (FIT). These have both online and offline operations, to cater for the heterogeneity of client preferences. The proportion of business by value undertaken online varied from a few percentage points to a quarter of the travel agent's business. Aside from these variations, the interviewees indicated that they would expand online sales in the next 18 months responding to consumer demand.

Some of the travel agents offering ticketing services, air-and-hotel services, and packaged tours online and offline said they went to great efforts to create new themes

or itineraries showcasing novel tourist spots, thereby innovating to maintain their offline business. Council's desktop research indicated that the majority of online transactions are limited to ticketing, FIT and some simple packaged tours that do not require personal advice. One travel agent being interviewed claimed that many clients preferred the personal touch, even if they completed the transactions online. The agent intimated that roughly 30% of customers made follow-up enquiries over an offline channel, mainly over the phone for service support after an online transaction.

In comparison to packaged tours, FIT tours and air-and-hotel bookings, the online mode of booking offers less support and a lower level of personalisation. Consumers that use the online mode would therefore need to pay attention to implications, and service providers would need to maintain some level of service support to assist online consumers.

Information display on carrier website: Some consumers are better at using the Internet than others, and it follows that online retail disadvantages less technologically savvy consumers. A user-friendly system helps empower consumers to go online, and will eventually benefit the service providers by reducing pressures on service centres. In the airline industry, one interviewee demonstrated the company's step-by-step booking process which allowed passengers to review their booking during the process, and which also displayed a summary page just before confirmation. The Council considers that such user-friendly displays of information should be the norm for online transactions.

Price display on travel booking site: The Council examined the manner of price displayed in eight travel booking sites in an article in *Choice*⁴¹. Among them, search results of airfares are shown in ascending order by price. Labels like "the cheapest" or "the best deal" are marked next to the top listed options to attract consumers' attention. Nevertheless, four of the surveyed sites displayed fares which excluded fuel surcharge, airport and government duties and other charges, thereby frustrating consumers' effort at comparing prices. Behind the headline rates the taxes and transaction fees are listed in a low-profile way. In previous years the Council has received complaints about the exclusion of "fuel surcharges" from the initially displayed price. As world oil prices have fallen this has become less of an issue. Certain websites display the handling fee only after purchasers have input their credit card details. Thus the final fare is not readily apparent.

Such price display can be misleading. For instance, on one website, the top search result for Hong Kong to Toronto was offered at \$6,958 and the next best was \$10,155. Although the top price in this case looked cheaper it excludes taxes and surcharges which totalled \$6,061. After these were included, the final fare was \$13,019 – higher than the \$12,240 final fare of the price listed as the second lowest.

After the Council's article was published the industry indicated to the Council that the total price, including taxes and surcharge, was their most common way of displaying prices, although a few sites still use air-fare only price. It is a common practice for price comparison sites in other countries, either because of regulations or conventions, that they include all non-avoidable prices such as fuel surcharges, landing charges etc. to

⁴¹ Hong Kong Consumer Council (2015). 旅遊服務網站買機票隱藏收費多. *CHOICE*, (470), pp.42-45.

establish a ranking. The Council is of the view that clear display of prices is important to facilitate consumers shopping online.

The Council also investigated the lowest price guarantees of eight hotel booking sites. Although the sites claimed that if their prices were not the lowest, the price difference with the competing rates would be refunded but many restrictions were imposed. For example, the lowest price guarantee was only available for the booking exactly matching all stipulated terms, including those prescribing the same grade of hotel, room type, bed type, accommodation dates, payment arrangements, etc. If there are any discrepancies, or the website offering a lower price lacks information in any aspect, the claim will be rejected.

Consumers should also be alerted that the listed prices may not fully detail other hidden charges. All eight surveyed sites accepted payments made in Hong Kong dollars. Nevertheless, the terms and conditions of five websites stated that when the hotels are located outside the territory, extra fees may be incurred for cross-border transactions when settling the payment in Hong Kong dollar. However none of these sites detailed the charges in accepting the foreign currency, or the exchange rate applied to convert the Hong Kong payment into the foreign currency.

Travel Industry Compensation Fund (TICF) Protection

The TICF protects travellers by compensating them for losses of outbound fares for group tours and packages. The TICF also provides financial relief under the Package Tour Accident Contingency Fund Scheme to group tour and package travellers who are injured or killed in accidents whilst touring outside Hong Kong⁴². In the traditional mode of booking, group tour travellers should have no difficulty obtaining an original franked receipt, evidencing the payment of levy by licensed travel agents, which is required for application for *ex gratia* payments from the TICF. With online booking made on a travel booking website of a licensed travel agent, package travellers can still obtain an original franked receipt from the travel agent subsequent to online payment.

Flexible Independent Travel (FIT) tours offer travellers some flexibility to choose their itinerary and hotels. They are regarded as outbound travel service if they meet the definition of the same under the Travel Agents Ordinance (Cap 218)⁴³. If a consumer purchases an air-and-hotel package through a licensed travel agent for a journey outside Hong Kong, they would be protected by the TICF. In case of FIT tours booked online, terms & conditions and receipts are all digitised. The Travel Industry Council of Hong Kong (TICHK) encourages these consumers to ask the travel agent to send them a

⁴² In case of loss of outbound fare, e.g. when a licensed travel agent defaults, affected outbound travellers can apply for *ex gratia* payments from the TICF of up to 90% of the outbound fares lost. In case of death or injury of an outbound traveller in an accident arising out of and in the course of an activity provided or organised by the licensed travel agent, the traveller can apply for an *ex gratia* payment of up to \$300,000. Under the Travel Agents Ordinance (Cap 218), an outbound traveller means a person who has paid an outbound fare to a licensed travel agent for an outbound travel service which is comprised of any two or all of the following: (a) carriage on a journey from Hong Kong and thereafter taking place mainly outside Hong Kong, (b) accommodation outside Hong Kong, (c) arrangements for an activity which takes place outside Hong Kong. Applicants are required to produce the original franked receipts issued by licensed travel agents showing that a levy amounting to 0.15% of the outbound fares had been paid by the licensed travel agent.

⁴³ Outbound travel service is defined in Part IIIA of the Travel Agents Ordinance (Cap 218) as one which is comprised of any two or all of the following: (a) carriage on a journey from Hong Kong and thereafter taking place mainly outside Hong Kong, (b) accommodation at a place outside Hong Kong, (c) arrangements for an activity which takes place outside Hong Kong.

copy of the franked receipt immediately and then get the original franked receipt from the travel agent as soon as possible to meet the requirement for the application for TICF. To better meet the increasing trend of online booking, the Travel Industry Compensation Fund Management Board (the Board) is developing a web-based e-levy system which records travel agents' payment of levies electronically without the need to look for a frank on the original receipt.

Two areas of concern are that some OTAs do not hold a Travel Agent's Licence in the first place and consumers who patronise them are not protected by the TICF. A second concern is that the eligibility for TICF protection is conditional on the consumer purchasing an outbound travel service as defined under the law.

The Board, which holds, manages and applies the TICF, notes the changing habits of travellers and has been considering ways to enhance traveller protection, including expansion of the protection scope to cover purchases of single items. Past reviews on such an expansion have shown implications for various areas such as risk exposure, operating cost of the trade, financial position of the TICF and the levy rate. The Board therefore has not changed the protection scope but will continue to study the issue.

Role of the Online Travel Agencies

For the provision of matching services, OTAs generally charge high commission rates. In the interviews with hotels, the large-scale international hotel chains said they were able to draw traffic to their own corporate websites without having to resort to using OTAs. Moreover, the large chains had the market power to impose their own pricing policies on OTAs.

However small-scale hotels indicated they relied on the OTAs for a high proportion of their bookings and the OTAs had some influence on their pricing. The small-scale hotels intimated that some OTAs required best available rate (BAR) contracts from the hotels preventing other OTAs or the *hotels* themselves from displaying lower prices online. The BAR contracts oblige the hotels to support the lowest price guarantee provided by the OTAs, which in turn handicap the hotels from offering better rates in their own websites or to other contracting parties. Some hotels resorted to offering better deals to loyal customers or enrolled members through Email Direct Marketing (EDM). The difficulty for small-scale operators is that they cannot afford to do without the OTAs in order to market their services. They stated that they try hard to divert customers back to their own corporate websites for booking of services by other means.

Hong Kong has enacted the Competition Ordinance (Cap 619) which prohibits an undertaking (a company) that has a substantial degree of market power in a market abuse that power by engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong⁴⁴.

If OTAs are misusing their market power in a way that prevents others from offering consumers lower prices this might raise issues with regard to the Competition Ordinance.

⁴⁴ Competition Ordinance Section 21(1) [online] Available at: https://www.compcomm.hk/en/legislation_guidance/legislation/legislation/files/CAP_619_e_b5.pdf [Accessed 19 Aug. 2016].

Inventory Control

Traditional mode of reservations: The Global Distribution System (GDS) is the name of the databases that can be directly accessed by larger travel agents which contain real-time information on the availability of space on participating flights, or rooms in hotels that are linked to the databases. The GDS is indispensable for airlines and hotels to ensure real time access to their inventory for reservations made by travel agents.

The GDS allow customers, through the OTA or travel agent, anywhere in the world to book hotel and airline services. According to some interviewees, small-scale travel agents do not have the financial solvency to offer bank guarantees to airlines for making real-time bookings using GDS. They must rely on wholesale agents to provide ticketing services. As such, the ticketing services are provided offline and cannot provide immediate confirmation when a booking has been secured. Similarly, hotel inventories are not accessible by some travel agents, so the hotel assigns a pre-allocated number of rooms to different agents for them to market. Therefore, there is no real time inventory control by the hotels.

Online business model: For airline bookings, there is a trend towards direct online links between OTAs and airlines to facilitate bookings, allowing transaction in real time. For the hotel industry, some hotels are connected to some OTAs' databases allowing real-time interrogation of room availability. Some hotel reservations are still on an on-request basis, subject to confirmation. Again, there is no real time inventory control by the hotels.

The trend towards direct link enables OTAs to transact customers' air bookings in real time. However, some hotel reservations are still transacted under pre-allocated number of rooms, or otherwise are subject to the hotel confirmation. The Council considers that consumers should be alerted of any time lags in hotel bookings, especially in case of small-sized hotels.

Allocation of Responsibility

Fragmentation of a service in airline and hotel booking gives rise to the issue of divided responsibility. The handling of refund of air and/or hotel fares (full or partial refund for whatever reasons) between the ultimate service provider and booking agent, follows the principle of booking origin. That is, the first point of contact for the refund is the booking agent. Airlines and hotels are generally responsible for all services-related complaints (not involving disputes in fares) regardless of booking origin. From the interviews, some carriers and hotel operators suggested that they, as the ultimate service providers, would help accommodate order fulfilment disputes that arise between the customer and a booking agent.

Food and Beverages

Food and beverages cover both dine-in or delivered meals and purchase of packaged foods (fresh or processed). In the case of dine-in meals, few restaurants allow consumers to make reservations online as online booking is more common for delivered meals. Another online option is the provision of a discount dining coupon, where the consumer has to make an appointment with a designated restaurant within the coupon's validity period. In case of packaged foods, only the ordering process is digitised, with product and delivery remaining substantially the same for online and offline. At present all but two interviewees in the Food and Beverages sector have less than 10% of their sales (by

value or volume) conducted online. Most of the interviewees have plans to expand their presence online within the next 18 months. This is to keep pace with the perceived changes in consumer demand, and to take advantage of the round-the-clock availability of online transactions.

The consumer behavioural survey results indicate that 28% of respondents have past experience of purchasing food and beverages online. Of these online purchasers, 20% of respondents claimed that they always purchase food and beverages online, and the rest sometimes purchase online. Consumers also expressed confidence in online purchase in this sector.

Licensing Requirements

The Council interviewed an association for catering management firms. In the interview, discussions covered several different types of licence. It was noted that the manufacture, distribution and sale of food must conform to the prescribed standard for the company in order to be granted a licence or permit. The licences are regulated by the Director of Food and Environmental Hygiene (DFEH) under the Public Health and Municipal Services Ordinance and other relevant legislation⁴⁵. The existing licensing regimes covered all food businesses as defined under Section 4 of the Food Business Regulation, Cap. 132X including online sale of restricted food. The basic licensing framework for off-premises consumption and storage is as follows:

A *food factory licence* is required for any food business that involves the preparation of food for sale for human consumption off the premises. A *cold store licence* is required for any food business that involves the storage of articles of food under refrigeration in any warehouse in Hong Kong. A *frozen confection factory licence* is required for any food business that involves the manufacture of any frozen confection such as soft ice cream. A *composite food shop licence* covers the sale and preparation for sale of various specified types of simple or ready-to-eat foods that do not involve complicated preparation. *Restricted food permits* are required from FEHD for the sale of restricted foods specified in Schedule 2 to the Food Business Regulations, including sashimi, sushi and oysters to be consumed in a raw state. Retail eateries are regulated either by *general restaurant* licences or more restrictive *light refreshment restaurant* licences. Shops with *fresh provision shop licence* can sell many kinds of food including fresh, chilled and frozen beef or fish.

In the course of surveying more than 40 local online shops which sell fresh food in 2015, the Council's staff looked into the food categorisation, terms of service and delivery arrangement. Difficulties were observed in distinguishing from the shop's information and claims whether the shops had obtained a relevant licence, permission or registration. Of the online shops surveyed, some claimed to have a "Food Factory Licence" or "Food Factory Environmental Hygiene Licence"; some claimed themselves to be food importers, dealers, etc.; others did not provide any information on whether they held any relevant licences or permission. Licensees/ permittees are required to disclose on their websites information about their licences or permits. Consumers can access through FEHD's website to verify whether the food supplier is covered by a valid food business licence or permit through online search by address, shop sign or licence numbers.

⁴⁵ Food and Environmental Hygiene Department (FEHD), (2016). *Guide on Types of Licences Required*. [online] Available at: http://www.fehd.gov.hk/english/licensing/Guide_on_Types_of_Licences_Required.html [Accessed 1 Sep. 2016].

New Licensing requirements: The Council is aware that, in the first quarter of 2016, the Food and Environmental Hygiene Department has implemented new measures applicable to online food traders. Traders selling "restricted foods" online without physical premises can apply for permit to conduct online sale. They are required not to tamper the package during the transportation and the permit does not allow traders to store and prepare food in the place where online businesses are conducted. Otherwise, different permit or licenses are needed. They are also required to maintain proper storage temperature of food at all times during delivery. For instance, both chilled meat and sashimi should be kept between 0°C and 4°C.

Online "restricted foods" traders are required to display their permit numbers, types of restricted food permitted for sale as well as a business address on all websites and publicity materials⁴⁶. The same requirements also apply to premises with food business licences/ restricted food permits that sell online at the same time. This is similar to the Food Safety Law of Mainland China⁴⁷ which is applicable to the online environment and came into effect in 2015. The Law stipulates that the online food platform must provide the name, address and effective contact information of the individual retailer and ensure that the food manufacturer is traceable.

Delivery Mechanism

In-house or contracted-out logistics: Besides the issue of licensing, the delivery system is another key area of concern. The Council interviewed a small number of online food vendors, and all except one also had physical retail stores. From the interviews, it was observed that many caterers contracted out the food delivery to third-party companies. A few interviewees retained the food delivery process in-house. One interviewee selling frozen food had its own refrigerated vans for delivery. Its services were occasionally supported by contracted third-party vans to cater for peak demand. However, a news article published in the South China Morning Post (SCMP)⁴⁸ suggests that the demand for refrigerated vans exceeds the supply in Hong Kong, and that the cost in engaging refrigerated vans is three times higher than for ordinary trucks. There are cases where companies deliver frozen food in trucks without refrigerating facilities, but possibly utilise dry ice packs.

Chilling/ freezing arrangement: The online shops differ from each other in the practices of keeping fresh food chilled or frozen for delivery. Of the 40-odd online fresh food shops surveyed, only 11 clearly detailed the chilling/ freezing arrangements for delivery. For example, "chilled goods will be kept at 10°C or below" or "frozen goods will be kept at -15°C". Some stated that the food would be packed and delivered in an isothermal bag with an ice pack. The others claimed that food would be delivered by an in-house refrigeration fleet or a courier company offering a low-temperature/ frozen food delivery service. Apart from the intrinsic quality of the product itself, the manner in handling each

⁴⁶ Food and Environmental Hygiene Department, (2016). *Application for permits for online sale of restricted foods (effective on 22.2.2016)*. [online] Available at: http://www.fehd.gov.hk/english/licensing/online_permits_notice.html [Accessed 19 Aug 2016].

⁴⁷ The National People's Congress of the People's Republic of China, (2016). *中華人民共和國食品安全法*. [online] Available at: http://www.npc.gov.cn/npc/zfjc/zfjcelys/2015-04/25/content_1992458.htm [Accessed 17 Aug. 2016].

⁴⁸ Cheung, E. (2015). Online food trade in Hong Kong set for new guidelines following food scandals, *SCMP*, [online] Available at: <http://www.scmp.com/news/hong-kong/health-environment/article/1886282/online-food-trade-hong-kong-set-new-guidelines> [Accessed 8 Jul. 2016].

step from ordering to delivery, including packaging and chilling/ freezing during transport, may affect the food quality and condition. All these are inter-related and improper handling in any step will increase the risk of food deterioration.

Food contamination: Prolonged storage of food at room temperature may allow pathogens to grow and produce toxins. Online food sales came into the spotlight in 2015, when more than 80 people fell ill and some of them were diagnosed with salmonella poisoning after eating the Taiwanese brand of Horng Ryen Jen sandwiches bought in Hong Kong or ordered online. In Hong Kong, the Food Safety Ordinance (Cap. 612), provides new food safety control measures, including a registration scheme for food importers and food distributors and a requirement for food traders, online or on-street, to maintain proper records of the movements of food to enhance food traceability. The law also empowers the authorities to make regulations for tightening import control on specific food types and to make orders to prohibit the import and supply of problem food and order the recall of such food.

Preservation of quality: The caterers interviewed claimed that they limit the quantity of food delivered in each run to preserve food quality. Some caterers occasionally engage on-demand delivery vans to supplement peak demand. When on-demand delivery vans are required, one interviewee arranged its staff to ride on the van for delivering food to customers, to ensure food quality and safety. For caterers who rely exclusively on third-party delivery agents, they enter into a long-term relationship with one particular logistic partner to ensure reliability of service.

Delivery agent's added value: A small-scale caterer intimated in the interview that it not only relied on some delivery agents for food delivery, but also made use of the agents' platform to collect orders and follow through the logistics. The small-scale caterer, concentrating on its on-premises business, benefits from the delivery agent's on-line ordering system for managing capacity.

A small-scale supermarket chain intimated that it has an established relationship with a delivery agent, who is reliable in handling packaged food. More recently, it entered into cooperation with an online platform for handling logistics and customer support. Its delivery team is equipped to handle fresh food, not only packaged food. Based on clients' purchase history and preferences, this online platform makes relevant recommendations. There was a noticeable surge in sales right after the online platform's launch of promotional activities. The online platform retains its customer databank and does not share it with cooperating partners. Through customer acquisition, the delivery agent's business seems to have recorded an exponential growth over just a few years.

Best price guarantee: Two delivery brands for cooked meals were interviewed. They provide marketing services for free and derive their income from commissions on successful orders. Partnering restaurants are required to provide them with the best price guarantee, such that any dining-in promotional offer applies also to delivery. The delivery agents ensure adherence to the agreement by random checks.

Consumer demand: The delivery agents find it challenging to satisfy demand during peak hours. One of them stated it hires part-time riders and takes scheduled online mass orders in advance. The other said it employs full-time employees to handle all the logistics, from acquisition of partnering restaurants, online display of menus, promotional offers, handling of orders, scheduling of riders, to dispute resolution with

customers. It is expected that the delivery agent may not get the best cooperation from restaurants. In case of constraint on capacity, restaurants normally priorities serving dine-in customers over delivery orders. As regards customer grievances, the Council found that some customers complain about late deliveries over online chat rooms.

Consumer complaints: According to the delivery agents, the most common reasons for complaints are the meals arriving late or cold, and orders being mismatched. One delivery agent told the Council that it would try and resolve problems with customers and offer them cash coupons for the next purchase if they experienced poor service. It formed the impression that the cash coupons somehow induced unjustified complaints from some customers. The Delivery agents informed restaurants of any complaints received against them, but rarely took action against the restaurants even if many complaints were raised against them.

Clothing and Beauty Care

Clothing and beauty care covers online purchase of clothing, cosmetics or skincare products. Despite the fact that consumers use all their senses – touch, smell, sight – to decide which product to buy non-branded clothing and beauty care products are popular with online shoppers. From the Council's interviews, consumers evidently feel confident relying on size and colour charts to select clothes when making purchases online. In the case of cosmetics or skincare products, most consumers who buy online are either regular users of those branded products or they test products in physical stores before making purchases online.

In terms of prevalence, clothes and accessories are the most popular online purchase sector. In the Council's behavioural survey, 73% of the respondents bought clothes and accessories online in the last year. Of these purchasers, 23% of respondents claim that they *always* purchase online, and the rest (77%) *sometimes* purchase online.

Multi-channels in the sales of beauty products: According to someone representing an association of beauty care products, customers for beauty care products need both online and on-street channels. Industry-wise, the online mode of operation has become popular in the last 5 years, and it is still growing. The mix of channels are:

1. on-premises only;
2. on-premises with online presence;
3. online only (by traders with business registration); and
4. online only (by individuals without business registration)⁴⁹.

Online shops operated by individuals without business registration is akin to consumer-to-consumer (C2C) transactions which are outside the scope of this study.

Physical stores threatened by online channels: Some traders still adhere to a traditional mode of operation with physical stores, and employ beauty advisors to offer personalised services. Sometimes this is at the insistence of brands that wish to maintain their reputations as luxury goods, by retaining tight control of the image and ambience

⁴⁹ Individual traders set up a platform to collect orders, where potential clients can follow them through Instagram, Facebook and other social media. The product delivery is very often made at MTR stations.

of the retail experience. These traders are authorised agents of branded products. However, this mode of operation is increasingly threatened by the emergence of online channels that sell less exclusive brands, and are less restrictive in how their products are displayed. Many online traders procure basic beauty products from Korea for sale at very low price. Korea, unlike other jurisdictions, encourages online sales without distributor-agent contractual relationships. Because of their attractive prices, the products do not require much marketing or sales effort to sell. Moreover, online chats are seen as very powerful in creating product awareness.

"No frills" in the online channel: Online channels suit customers who require "no frills" services. In case of colour mismatch on cosmetic items or allergy with skincare products, customers who buy products online can seek to have the products exchanged at designated fulfilment centres. Short of making a refund, it costs very little for the online traders to accommodate an exchange. According to a representative of a beauty care association, online traders invariably offer goods exchange. It was asserted that the expensive cosmetic items sold online are normally delivered with testers, and customers can try the tester first, and keep the full-size product sealed in case of a decision to exchange following the test. According to a platform owner that sells both expensive and inexpensive cosmetics or skincare products, clients who purchase expensive items are normally regular users of the brand and know the brand suits their skin types, or else they have tried the testers in physical stores before making an online purchase.

Product differentiation between online and offline: Some major beauty chain stores also go online, and the online platform actually draws customers to the physical stores for order fulfilment. Some stores self-manage their logistics to support online sales, but others outsource the logistics to third parties. The major chain stores market mostly private label products online with only a small proportion of premium branded products. With product differentiation, the online platform is seen to supplement but not cannibalise the offline mode of operation.

High pressure sale tactics for beauty treatment: The sale of discount coupons online for in-store redemption for beauty treatments is a common practice. To improve sales, many traders rely on popular third-party platforms to sell discounted coupons online with a high rate of commission being paid to the intermediary. The main rationale for the traders is to drive customers to physical stores. The coupons sold are in fact non-profitable, if not loss-making. When the customers are on the premises, the beauty advisors are financially incentivised to sell them expensive treatments. This may create circumstances susceptible to high pressure or misleading sale tactics.

Computer and Electronic Products

In the case of "computer/ electronic products", the behavioural survey results indicate that 25% of respondents have purchased computer or electronic products online. Of these online purchasers, 15% of respondents claim that they *always* purchase computer or electronic products online, and the rest (85%) *sometimes* purchase online. Consumers also express confidence for online purchase in this sector. According to the Council's survey findings, 93% of online retail respondents claim to be confident.

Some of the larger computer and electronic product retailers in Hong Kong do not support e-retail from their websites, or limit e-retail to low value goods. The sites

function primarily as marketing channels for the stores. Perhaps as a result, no online retail shop responded to the invitation for interview⁵⁰. There were in the past three large scale incidents regarding the practices of online retail shops in this sector which gave rise to many complaints against traders, and the underlying issues of those practices highlighted the problem in online purchases.

Delivery not within a reasonable time: The Council received many complaints against one telecom services provider that took non-refundable deposits for a new smartphone model prior to its launch. Each pre-order was bundled with a subscription to a designated service plan. As the number of handsets available was, at least at first, highly constrained the service provider could have predicted that demand would exceed supply by a wide margin and that it would not be able to fulfil all the orders it had taken.

Complaints arose because the telecom services provider was, as a result, unable to fulfil the delivery within a reasonable time period. It attempted to shield itself behind stringent terms and conditions that gave it an indefinite delivery timeframe. The case raised a few issues about fairness and reasonableness of contract terms. First, those traders tend to pose stringent terms and conditions online to protect their own interests, whereas consumers practically have no choice but to click the "Accept" button, or else they cannot proceed further.

Second, while it is possible that a local service provider has no control over a global manufacturer's shipment schedule and stock allocation, accepting and confirming large numbers of pre-orders online without making any assurance as to the date of stock availability was plainly unfair to consumers.

Safety of online electronic products: All electrical products sold on-street in Hong Kong should comply with the essential safety requirements specified in Schedule 1 of the Electrical Products (Safety) Regulation (Cap 406G), which are elaborated in Section C.2 of the Guidance Notes of Electrical Products under Electrical and Mechanical Services Department. These essential safety requirements are stipulated to ensure that all electrical products that are designed for household use and supplied in Hong Kong are safe to use. However, not all electrical products sold online will be suitable for use in Hong Kong perhaps because they do not meet the local electrical safety standards or because they are unsuited to the electricity supply. Since there may be no conspicuous indication that the electronic products do not meet Hong Kong appliance standards, consumers may be unaware that the products might be unsuitable or unsafe for use in Hong Kong. As more new electronic devices are marketed online, more consumer education will be needed to raise safety awareness.

Purchase overseas: The Council received many complaints against an electronic products trader where the causes of complaint were: repeated problems with delayed delivery, slowness or total failure in making refunds, product mismatch, and some form of bait-and-switch pricing.

This trader is registered in Hong Kong but targets British customers. On its UK website it posts a UK phone number which would give an impression to its target consumers that it is a local company. The only available forms of contact with the trader are by phone or via the online platform.

⁵⁰ Four online platforms who sold computer and electronic products answered positively.

This case illustrates that the geographic ambiguity of online retail can make it difficult to resolve problems when they arise. British consumers had to ask for the Council's assistance to help resolve their disputes. By the same token, Hong Kong consumers could face similar situation when they purchase goods from overseas online retailers. This points to a need for consumers to think twice before making online purchases from unknown companies overseas, it is important to know whether there is a consumer protection body or dispute resolution mechanism to support redress.

3.6 Overview of Core Issues

The Council's findings across the four sectors are as follows:

- Consumers may be unaware of the sometimes minimal level of advice and support on product selection advice offered online ("no frills" service).
- Consumers might be overlooking the disclaimers of liabilities in the Terms & Conditions by which they are bound.
- Consumers are increasingly relying on social media, or peer-to-peer ratings to understand traders and products.

3.7 Competition Implications

Competition jurisdictions⁵¹ decide if a good is in the same market as another good by considering whether a customer would substitute between them if there are small shifts in their relative price. The potential product market is expanded to include any substitute products which a buyer would buy if there is an increase in the prices of competitor goods in a market.

Accordingly, in the Council's survey, a question was asked about how consumers would respond if there was a 5% difference in price between online and offline for the same good. The majority of consumers that already shop online said they would shift their custom between online and on-street shops if there was a 5% price difference in price. In other words, people that already shop online see online and on-street channels as *the same market*.

Third party platforms are already the main way that consumers shop online. This has implications for the commercial viability of on-street stores and also online stores of a single vendor. Platforms derive significant market power from the effect of their large scale; the collection of customer and transaction information; and the leverage from customer profile analysis. The implications of dominance of third-party platforms should be of concern to consumer interests.

It is understood that the offline mode may find it difficult to compete at least for certain sectors. Offline operations, such as hotels, may need to rely on platforms to reach the market. Over time, some online platforms will ride on this success to acquire substantial market power. The dominance of the one or more platforms could therefore give rise to competition issues.

⁵¹ Hong Kong Competition Commission, (2015). *Guideline the Second Conduct Rule*. [online] Available on https://www.compcomm.hk/en/legislation_guidance/guidance/second_conduct_rule/second_conduct_rule.html [Accessed 12 Sep. 2016].

Many Internet giants such as Microsoft, Google and Amazon have been subject to scrutiny under competition law. In 1990's-2000's Microsoft was prosecuted for restricting competition by anti-trust authorities in the US and the EU. In 2015, the European Commission⁵² started a formal antitrust investigation into certain business practices. In particular, it looked into certain clauses included in Amazon's contracts with publishers requiring the publisher to inform Amazon about the terms offered to Amazon's competitors so that Amazon could check whether it was offered terms at least as good as those offered to its competitors in the distribution of electronic books (e-books). In 2016 the European Commission sent statement of objections to Google for possibly breaching EU's antitrust rules in abusing the dominance of its Android mobile-operating system by "strong-arming" smartphone makers and telecom firms into pre-installing its search engine as the default on mobile devices⁵³ and started to investigate other abuses on (i) restricting websites offering a Google search function on how to displace search advertisements offered by its competitors; and (ii) using its eponymous search engine to harm competitors of its comparison-shopping service;

In August 2016, it was reported that the Japan Fair Trade Commission raided the offices of Amazon Japan over allegations that it improperly pressured retailers that sold products on its site to sell products below the price they advertised on rival sites⁵⁴. In September 2016, an advisory panel to Japan's Ministry of Economy, trade and Industry voiced the opinion that Apple and Alphabet's Google engaged in practices undermining competition in the smartphone app market⁵⁵.

Accumulation of market power may lead to an artificial rise in prices, restriction of choice or discriminative treatments across consumers and small downstream businesses. In Europe, the European Commission has looked into some trade practices of European online platforms and Internet giants. The EU study was an antitrust sector inquiry into the e-commerce sector that looked into the extent of any barriers erected by companies (for example: geo-blocking and exclusive practices) that affect competition in European e-commerce markets that could limit consumer choice in purchasing goods and accessing digital content online in the EU⁵⁶. It was found that 60% of the license agreements in the market for e-books and music download restricted sales to a single economy.

It is commonly believed that entry barriers in the Internet are low. In many cases, it is seen that gaining an entry into market with many platforms for online retail services may be easier than in the case of traditional on-street retail markets. On the other hand, in

⁵² European Commission, (2015) *Antitrust: Commission opens formal investigation into Amazon's e-book distribution arrangement*. [online] Available at: http://europa.eu/rapid/press-release_IP-15-5166_en.htm [Accessed 12 Sep. 2016].

⁵³ European Commission, (2016) *Antitrust: Commission sends Statement of Objections to Google on Android operating system and applications*. [online] Available at: http://europa.eu/rapid/press-release_IP-16-1492_en.htm [Accessed 12 Sep. 2016].

European Commission, (2016) *Antitrust: Commission takes further steps in investigations alleging Google's comparison shopping and advertising-related practices breach EU rules*. [online] Available at: http://europa.eu/rapid/press-release_IP-16-2532_en.htm [Accessed 12 Sep. 2016].

⁵⁴ The Japan Times, (2016) *Amazon Japan Offices Raided in Anti-trust Case*. [online] Available at: <http://www.japantimes.co.jp/news/2016/08/08/business/amazon-japan-offices-raided-antitrust-case/#.V9ecmFt97Gg> [Accessed 12 Sep. 2016].

⁵⁵ Reuters Technology News, (2016) *Japan Government Panel Says Apple and Google Hinder App Competition* [online] Available at: <http://www.reuters.com/article/us-apple-competition-idUSKCN11K2UV> [Accessed 16 Sep. 2016].

⁵⁶ European Commission, (2016) *Sector Enquiry on E-commerce* [online] Available at: http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html [Accessed 2 Sep. 2016].

online retail markets, some factors can act as entry barriers and restraints that hinder on-street retailers from entering the online market. In specific markets it may be necessary to spend significant amounts on marketing to support a product's entry into the market by advertising campaigns aiming to improve online consumer awareness and build up brand recognition in an online environment. Significant financial resources may be necessary in order to develop good customer services and complex information algorithms working efficiently with the supply chains.

If potential competition between platforms and online retailers do come under consideration, the question must be examined as to whether online retailers or new online business can actually sustain their business and reach online customers through the platform and are able to compete in the market. The Council's observation in the hotel sector is that the landscape of competition is favourable towards the operation of OTAs. Some large OTAs have significant market power competing with online booking services offered by small- and mid- size hotels. As a result, most hotels rely on large OTAs platform to provide online booking services. It is noted with concern that not considering restrictions on terms and conditions of the contracts between the platforms and traders might overlook the detrimental effect on consumers that is being brought about by the market power of the platform on competition. The way an OTA exercises its market power and some market practices such as Best Available Rate agreements offered by the OTA would have an effect on competition. The practice of Best Price Guarantees preventing restaurants from displaying food at a lower price to customers was also noted in online food delivery services.

Google competes with local platforms on comparison-shopping service. The e-commerce industry and the Competition Commission should examine whether Google also exercises similar dubious practises as found in Europe through its search engine to harm its competitors in Hong Kong.

3.8 Other Observations

Digitisation: It should be understood that different sectors exhibit different levels of online development. On the one hand, the Internet through being used for airline selection, ticketing (e-vouchers) and delivery in the airline and travel sector has transformed how airline tickets are bought and delivered with a decreasing level of personalised services online compared to offline. On the other hand, the food and beverages sector is largely unchanged with some aspects of ordering changed by the Internet, but with most of the remaining process unaffected.

For airline and hotel transactions, digitisation offers a high level of convenience for both traders and consumers. Multiple service providers are involved in the whole process of booking to consumption of services. In general, more parties are involved in the online mode than the offline mode. The online multi-party transactions give rise to new challenges not observed offline.

Dichotomy in service levels: According to most of the interviewees, they said they planned to expand their online operations in the next 18 months. There is a paradigm shift from offline to online in their sector and they are powerless to slow it. Alongside this transformational change, service providers are better able to target their clients and offer promotions in a cost-effective manner. From the survey and interview findings,

service providers anticipate online customers to be tech savvy and to search for relevant information themselves. As discussed in the previous chapter, the level of customer service support has decreased in the online world. For the majority of sectors, the outcome may be a dichotomy in service levels between offline and online.

Reduction in premium services: The platform operators charge service providers high commissions for their matching services. Other than the matching services, the platform operators are not contractually obliged to offer after-sales services, complaint handling, and dispute resolution in the multi-contractual arrangements. It should be noted that even though platforms might contractually distance themselves from disputes, and the Terms and Conditions often specify which disputes are to be resolved between trader and customer, the platforms often operate rules and employ staff to help resolve disputes. Service providers are ultimately responsible for resolving service-related complaints and problems arising along the logistic chain. As their margins are squeezed, service providers can no longer afford offering value-added or premium services to clients. In a competitive market, if consumers do not recognise the benefits of value-added and premium services, the service providers and the product manufacturers will not be able to increase their prices to cover the added costs. This will eventually lead to an observable trend of deterioration in quality of services. The possible trend of reduction in premium services varies among different sectors.

Goods return or refund: From the Council's findings, there is no uniform practice or single provider held responsible for problems arising from product delivery, goods return or refund in multi-party online transactions. Different couriers also have diverse levels of insurance coverage. The implications of these on consumer protection points to a need for the introduction of industry codes of practice, voluntary or mandatory.

Big data development at infancy: From the Council interviews, it was clear that most Hong Kong based online traders do not have sophisticated live-marketing systems to capture information from the full-customer database, such as past purchases and customer demographics etc., for responsive online marketing purposes. Many Hong Kong consumers have accounts with global online companies like Amazon and Netflix and already experience the precise targeting of goods and services based on historical purchases. It remains to be seen to what extent local traders are able to use data analytics to anticipate consumer preferences.

Only one of the interviewees uses its database to segment customers and conducts promotional activities based on customers' historical purchase records. It stated it also plans to adopt a more sophisticated marketing response system with in-house big data analysis. Given the level of naivety in data analysis of local traders the Council is concerned that they may not be able to survive competition from the large international platform services which have greater expertise in interrogating and analysing the data, unless they are clear on what additional services they can offer consumers either in terms of quality of service, convenience, and better insights into their customers' tastes.

Retention of personal data: Most of the interviewees told the Council that they only retain customer data for operational purposes. When the delivery service is outsourced to a third party, some but not all claim that the delivery agents are restricted by a confidentiality undertaking on the handling of customer data. From the Council's perspective, customer data integrity is not adequately safeguarded. Even if a problem does not surface at this current point in time, possibly because big data development is still at its infancy in Hong Kong, the risks of misuse, abuse, or leakage of customers' personal data cannot be ruled out.

The data being collected can be used for informed targeting that benefits consumers but it can also be subject to abuse. It is difficult to tell where the balance should lie. One sensible approach would be to implement a "do not track" policy that allows consumers to enable persistent settings on their web browsers and prevent firms from collecting clickstream data.

Fake reviews: Some review platforms have guidelines in place to detect and remove fake reviews to maintain the integrity of their platforms. Some sites have easy processes for site users to flag suspect reviews. In the Council's interviews with online retailers, they invariably claim that they do not remove negative reviews from their websites, but some would take follow-up action with the parties posting negative reviews. This loose form of monitoring may not be the best practice to promote truthfulness and integrity.

Chapter 4 Legal Protection against the Hidden Hazards in Online Retail

Highlights

Hong Kong consumers who buy online are protected by laws that govern the sale of goods and services which apply to goods and services purchased both online and offline.

In online retail, unlike the situation in on-street shopping, consumers cannot physically inspect the product prior to purchase. The Council has learnt, through its interviews with traders, that consumers are confident in relying on size and colour charts to select clothes when making purchases online. However, in some cases online information does not adequately describe a product. Some online traders have developed their own “goodwill” returns policies offering exchange, replacement, credit notes or refund. Such practices strengthen consumer confidence and should be encouraged.

In the EU, Mainland China and Taiwan, legislation now provides a statutory right for consumers to return goods within a prescribed period of time, without having to give a reason, so long as the good is returned in a state it can be resold. There are exclusions for perishable, time sensitive goods (like newspapers) or where the packaging has to be intact, such as medicines. A similar right of withdrawal for goods and services bought online from Hong Kong websites would greatly enhance consumer confidence.

The information supplied by a merchant about a product's characteristics and delivery during the transaction varies greatly. The price can be displayed in a misleading manner or with important details either omitted or supplied late in the purchase process.

The Organisation for Economic Co-operation and Development (OECD) has made some helpful suggestions, aimed principally at businesses, about how they might improve transparency. The OECD lists the sorts of information that should be supplied, such as: information about the business, information about the goods and services, and information about the transaction. In the UK statutory provisions imposing duty on e-traders to provide adequate information about the transactions have already in place. The Council believes that similar regulations should be considered for Hong Kong too.

There has been rapid growth in the consumption of digital content like e-books, music downloads, online films and games. Consumers who purchase digital products should have the same protections, as far as possible, as consumers who purchase physical goods. In the UK, the new Consumer Rights Act 2015 introduces, among other things, clear consumer rights for digital content. The Council considers Hong Kong consumers need similar statutory protection.

Sale of counterfeit goods is a form of online deceptive practice which deserves particular attention. Sale of counterfeit drugs and health products can have serious deleterious effects on people's health. No pharmacy in Hong Kong has been authorised to carry out retail sale of medicines via the Internet. It is important that consumers fully consider the risks of using drugs bought from illegal sources and avoid such sites.

4.1 The Hidden Hazard

Consumers encounter risks in any retail environment whether it is offline or online. But there are features inherent in online retail which may give rise to consumer detriment not found in the usual on-street retail environment. For instance, inability of consumers to inspect goods before purchase, uncertainty about the location and identity of the seller, as well as the requirements of disclosure and transfer of credit card and other personal information when making purchase and payment for goods or services.

As mentioned in Chapter 2, the Council survey found that online shoppers experience very high levels of satisfaction. But Figure 9 showed that risks such as personal data leakage and the lack of confidence in the product quality are major concerns that deter some consumers from purchasing online.

This chapter looks at the hidden hazards commonly encountered by consumers engaging in online shopping and the extent to which they are protected under the law and the possible improvement that can be made to such protection.

An improvement of the legal framework may bring about extra burden to business. However, it can and should be seen as an opportunity as it helps online traders gain the confidence of consumers, especially those unfamiliar or anxious about shopping online. An effective legal framework can assure consumers that their interests are protected by setting out minimum acceptable standards of behaviour, identifying unacceptable practices, and providing a mechanism for obtaining redress if all other channels fail. This would not only strengthen consumer protection in the digital world, but also help B2C e-commerce develop in a healthy and sustainable manner and thus attract the engagement of non-online shoppers.

Of course, enforcement of law in the Internet is still a problem with issues such as extraterritoriality and anonymity or the pseudo character of the seller's identity. A mechanism for resolving disputes without resorting to litigation, thus mitigating enforcement challenges, will be examined in the next chapter.

4.2 Inability to Inspect Goods Online

Unlike on-street shopping, consumers shopping online cannot physically inspect the product prior to purchase. Their purchase decision is often made on the basis of how the good is presented through word, graphic, or video; perhaps through reviews posted on the Internet, or through the views of consumers' contacts on social media. From the Council's interviews with traders, we were told that consumers were confident in relying on size and colour charts to select clothes when making purchases online. However, in some other cases this information may not adequately describe a product. For instance, how a toy looks on-screen may well be different, in colour or size, from its actual appearance. Likewise, one cannot tell the fit of a pair of shoes from a screen. One of the main reasons given by consumers who do not shop online, for their reluctance, is their inability to inspect products. In our consumer survey, 22% of non-online shoppers cited "no confidence in the product quality/ not conforming to specifications" as a reason for not shopping online.

To counter this, some online traders have developed their own "goodwill" returns policies offering exchange, replacement, credit notes or refund. Such practices

strengthen consumer confidence and should be encouraged. But exhortation towards this practice may not be enough, as it may be impracticable to expect that all e-traders will voluntarily provide an effective and fair returns policy. A statutory right for online consumers to return goods, still suitable for resale, within a prescribed period of time will serve to advance consumers' confidence in online shopping. As shown in Figure 10, the most commonly mentioned encouragement for non-online shoppers to engage in online shopping is the right to after-sales refund and return (48%). Such a right has been provided under law in the European Union, Mainland China and Taiwan.

However, for the time being we do not have data to evaluate the effectiveness of the relevant regulations in these jurisdictions. Nonetheless, we believe that they set a specific and basic standard for e-traders to follow, and enable consumers to have a clear idea about their right in this regard.

On the other hand, we are not aware of such right in the US (federal law), Australia (federal law) and Singapore. But that does not mean online shoppers are less protected in these jurisdictions. Some leading multi-national online marketplaces such as Amazon (US) Barnes and Noble, Apple (US), have a well-established refund and returns policy and internal complaints handling mechanism which in effect provides similar protection to consumers. For example, eBay.com insists that retailers establish a clearly stated returns policy and recommend 30 days, although each retailer is free to choose their own. In Hong Kong, similar protection is provided by the online selling platforms of many international chains as well as retailers based in Hong Kong.

European Union (EU) Directive on Consumer Rights

The EU Directive on Consumer Rights (2011/83/EC) sets out clear rights and obligations on distance contracts not only for the sale of goods, but also for the supply of services and digital content not supplied on a tangible medium. These rights cover online purchases, telephone sales, mail order and TV shopping. The EU Directive was transposed into national laws in all 28 member states in December 2013, including Germany and UK. In effect, it harmonised certain key aspects of consumer rights and provided uniform rules in relation to online shopping across the EU. The Council has used the UK legislation as an example below. In the UK, all the major provisions of the EU Directive were implemented through the enactment of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR) 2013. The protection afforded to consumer includes the following:

- Consumer purchases from an online trader within the EU can exercise a right to return the goods within 14 days since he/she acquires physical possession of them, or to withdraw from a service contract or a contract for the supply of digital content which is not supplied on a tangible medium within 14 days since the conclusion of the contract, without having to give any reason⁵⁷.
- The trader is required to provide the consumer information⁵⁸ about the right-to-return or right of withdrawal, how the period is counted, how to exercise the right.

⁵⁷ Regulation 30 of CCR.

⁵⁸ Regulations 13 and 14 of CCR.

- If the trader wants the consumer to bear the cost of returning the goods, it has to clearly inform the consumer and may need to provide an estimate of cost, in advance⁵⁹.

On the other hand, consumers need to return items within 14 days of cancellation⁶⁰. The trader may reduce the amount of refund where there is evidence of use of the goods beyond the handling necessary to see whether the goods are as expected⁶¹. A consumer who has contracts for a service which has begun during the 14-day period has to pay for the duration of service he/she has enjoyed. The trader has to refund within 14 days from the day on which he/she is informed of the consumer's decision to withdraw from the contract⁶².

A number of types of good/ service are excluded from the right to cancellation under the Directive, including⁶³: "Investment" type products, customised goods, time limited goods such as perishable goods and newspapers; goods that have to be sold in a sealed state such as certain hygiene products or audio-visual products which were unsealed after delivery; contracts for accommodation other than for residential purpose, vehicle rental, catering or services related to leisure activities if the contract provides for a specific date or period of performance and services which have been fully performed.

The Consumer Protection Law of Mainland China

Article 25 of the Consumer Protection Law of the People's Republic of China also includes a statutory right-of-return for online purchases. If a consumer purchases goods via the Internet, television, telephone or mail order, they are entitled to return the goods without having to give any reason within 7 days of the date the goods were received. The amount paid for the goods shall be returned to the consumer within 7 days from the day the trader receives the returned goods.

Custom-made goods, perishable goods, software downloads and newspaper/periodicals are excluded. Any goods returned must be in good condition. The shipping cost is borne by the consumer unless otherwise agreed to by the parties.

The Consumer Protection Act of Taiwan

Similar provisions are found in Taiwan. Article 19 of the Consumer Protection Act of Taiwan provides a statutory right of withdrawal for distance sales of goods and services, including transactions made via radio, television broadcasts, telephones, facsimiles, catalogues, newspapers, magazines, the Internet, flyers, or any other similar channels, where a consumer does not have an opportunity to review the goods or services. Consumers may return the goods or rescind the service contract in writing within 7 days upon receipt of goods or services.

Certain types of transactions are exempted. Typically, they include those related to the supply of perishable goods; customised goods; newspapers and periodicals; sealed

⁵⁹ Ibid.

⁶⁰ Regulation 35 of CCR.

⁶¹ Regulation 34 of CCR.

⁶² Ibid.

⁶³ Regulation 28 of CCR

digital products which have been unsealed after delivery or digital content not supplied on a tangible medium or online services which would be fully performed once begun with the consumer's prior consent; international airline passenger services; and personal hygiene products⁶⁴.

Applicability to Hong Kong

A right of withdrawal within a prescribed period subject to reasonable exceptions may help ease consumers' concern as to whether the product purchased online corresponds with their perception from the information on-screen, and thus enhance consumers' confidence in online shopping.

In the absence of any such rights, stipulated expressly and clearly by statutory provisions, the individual policies of the e-traders might offer rights of return to Hong Kong consumers buying from a local website. However since e-traders provide these assurances voluntarily the contractual rights and obligations may differ under different cancellation policies. Some cancellation policies may be less fair or more favourable than others. The Council believes that the introduction of a statutory right of withdrawal in Hong Kong will strengthen consumer protection, and give impetus to the development of local e-commerce.

4.3 Misleading Advertising and Other Deceptive Commercial Practices

Consumers shopping online are more susceptible to misleading and deceptive practices than those shopping in on-street stores. This is in part because consumers buying online rely on the information found on the Internet provided by the suppliers or from other sources which may not be accurate or reliable, rather than making face-to-face enquiry or inspection to ensure the genuineness of claims, as they may do when shopping offline.

Also, this is partly attributed to the fact that it is easier and cheaper for a fraudulent business to appear legitimate, or even reputable online, for instance by using a stolen logo or fake website, than in the physical market. Also, the pool of potential victims can be much larger with the extensive outreach through using technology. This means that even if only a tiny proportion of online shoppers fall for a scam, the fraudulent trader can still recoup his "investment". Fraudulent traders can also easily close down a website and re-open another to evade legal liability.

Misleading Advertising – Quality Labels, Hidden Advertisement, Misleading Price Information

A briefing paper produced by the European Parliament⁶⁵ points out that misleading advertising on the Internet takes many forms including the use of quality labels that the businesses are not eligible to use, test results which are outdated, or labels that create

⁶⁴ Consumer Protection Committee, Executive Yuan of Taiwan, (2016) *Regulations regarding exceptions to the 7-day right to cancellation of distance sales are to come into effect as of January 1, 2016*. [online] Available at: http://www.cpc.ey.gov.tw/cpc_en/News_Content.aspx?n=F66FD3CFB8AED49D&sms=D5B062E5C3E2CFD2&s=EDD0E472F581AB86 [Accessed 21 Sep. 2016].

⁶⁵ European Parliament, (July 2010). *Misleading Advertising on the Internet*. Directorate-General for Internal Policies, European Parliament. Para 1.2.2 [online] Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/440289/IPOL-IMCO_ET\(2010\)440289_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/440289/IPOL-IMCO_ET(2010)440289_EN.pdf) [Accessed 4 Jul. 2016].

the impression that the business has fulfilled some special quality requirements whereas the labels only require the fulfilment of legal requirements.

Businesses also use misleading “headline” prices to attract consumers, sometimes distorting rankings on price comparison sites by failing to include additional costs, such as handling fees, postage and packing and taxes. Studies of the practice, including “drip” or “partition” pricing, suggest that the potential to mislead consumers is high, since consumers tend to focus on headline prices when making their purchase decisions. The overall effect is to mislead customers into selecting products from higher priced sources⁶⁶. The tactics are evident from the interviews with online traders in this study and was uncovered by the Council in prior research on 8 travel booking websites in Hong Kong⁶⁷.

The European Parliament paper points to an increase in so-called “hidden advertising” on the Internet, especially in the form of product reviews written by employees of the producer of the reviewed product or appraisals of products in blogs or via YouTube by people who seem to be consumers but are paid by the producer to do so (so-called “viral” and “buzz” advertising)⁶⁸.

Online retailers, quite legitimately, use social media channels to promote products and services. There are worries that consumers are paid to “like” products in order to falsely promote sales within social networks. There is a market in trading “likes” to enhance the prestige of an online shop. Such marketing may have a misleading effect on consumers who are likely to believe that those representations truly reflect honest opinion or belief or actual experiences of a person other than a sponsoring advertiser.

Unclear or Fake Identity of Trader

An online consumer may be confused about the true identity of the trader he is dealing with. For instance, he may not be clear about whether it is the website selling the coupons for goods or services or the supplier of the goods or services is the one with whom he enters into the contract. Moreover, anyone can set up an online business in any name. The location and identity of an e-trader in cyberspace is often not readily identifiable. If the product or the transaction goes wrong, the online consumer may not be sure who should be called to account; or whether he can get hold of someone to fix the problem.

To enhance transparency and ensure fairness in a transaction, adequate, comprehensible and accessible information about the trader, the product and other matters relating to the transaction should be available to online consumers.

Law Prohibiting Deceptive Claims in Hong Kong

Misleading and deceptive commercial practices that are made online are subject to the same criminal sanctions as those conducted in the physical world under the Trade Descriptions Ordinance (Cap 362) (TDO).

⁶⁶ OECD (2014). *Consumer Policy Guidance on Mobile and Online Payments*, OECD Digital Economy Papers, No.236, p.7. [online] Available at <http://dx.doi.org/10.1787/5jz432cd1ns7-en> [Accessed 4 Jul. 2016].

⁶⁷ Hong Kong Consumer Council, (2015). 旅遊服務網站買機票隱藏收費多. *CHOICE*, (470), pp. 42-45.

⁶⁸ Briefing paper (July 2010) on “Misleading Advertising on the Internet”, the Directorate General for Internal Policies of European Parliament. p.6, citing Singleton, *The Consumer Protection from Unfair Trading Regulations 2008 and IT/Internet – viral and buzz marketing issues*, 13 (4) Communications Law pp. 117-119 (2008), p.6.

Trade descriptions include price (including its basis for calculation, or the existence of price advantage or discount), availability of good or service, fitness for purpose, other characteristics of the good or service (strength, performance, compliance with a standard)⁶⁹. It is an offence to apply a false or misleading trade description to a good or service, or supply or offer to supply of a good or service to which the false trade description applies⁷⁰.

Many unfair trade practices that consumers encounter online are prohibited by the TDO. They include omitting or concealing material information, providing material information in an unclear, unintelligible or untimely manner, and failing to identify material information⁷¹, "Material information" includes a variety of factual information (including the trader's identity). Failure to identify commercial intent also amounts to misleading omission. Moreover, advertising goods or services at a price that the trader is unlikely to be able to supply⁷² ("bait" advertising) and accepting payment for goods with the intention of not supplying or supplying another different product are also prohibited under the TDO⁷³. These allow Hong Kong enforcement agencies to combat the problem of online traders deploying "deceptive commercial practices".

A Hong Kong consumer who suffers damage as a result of the deceptive or misleading practice of an online trader may seek redress under relevant consumer protection legislation, such as the Misrepresentation Ordinance (Cap 284) for rescission and/ or damages, or the TDO for damages. Damages may also be recovered for personal injuries caused by using defective and unsafe products.

However, the enforcement of law against online misbehaviour is an uphill task. It may be difficult to identify the unscrupulous traders, especially if they are located outside Hong Kong. Even if they can be identified it is costly to bring a lawsuit or enforce a judgment, especially against those outside Hong Kong. Moreover, given the small amounts of money involved in many online transactions (our survey found that the median annual spend of online shoppers was just \$3,600/year) the legal costs would usually greatly exceed to the amount claimed.

Worse still, certain undesirable practices such as misleading advertising are difficult to detect. As the European Parliament paper points out, even if it appears a product review looks suspicious, it will be difficult to prove that the reviewer was paid by a business to write the review⁷⁴.

The above discussion underlines the importance of consumers' being vigilant when making online purchases, especially from shops outside Hong Kong, or ones that they are unfamiliar with.

⁶⁹ Section 2(1) of the TDO.

⁷⁰ Sections 7 and 7A of the TDO.

⁷¹ Section 13E of the TDO.

⁷² Section 13G of the TDO.

⁷³ Section 13I of the TDO.

⁷⁴ See supra note 68.

UK Legal Solution to Inadequate Information

Misleading advertisement or representations may be resulted from inadequacy of information. The imposition of a statutory duty on online traders to provide sufficient particulars of themselves, the goods or services they supply and other related matters may serve as a preventive measure against misleading advertisements or representations on the Internet. The EU Directive on Consumer Rights is an example, has been implemented in the UK by CCR 2013. It imposes information provision requirements on the e-traders and these are set out in Box 1. These requirements address online consumers' concerns about the information on goods' characteristics or prices being unclear.

Box 1: Selection of information provision obligations on online traders in UK about the goods or services being purchased

- The main characteristics of the goods or services;
- The total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- Any additional delivery charges and any other costs;
- In the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period;
- The duration of the contract, or the conditions for terminating the contract; and
- The minimum duration of the consumer's obligations under the contract.

If the trader has not complied with the information requirements regarding additional delivery charges, the consumers do not have to bear any charges or costs to return the goods when exercising their right to return⁷⁵.

The trader also has to provide information about their identity, the trade, the complaints process and other relevant matters⁷⁶. These are given in Box 2.

Box 2: Some of the information requirements about the trader from whom the good is purchased

- The identity of the trader;
- The address of the trader and the trader's contact details;
- The arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the services⁷⁷;
- Where applicable, the trader's complaint handling policy;
- The conditions, time limit and procedures for exercising that right to cancel in accordance with the CCR 2013;

⁷⁵ Regulation 13(5) of the CCR.

⁷⁶ Regulation 13 of the CCR.

⁷⁷ This may prevent an intermediate trader who has no control over the date of stock availability to shield behind the stringent terms and conditions to the prejudice of consumers.

- Where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees;
- Where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- Where applicable, the functionality, including applicable technical protection measures, of digital content;
- Where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; and
- Where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

Any information that the trader gives the consumer under the CCR 2013 is to be treated as included within the terms of the contract. Unilateral variation of such a term is not allowed. Any change is not effective unless expressly agreed between the consumer and the trader⁷⁸. Failure to provide the required information on the right to cancel could result in an extension of cancellation rights⁷⁹.

Moreover, within a reasonable time after the conclusion of the contract, the trader has to give the consumer confirmation of the conclusion in a durable medium⁸⁰, such as email⁸¹.

Information Disclosure Requirement in Mainland China

Article 28 of the Consumer Protection Law requires traders who provide goods/ services via distance communications, such as the Internet, to provide consumers with information such as business address and contact details of the traders. Where consumers purchase through online trading platform and their rights are infringed, they may demand compensation from online traders. Online trading platforms are also liable to consumers if they fail to provide the true name and address of the online traders⁸² to consumers.

Information Disclosure Requirement in Taiwan

Article 18 of the Consumer Protection Act requires traders who provide goods/ services via distance sales or door-to-door sales to provide consumers with information such as name and contact details of traders, complaint handling procedure, and their right-of-withdrawal. When traders do not provide consumers with the information relating to the right to rescind a contract upon receipt of goods or services, the 7 days period shall not be counted until the date the information is provided⁸³.

⁷⁸ Regulation 13 of the CCR.

⁷⁹ Regulation 31 of the CCR.

⁸⁰ Regulation 5 of the CCR defines “durable medium” as paper or email, or any other medium that – allows information to be addressed personally to the recipient, enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and allows the unchanged reproduction of the information stored.

⁸¹ Regulation 16 of the CCR.

⁸² Article 44 of the Consumer Protection Law.

⁸³ Article 19 of the Consumer Protection Act.

4.4 Counterfeit Goods

Sale of counterfeit goods is a form of online deceptive practice which deserves particular attention as it can have serious deleterious effects on customers' health and safety.

The rapid development of the Internet and mobile information technology has spurred the growth of online counterfeit sales. Hong Kong online consumers face a greater risk of unknowingly buying counterfeit goods than on-street customers. The digital world is a place where counterfeiters can trade in anonymity so as to hide from the enforcement agencies while getting access to a global consumer market. Search engines are used by counterfeiters to lure consumers into believing that they are selling genuine goods. Entering a trademark into a search engine does not guarantee that the search results offer only genuine products of the trademark owner. Online sellers of counterfeits, like online sellers of genuine branded products, can take steps to achieve higher listing positions for their websites.

Internet counterfeit traders can easily post pictures showing genuine products, but then ship counterfeit goods to those consumers once the sale is placed. This is in contrast to sales at physical stores, where consumers can examine the product they are purchasing⁸⁴.

Social media can be exploited to sell counterfeit goods. The Customs and Excise Department has observed that there was a significant rise in the sale of counterfeit goods online by teenagers via social media platforms⁸⁵.

The Intellectual Property Rights Study, a joint report by the European Chamber of Commerce, KPMG, Mayer Brown JSM and TNS, examined consumer attitudes in Hong Kong and Macau towards purchasing fake goods⁸⁶.

Consumers are not always misled into buying counterfeit goods. Sometimes they know, or have a suspicion that the goods they buy are counterfeit but continue nevertheless. In a market research company's survey of 802 consumers, a third of the respondents purchased counterfeit goods online. The reasons given for buying counterfeit products, were: they were cheaper (72%), easier access (21%), good imitation and quality (35%), not aware that they are copies when buying (21%), recommended by friends and relatives (10%), difficult to get genuine goods (7%) and resell for profit (3%). The types of counterfeits products include movie CDs/ DVDs, music CDs/ DVDs, computer software CDs/ DVDs, computer games CDs/ DVDs, handbags and wallets, clothes and shoes, electronics and fashion and mobile accessories, watches, toys and cosmetic and beauty products⁸⁷. Counterfeit items are often substandard⁸⁸.

⁸⁴ International Trade Mark Association, (2009) *Addressing the Sale of Counterfeits on the Internet* [online] Available at: <http://www.inta.org/Advocacy/Documents/INTA%20Best%20Practices%20for%20Addressing%20the%20Sale%20of%20Counterfeits%20on%20the%20Internet.pdf> [Accessed 8 Jul. 2016].

⁸⁵ Hong Kong Economic Journal Company Limited, (2015) *Rising cases of teens selling fake goods online: customs* [online] Available at: <http://www.ejinsight.com/20151221-rising-cases-of-teens-selling-fake-goods-online-say-customs-officials> [Accessed 4 Jul. 2016].

⁸⁶ The European Chamber of Commerce in Hong Kong, KPMG, The Mayer Brown Practices and TNS (2013), *Intellectual Property Rights* [online] Available at: <https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Documents/Intellectual-Property-Rights-Study-201309.pdf> [Accessed 4 Jul. 2016].

⁸⁷ Ibid.

⁸⁸ OECD, (2007) *The Economic Impact of Counterfeiting and Piracy – Executive Summary* [online] Available at: <http://www.oecd.org/sti/38707619.pdf> [Accessed 4 Jul. 2016].

Buying counterfeit goods can risk a consumer's health, be unsafe and harm the commercial interests of firms making high quality or innovative products.

The sale of goods to which a forged trade mark is applied is prohibited by the TDO. Online suppliers of counterfeit goods are also subject to the Consumer Goods Safety Ordinance (Cap 456) as is any supplier of consumer goods. They owe a statutory duty to ensure that the goods they supply comply with the general safety requirements for consumer goods; or where an approved standard applies to consumer goods, the approved standard for the particular consumer goods applies. For toys and children's products, a statutory duty on manufacturers, and importers to ensure that the goods they supply are safe for use or consumption is also imposed by the Toys and Children's Products Safety Ordinance (Cap 424).

Safety Concern: Counterfeit Drugs

In recent years, an international focus has been placed on substandard, spurious, falsely labelled, falsified and counterfeit (SSFFC) medical products. Unregulated websites supplying medicines, particularly those concealing their physical address or landline telephone number are frequently the source of unlicensed, substandard and falsified medical products⁸⁹. Apart from spam emails, unsolicited messages through mobile apps are often used for advertising. In 2015, an operation led by Interpol and 115 jurisdictions to combat illegal peddling of medicines from the Internet found counterfeit and fraudulent drugs worth approximately US\$81 million⁹⁰.

The Council's survey finds that about 13% of online shoppers reported that they sometimes/ always purchase "health products" on the Internet. Another survey published by Visa in 2015 found that 16% of Hong Kong people had purchased "health and wellness" products from overseas websites over the last 12 months, making it the third most popular category⁹¹. There is no way of determining from the Council's survey what proportion of people purchased SSFFC medicinal products. But the online sale of such products could be a cause of significant health concern.

In Hong Kong the majority of online drug and health products problems involved slimming products marketed as "health foods" with natural and herbal ingredients⁹². Actually, these products were often found to contain banned substances or substances not yet been registered as pharmaceutical products. One worrying case was of a life-saving medicine: a patient received promotional messages from mobile phone applications about medicines for cancer⁹³. The message was linked to the website of a local pharmacy shop and displayed the names and logos of pharmaceutical companies. However, one of the manufacturers stated they did not supply drugs to the pharmacy, implying the medicines on offer were either fake or parallel imports.

⁸⁹ World Health Organisation, (2016) *Substandard, Spurious, Falsely labelled, Falsified and Counterfeit (SSFFC) Medical Products* [online] Available at: <http://www.who.int/mediacentre/factsheets/fs275/en/> [Accessed 8 Jul. 2016].

⁹⁰ Interpol, (2016) *Operations* [online] Available at: <http://www.interpol.int/Crime-areas/Pharmaceutical-crime/Operations/Operation-Pangea> [Accessed 4 Jul. 2016].

⁹¹ Visa Inc., (2015) *Visa Survey: Hongkongers choosing mobile to browse and purchase online* [online] Available at: http://www.visa.com.hk/en_HK/aboutvisa/mediacenter/nr_hk_20112015_HKeCommsurveyrelease1_Eng.html [Accessed 4 Jul. 2016].

⁹² Hong Kong Consumer Council (2015). 網購藥物及健康食品危機四伏. *CHOICE*, (468), pp. 42-45.

⁹³ Ibid.

Many counterfeit drugs have harmful substances, including bacteria-laced water, toxic paint, floor wax, coloured dye, powdered cement, boric acid, and antifreeze. Even counterfeit drugs containing no active ingredient or toxic substances may still harm the consumer. It may mislead the consumer into believing he/she is being medicated or affect the clinical judgement of the consumer's physician when being treated as a patient.

Proper packaging and labelling of a drug is important to consumers as these contain instructions on how the medicine should be taken. Labels include information about the product's identity and strength. Many of the counterfeit drugs had no or minimal information on their labels regarding the proper usage of the product, and some were written in foreign languages⁹⁴. The absence or deficiency of this information puts consumers' health at risk.

No pharmacy in Hong Kong has been authorised to carry out retail sale of controlled medicines via the Internet. In its reply to a LegCo Member's question, the Department of Health said it had put in place an established mechanism to monitor the sale of health products and drugs online. Investigation and enforcement would be taken against any contravention of relevant legislation. If auction websites were involved, the Department of Health would ask the webmasters concerned to delete the relevant product information from the websites, on top of investigation and prosecution actions⁹⁵. If more online activities were observed, regulation in this respect should be enhanced by strengthening enforcement action against illegal online sellers. In the long run, it may be worth studying whether and how much detriment online pharmacies have on consumers in Hong Kong and whether there is the need to introduce more appropriate measures to enhance public health protection. In foreign jurisdictions, such as in the US and Canada, some licensed pharmacies are permitted to sell a limited range of drugs on the Internet for consumers. Online consumers are advised to purchase drugs from licensed pharmacies verified by credentialing entities, such as Certified Canadian International Pharmacy. Licensing requirements are imposed for sale of drugs online in some jurisdictions. For instance, in the State of Florida the business days and hours of online drugs retailers are expressly provided for. Moreover, they are also required to put in place free hotline services with pharmacists answering consumers' enquiries⁹⁶.

The Council is of the view that the above mentioned foreign experiences may deserve consideration of the Government in reviewing its public health policy. It is important that consumers guard themselves against the risks of using drugs bought from illegal sources by avoiding such sites.

⁹⁴ World Health Organisation, (2011) Safety and security on the Internet: challenges and advances in Member States: based on the findings of the second global survey on eHealth, volume 4 p.25 [online] Available at: http://www.who.int/goe/publications/goe_security_web.pdf [Accessed 3 Oct. 2016].

⁹⁵ HKSAR government, (2016) *LCQ4: Regulation of pharmaceutical products and proprietary Chinese medicine* [online] Available at: <http://www.info.gov.hk/gia/general/201606/01/P201606010561.htm> [Accessed 4 Jul. 2016].

⁹⁶ Hong Kong Consumer Council (2015). 網購藥物及健康食品危機四伏. *CHOICE*, (468), p.46

4.5 Digital Content

According to the Census & Statistics Department⁹⁷, 4,190,000 persons (83%⁹⁸) used the Internet for consuming online entertainment in 2014, a rapid growth from the 729,900 persons (28%⁹⁹) in 2001. Online entertainment includes streaming music and radio, watching online video, playing or downloading online games, and online reading books/fictions and comics¹⁰⁰.

In Hong Kong, neither the Sale of Goods Ordinance (Cap 26) nor the Supply of Service (Implied Terms) Ordinance (Cap 457) specifically provides for any legal rights to consumers who buy digital content products. In the absence of clear judicial guidance, it is doubtful whether the rights and remedies, such as those related to the quality of goods, fitness for purpose or damage arising from product deficiencies are available to consumers. This is not surprising given that both Ordinances were developed in the pre-digital age. The situation is further complicated when cross-border transactions take place and treatment differs between the jurisdictions involved¹⁰¹.

Foreign jurisdictions face the same problem. OECD points out that in most OECD countries, legal and private-sector voluntary remedies are often not applicable to digital content products, or that the remedies may vary, depending, for example, on way the digital content product is supplied to consumers (via streaming or download) and its treatment as a good, a service or something else¹⁰².

A legal research paper commissioned by the UK Department of Business, Innovation and Skills in 2010 examined consumer rights relating to digital content. It was submitted that whether digital content would be described as goods, services, or something else was not clear and thus unclear about what, if any, legal rights the consumer had if digital content proved defective or failed to live up to the consumer's expectations¹⁰³. Taking software as an example, case law in the UK, as it is, supports the view that intangible digital products, such as downloaded software, are not "goods". But that does not mean it is a "service". The concept of a service seems to connote an action of some sort; i.e. doing something, whereas software is a thing, albeit an intangible one. Further, consumer rights in service contracts are that the service be provided with "reasonable skill and care". It is difficult to see how this concept could properly apply to digital content downloaded from Internet. Such legal uncertainty leads to a strange result that two consumers buying the same software, one buying it on disk (which is tangible and will be considered as a good), and the other downloading it from the Internet, have different rights and remedies if the software proves faulty.

To clear the uncertainty, UK's new Consumer Rights Act 2015 includes new protection for consumers of digital content products, following a similar approach to that taken for

⁹⁷ Census and Statistics Department, (2015) Hong Kong Monthly Digest of Statistics – The Feature Article on Usage of Personal Computer and Internet Service by Hong Kong Residents, 2000 to 2014. [online] Available at: <http://www.statistics.gov.hk/pub/B71511FC2015XXXB0100.pdf> [Accessed 8 Jul. 2016].

⁹⁸ Ibid. The figure represents the percentage in respect of all the number of persons aged 10 and over who had used Internet service during the 12 months before enumeration for entertainment from 2001 to 2014.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² OECD (2014). *Consumer Policy Guidance on Intangible Digital Content Products*, OECD Digital Economy Papers No. 241, p.18-19, OECD Publishing. Available at: <http://dx.doi.org/10.1787/5jxvbrjg3gg6-en> [Accessed 4 Jul. 2016].

¹⁰³ See para 169, Consumer Rights Act 2015 Explanatory Notes.

goods¹⁰⁴. It clarifies with certainty the legal rights of consumers for digital content. Digital content is defined as data which is produced and supplied in digital form¹⁰⁵. The Act requires the quality of the digital content to be reasonably satisfactory, taking into account the description of the digital contents, its price and other relevant circumstances¹⁰⁶. The digital content should match any description of it given by the trader to the consumer¹⁰⁷.

If the digital content provided by a trader causes damage to a device (such as a computer) or to other digital content belonging to the consumer as a result of the failure of the trader to exercise reasonable care and skill, the trader is liable to pay compensation to the consumer¹⁰⁸.

4.6 Sufficiency of Privacy Protection

Unlike shopping in physical stores, consumers that shop online have to provide personal data¹⁰⁹, such as their name, email address, delivery address, telephone contact, and credit card details to the online trader. Problems faced by online consumers may include (i) excessive collection of personal data; (ii) illicit collection of personal data with tactics such as installing malware into the electronic devices, hacking, phishing, smishing; and (iii) misuse/unauthorised disclosure of personal data, be it inadvertent or intentional.

In the era of big data, personal data collected from digital communications is a valuable asset that can be used internally for analytics purposes or traded. There is also the risk that data provided by a consumer will be stolen from or lost by the trader and used by the thief for criminal purposes. This has the potential to expose customers to financial losses through no fault of their own.

Retail websites sometimes ask consumers to accept cookies. A poorly written cookie may contain sensitive information and/or personal data about the consumer, which might be disclosed if the computer is stolen. Consumers should be careful about allowing cookies to be installed from websites they are unsure about.

In Hong Kong, the collection and use of personal data is governed by the Personal Data (Privacy) Ordinance (Cap 486) (PDPO). Traders who control the collection, holding, processing or use of personal data must comply with the following six Data Protection Principles (DPPs) under the PDPO¹¹⁰:

¹⁰⁴ See para 177, Consumer Rights Act 2015 Explanatory Notes.

¹⁰⁵ Section 2(9) of the Consumer Rights Act 2015.

¹⁰⁶ Section 34 of the Consumer Rights Act 2015.

¹⁰⁷ Section 36 of the Consumer Rights Act 2015.

¹⁰⁸ Section 46 of the Consumer Rights Act 2015.

¹⁰⁹ Personal data is defined in section 2 of the PDPO. It has a wide meaning and generally includes information which could directly or indirectly ascertain the identity of an individual.

¹¹⁰ Schedule 1 to the PDPO.

DPP1 – Data Collection Principle	<ul style="list-style-type: none"> • Personal data must be collected in a lawful and fair way, for a purpose directly related to a function/ activity of the data user. • Data subjects must be notified of the purpose and the classes of persons to whom the data may be transferred. • Data collected should be necessary but not excessive.
DPP2 – Accuracy & Retention Principle	<ul style="list-style-type: none"> • Practical steps should be taken to ensure Personal data is accurate and not kept longer than is necessary to fulfil the purpose for which it is used.
DPP3 – Data Use Principle	<ul style="list-style-type: none"> • Personal data must be used for the purpose for which the data is collected or for a directly related purpose, unless voluntary and explicit consent with a new purpose is obtained from the data subject.
DPP4 – Data Security Principle	<ul style="list-style-type: none"> • A data user needs to take practical steps to safeguard personal data from unauthorised or accidental access, processing, erasure, loss or use.
DPP5 – Openness Principle	<ul style="list-style-type: none"> • A data user must take practical steps to make personal data policies and practices known to the public regarding the types of personal data it holds and how the data is used.
DPP6 – Data Access & Correction Principle	<ul style="list-style-type: none"> • A data subject must be given access to his/ her personal data and allowed to make corrections if it is inaccurate.

Under DPP2, if a data user engages a data processor, whether within or outside of Hong Kong, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than necessary for processing the data. Section 26 of the PDPO provides that a data user must take all practicable steps to erase personal data held when the data is no longer required. Use of personal data in direct marketing shall require the prior express consent of the data subjects. Transfer of personal data to another party (including the data user's subsidiaries or affiliates) for direct marketing purposes, whether for gain or not, will require express written consent from the data subjects¹¹¹.

Although all traders are expected to safeguard the privacy of consumers' data, it is our worry that some online businesses might not fully observe the statutory requirements in the PDPO, including the six data protection principles listed above. In our interviews with traders, the Council notes that online food traders often outsource their delivery service to delivery agents but only some of them are restricted by confidentiality undertakings on the handling of a consumer's personal data. Furthermore, it is not presently uncommon that traders promote their products or services only on social media such as Facebook. A few of those trades might have no visible Privacy Policy Statement. By providing their personal data to these traders, consumers are at risk of leaking their personal data to unrelated third parties.

¹¹¹ Part 6A of the PDPO.

The Council's survey suggested that many consumers are lax in taking measures to protect their personal data. Privacy and security measures were only quoted by a third of consumers in contributing to establishing trust on an online shopping site (33%), lower than good reputation (76%) and good track record of sales (62%).

Over the past few years, the Office of the Privacy Commissioner for Personal Data (PCPD) has seen an upward trend in information and communications technology related complaints. In 2015, the most common privacy disputes arose from the use of mobile apps and social networking websites (161 cases) and the disclosure or leakage of personal data on the Internet (85 cases). The PCPD commented that the rapid development of information and communications technology, the use of big data and cloud computing will further change the ways that individuals' personal data is collected, retained and used¹¹². Apart from the complaints received by the PCPD, there were 98 data breach incidents in 2015, affecting 871,000 Hong Kong individuals. The nature of these incidents ranged from unauthorised disclosure of personal data through hacking to inadvertent circulation of personal data to unrelated third parties.

For instance, in December 2015, there was a data leakage incident of VTech Learning Lodge, which appeared to have disclosed data of 5 million parents and over 6.6 million related children's profiles worldwide¹¹³.

Also in December 2015, Sanrio Digital (HK) Limited, a Hong Kong company that operates the SanrioTown website, announced that certain personal data of up to 3.3 million members could have been publicly accessible as a result of security vulnerability¹¹⁴.

In Hong Kong, 6,778 cases of technology crime were reported in 2014, an increase of 1,645 cases compared with 5,133 cases in 2013. The amount involved also increased by 31% from \$916.9 million in 2013 to \$1,200.7 million in 2014. Over 63% of the technology crime cases fell into the following three major categories, i.e. online business fraud¹¹⁵, unauthorised access to computer; and online game related crime¹¹⁶.

In view of the rapid advancement of information and communications technology and the increasing prevalence of technology crime as mentioned above, it is of paramount importance for online shopping consumers to be alerted on the privacy risks of online shopping.

¹¹² Media statement of the PCPD dated 26 Jan. 2016. [online] Available at: https://www.pcpd.org.hk/english/news_events/media_statements/press_20160126b.html [Accessed 14 Oct. 2016].

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ "Online Business Fraud" can be generally described as someone utilising the online platform (e.g., e-auctions) to buy or sell something but resulting in being deceived either in the form of failing to receive the monies or the products. The relevant offences include (i) Obtaining property by deception; and (ii) Fraud.

¹¹⁶ Fight Crime Committee Report No. 34 2014 [online] Available at: http://www.sb.gov.hk/eng/pub/fcc/FCC_Report_34.pdf [Accessed 14 Oct. 2016].

Chapter 5 Consumer Redress in an Online Age

Highlights

In most cases when there is a dispute between a consumer and a business, the consumer will make use of the company's customer services or complaints procedure to resolve the issue, applying whatever escalating mechanisms are available. Because of the small value of most online transactions, suing the trader will usually not be viewed as a practical or cost-effective means of obtaining redress.

The Council finds through its dealing with online consumer disputes that conciliation is often cumbersome when the trader is located outside Hong Kong. An effective mechanism that can help a consumer identify the party answerable and facilitate an out-of-court settlement in a cheap, fast and fair manner would be a valuable tool for resolving online consumer disputes.

Online dispute resolution (ODR) has become a growing international trend. ODR is defined as a "mechanism for resolving disputes facilitated through the use of electronic communications and other information and communications technology"¹¹⁷.

Commentators that have looked at different ODR highlight some best-practice features: Fairness, Visibility, Accessibility, Timeliness, Finality and Enforceability. Such Online ODR mechanisms are available in the EU and the US.

5.1 Limitation of Legal Action

The previous chapter discusses the legal framework governing online shopping in Hong Kong and provides examples of good practice from other jurisdictions. If there is a problem between a customer and an online trader, in most cases the consumer will make use of the company's customer services facilities or complaints procedure to resolve the issue, and then use whatever escalating mechanisms are available. The Consumer Council can also help conciliate between consumers and traders if there is a dispute.

Because of the generally modest value of most online transactions, litigation against the trader will usually not be viewed as a practical or cost-effective means of obtaining redress. This chapter considers other affordable mechanisms for online consumers in Hong Kong to obtain redress when buying from traders outside Hong Kong, for example through in house mechanisms provided by large operators such as Taobao, Tmall and Amazon, when locally provided consumer protection mechanisms may not be available.

As noted above, legal action may not be a practical means for online consumer to seek redress mainly for three reasons:

¹¹⁷ Technical Notes on Online Dispute Resolution UNCITRAL Working Group III, A/CN.9WGIII/XXXII/C.R.P3, para.25 [online] Available at: http://www.uncitral.org/pdf/english/workinggroups/wg_3/crp3-e.pdf [Accessed 3 Oct. 2016].

- The claims are often modest and do not warrant the legal costs to be incurred;
- If the trader is situated in a foreign jurisdiction, as it is very often the case, extra costs will be incurred to bring legal proceedings in a foreign country; and complicated legal technicalities may be involved in the conduct of overseas legal proceedings and enforcement of judgment; and
- Even if a judgment is obtained from Hong Kong Courts, the enforcement of Hong Kong judgment in a foreign country is complex, partly depending on whether there is reciprocal recognition and enforcement of judgment. In the absence of such arrangement, separate legal proceedings have to be brought in foreign courts to enforce a Hong Kong judgment.

5.2 Dispute Resolution

The Council has found, through its dealing with online consumer disputes, that conciliation is often cumbersome when the trader is located outside Hong Kong. Conciliation is also impeded if the transaction involves a complex multi-party contract, where it may be unclear which party should be answerable for resolving the problem. As the OECD points out¹¹⁸, issues have also been raised in the context of apps purchases on online platforms from third party developers. There have been instances where, after consumers had unsuccessfully tried to reach out to a third party developer to resolve problems with the transaction, the role of the online platform on which the product had been sold, was unclear.

Therefore, an effective mechanism that helps consumers identify the party answerable to the claim and facilitates out-of-court settlement in a cheap, fast and fair manner will be a valuable tool for resolving online consumer disputes. It may also enhance the confidence of consumers in e-commerce, who would feel more secure for having a channel of redress to turn to whenever there is a problem with the product they purchased. A settlement without a contentious litigation process may also help to maintain good relationship between the parties.

As the OECD recommends¹¹⁹, "Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden. These should include out-of-court mechanisms, such as internal complaints handling and alternative dispute resolution (ADR). Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress."

¹¹⁸ OECD (2013). *Empowering and Protecting Consumers in the Internet Economy*, OECD Digital Economy Papers, No. 216, p.26, OECD Publishing. Available at: <http://dx.doi.org/10.1787/5k4c6tbcvq2-en> [Accessed 4 Jul. 2016].

¹¹⁹ OECD (2016), *Consumer Protection in E-commerce: OECD Recommendation*, p.16, OECD Publishing [online] Available at: <http://dx.doi.org/10.1787/9789264255258-en> [Accessed 11 Jul. 2016].

5.3 Online Dispute Resolution in Overseas Jurisdictions

A mechanism for out-of-court settlement may take a specific form, namely an “Online dispute resolution” (ODR) which has become a growing international trend. ODR is defined as a “mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology”¹²⁰.

The EU has passed the Regulation on Online Dispute Resolution for Consumer Disputes on 21 May 2013. This entered into force on 9 January 2016 (the Consumer ODR Regulation) and established a common ODR platform for EU members.

The ODR platform is a web-based tool which accepts electronic complaints in prescribed form in any of the 23 official languages of the EU, informs the responding party about the complaint, and refers the disputes to registered ADR bodies which have to comply with the quality requirements of the ADR Directive¹²¹. An electronic case management tool is also available. To increase awareness of ODR platforms, the Consumer ODR Regulation requires online trader/ online shopping platforms to provide a link to the ODR platform on its website¹²². Online traders are also required to inform consumers of the existence of the ODR platform and the possibility of using the ODR platform for resolving disputes.

Around 117 Alternative Dispute Resolution bodies from 17 Member States are connected to the Online Dispute Resolution platform. On average, it takes 90 days for cases to be solved. The experience of European consumers who have used ADR tends to be positive: 70% were satisfied by the way their complaints were handled through this procedure whereas only 45% of consumers were satisfied by the way a court handled their complaint¹²³.

The United Nations Commission on International Trade Law (UNCITRAL) encourages the use of ODR, which has the potential to provide a simple, fast, flexible and effective option for the resolution of disputes, particularly those arising from cross-border low-value online transactions. UNCITRAL drafted the Technical Notes/Guidelines on Online Dispute Resolution to foster the development of ODR as a form of dispute resolution by assisting the participants in an ODR system in the conduct of ODR proceedings¹²⁴.

Outside the EU, there are quite a number of ODR providers, e.g. Better Business Bureau Online (BBB Online) (based in the North America) and Modria (based in the United States and India)¹²⁵. Currently, there are more than 100 BBBs across the United States and Canada. Each BBB responds to complaints about businesses located in its region, handling over 885,000 consumer disputes against businesses in 2013, of which close to

¹²⁰ Technical Notes on Online Dispute Resolution UNCITRAL Working Group III, A/CN.9WGIII/XXXII/C.R.P3, para.25 [online] Available at: http://www.uncitral.org/pdf/english/workinggroups/wg_3/crp3-e.pdf [Accessed 3 Oct. 2016].

¹²¹ A list of the registered ADR bodies is available at <https://webgate.ec.europa.eu/odr/main/>.

¹²² Article 14 of the Consumer ODR Regulation.

¹²³ European Commission, press release “Solving disputes online: New platform for consumers and traders, Brussels, 15 February 2016, [online] Available at: http://europa.eu/rapid/press-release_IP-16-297_en.htm [Accessed 8 Jul. 2016].

¹²⁴ Technical Notes on Online Dispute Resolution UNCITRAL Working Group III, A/CN.9WGIII/XXXII/CRP3, para. 1-3. [online] Available at: http://www.uncitral.org/pdf/english/workinggroups/wg_3/crp3-e.pdf [Accessed 3 Oct. 2016].

¹²⁵ ORD Info, *the National Centre for Technology and Dispute Resolution – Provider List* [online] Available at: <http://odr.info/provider-list/> [Accessed 8 Jul. 2016].

78% were settled¹²⁶. Modria is an online dispute resolution platform which provides automated settlement resolution according to the subscribed trader's pre-configured policies, including auto-escalation for high value customers, or automatic refunds for low value purchases. If the online traders located within the above countries use BBB Online or Modria for handling consumer disputes, consumers buying goods/ services from those overseas traders may then approach the BBB online or Modria to file a complaint if anything goes wrong. The parties must get involved and work with each other to resolve the dispute. They also have more control over the outcome of the dispute. The use of digital technology in ODR allows the parties to select a format that best suits them, ranging from a synchronous form such as a fully automated Internet platform with on online chat or video conferencing, to exclusive use of the asynchronous form, such as e-mail, through which the parties agree on an amount that is acceptable to each other without the need to meet directly¹²⁷.

One feature of ODR is that it avoids one major issue arising from cross-border online retail – namely which law is to be applied and which court is to have jurisdiction over the dispute. Because both parties have chosen to resolve their dispute with an out-of-court settlement process, legal jurisdiction issues can be avoided. However, it is not without limitations. The use of overseas ODR platforms and service providers is predominantly confined to the region of operation. For example, BBB Online only responds to complaints about businesses located in North America; the ODR platform established in EU is only available to consumers resident in EU countries and traders based in the EU¹²⁸. That said, there is nothing to stop consumers outside the EU approaching the appropriate ADR bodies in the relevant Member States to resolve their disputes. At present, the development of ODR in Asia is in its infancy. There is no single and well established ODR platform which offers a single point of entry that allows consumers and traders in Asia to settle their disputes for both domestic and cross-border online purchases.

After reviewing the 15 years' experience of ODR, the Council of Better Business Bureaus launched and now administers a North American consumer "trust mark" programme – BBB OnLine. The report¹²⁹ sets out some basic guidelines to follow to aid any cross-border ODR mechanism. These are shown in Box 1.

¹²⁶ See https://en.wikipedia.org/wiki/Better_Business_Bureau.

¹²⁷ International Comparative Jurisprudence, (2015) *Online dispute resolution: the future of justice* [online] Available at: <http://www.sciencedirect.com/science/article/pii/S2351667415000074> [Accessed 4 Jul. 2016].

¹²⁸ Article 2 of the Consumer ODR Regulation.

¹²⁹ Stephen J. Cole and Charles I. Underhill (2010). *Fifteen Years of OR Experience: The BBB Online Reliability Trust Mark Program*, Uniform Commercial Code Law Journal, 43(1), p.459 -460.

Box 1: Essential attributes of a good online dispute resolution system

- *Fairness.* Consumer dispute mechanisms must have structure, rules and procedures that ensure that all parties' rights are protected and that every aspect of the mechanism operates with regard to the parties' rights to due process.
- *Visibility.* Consumers must be fully aware of the existence of any mechanism. While it is desirable that consumers have this knowledge prior to entering into a transaction, it is critical that this information be available at the time a dispute arises.
- *Accessibility.* The mechanism must be readily accessible by consumers when a dispute arises. Accessibility not only means that the mechanism can be called upon when needed, but that there are no unreasonable barriers to access (including unreasonable costs). In the global context, additional barriers including language, custom and time zone differences must be addressed and overcome.
- *Timeliness.* There is an old adage that "justice delayed is justice denied"; it applies particularly to consumer dispute resolution. Disputes should be resolved as quickly as possible, taking into account the need for the parties to provide (or the mechanism to collect) sufficient information upon which to base a resolution. This will require significant investments in technology to meet user expectations under Internet time frame.
- *Finality.* The mechanism should, to the greatest extent possible, ensure that decisions fully and finally resolve individual consumer disputes. Finality can be ensured by way of:
 - Binding arbitration: both parties agree to be legally bound by the decision;
 - Conditionally-binding arbitration: the arbitrator's decision is not binding on either party unless the consumer formally accepts the decision; and
 - Informal dispute settlement: the parties enter a non-binding process that provides a settlement recommendation. The trader must act in good faith in determining whether and to what extent to honour it.
- *Enforceability.* The mechanism should ensure that decisions it renders are quickly and completely honoured.

The decision reached through the process is not legally binding on the trader, but failure to honour the decision may result in a revocation of the "trust mark" and/ or other sanctions (such as "name and shame").

As a result of BBB's significant success as a self-regulatory process, the report recommends that a self-regulatory framework provides the best model for consumer protection in the global ecommerce environment. Such a framework should include:

- A strong Code for online consumer protection;
- A consumer dispute resolution mechanism that is fast, fair and accessible;
- A "trust mark" to enable consumers to recognise merchants that have made commitments to the Code and to effective dispute resolution.

- Governments play a vital role in:
 - Adopting principles that complement and/or encourage the development of voluntary Codes;
 - Establishing flexible standards for dispute resolution programmes;
 - Establishing methods of certifying “trust mark” programmes and auditing their performance; and
 - Taking action under existing legislation/ regulation when companies fail to honour commitments.
- Industry plays a pivotal role in:
 - Encouraging the development of meaningful standards for online commerce;
 - Funding the development of the technology infrastructure that will be necessary to ensure dispute resolution mechanisms are both cost-effective and can be made available at little or no cost to consumers;
 - Ensuring that opportunities exist which encourage effective partnering among various jurisdictions' consumer groups, dispute resolution programmes and self-regulatory organisations; and
 - Developing private sector funding for new programmes.
- Online dispute resolution models must be developed to take advantage of new technologies while not sacrificing traditional fairness principles¹³⁰.

All in all, the OECD recommendations for consumer protection in e-commerce, the UNCITRAL guidelines on ODR, and the above self-regulatory framework driven by the interaction and collaboration between industry and government initiatives and “trust mark” system could serve as a good basis for exploring the future development of ODR in Asia.

¹³⁰ Ibid., p.449.

Chapter 6 Recommendations

6.1 A Greater Online Retail

Online retail has been steadily growing in Hong Kong over the last ten years, but its penetration is low compared to that in other developed economies and the Mainland. The change in Hong Kong shopping behaviour, means Hong Kong on-street retailers also need to adapt to competition from online shopping sites, especially extraterritorial giant platforms like Taobao, Amazon and Tmall, by capitalising on their strengths such as convenient locations, high quality retail space, and personalisation of service.

Our consumer survey suggests that the vast majority of consumers that have shopped online have been satisfied or highly satisfied. The two most commonly cited reasons given by non-online shoppers for their abstinence are: "Worry about leakage of personal data", and "Have no confidence in the product quality". These are likely to subside as consumers hear about the positive experiences of those they trust. In other countries online retail has been embraced by every age group, and by people living in densely populated cities as well as those living in rural areas. There is no reason to believe that penetration of online retail in Hong Kong will not reach levels similar to those in the UK and the Mainland. In some sectors, such as buying software and hotel booking, online purchasing is already the default option for many consumers.

The Council's complaints statistics reveal the other side of the coin. A record high number of complaints against hotel bookings through online travel agencies and purchases from group buying websites reflect the fact that local online shoppers could be confused by the complexity of multi-party contractual relationships particularly where platforms, traders, and delivery agents are involved.

However, a transition to greater online retail is inevitable. The recommendations of this report are intended to help make the online retail experience safer, and help ensure no group of Hong Kong consumers is excluded from realising the benefits of online retail. These recommendations draw on examples of best practice from other countries where the online retail market is more mature than in Hong Kong, taking on board local conditions and preferences in tackling the new challenges arisen from the online environment. For sustainable development of online retail it is in their best interest that traders to boost the confidence of consumers by taking measures to address those consumer concerns.

6.2 Recommendations to Business

Better Observance of Legal Obligations

Chapter 2 lists some of the common complaints made to the Council by Hong Kong consumers. Late and non-delivery of goods was found to be an issue in the "Electronic Goods" and "Clothing and cosmetics" sectors but is also encountered elsewhere. Sometimes delays in delivering goods arise for reasons outside the control of the retailer, for instance due to difficulties in accessing popular or newly released clothes or smart phone handsets. These are possible breach in contract and the dispute could be addressed under existing law through the court. But in most instances consumers, if they

are treated fairly and kept informed, will understand that delays sometimes occur and may not exercise their contractual rights so promptly and strictly. Businesses should proactively engage with customers if an agreed delivery date cannot be met, telling the consumer the revised date of delivery and offering customers an exchange in goods or refund if this delivery date is unacceptable. The Council recommends that if there is any delay in delivery of goods/ services outside the period agreed or a reasonable period if no time is fixed, the businesses should make a proper refund for any payments made by the customers to the business.

Consumers always complain about unwanted marketing emails and phones calls. Businesses should respect the privacy of their customers and personal data should not be misused for non-operation purposes like marketing without consent.

Another problem identified was redeeming (discount) coupons for products or services in some market categories e.g. "Food and Beverage" sector. If customers give reasonable advance notice and yet cannot access the service on a suitable date there should be a clear direction about whom their complaints should be directed to and the complaints should be considered sympathetically. Clauses seeking to limit the liability of the supplier of the product or service for which the coupon is to be redeemed using terms like "subject to availability" is not acceptable to consumers.

Industry Should Voluntarily Adopt Industry Best Practices

The OECD¹³¹ has made a number of recommendations to protect consumers in the online retail environment which the Council recommends that business should adhere to. The OECD provides a definitive description of *best practice* in information provision to enable consumers to trade confidently. These elaborate on and often go beyond the *mandatory* information provisions described in section 6.4. The OECD's recommendations are grouped under the following headings:

- Information about the business,
- Information about the goods and services, and
- Information about the transaction.

Amongst other things, the OECD proposes consumers should be given the opportunity to review summary information about the good or service being purchased, its full price and any delivery information *before* being asked to confirm a transaction.

An example of a "best practice" recommendation includes a dispute resolution recommendation – "43. Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden."

Another recommendation recognising the increased role of cross-border payments trade arising from online retail. "42. Governments and stakeholders should explore other areas where greater harmonisation of payment protection rules among jurisdictions

¹³¹ OECD (2016), *Consumer Protection in E-commerce: OECD Recommendation*, OECD Publishing, Paris [online] Available at: <http://dx.doi.org/10.1787/9789264255258-en> [Accessed 8 Aug. 2016].

would be beneficial and seek to clarify how issues involving cross-border transactions could be best addressed when payment protection levels differ."

There are many other "best practice" behaviours, including those recommended by OECD, that the Council would like businesses to adopt to increase online shoppers' confidence. The Council invites online businesses to voluntarily adopt the following measures:

1. *Fair price comparison:* A minority of price comparison sites fail to include charges such as booking fees or fuel surcharges. This can result in consumers being provided misleading prices and can undermine fair comparison. Hong Kong businesses should follow the lead set by other countries and itemise all mandatory charges in the price comparison on a "what you see is what you pay" basis. In addition, transparency is the crucial element for price comparison.
2. *Clear statement about the online business policies:* Shoppers are concerned about data privacy, quality/ authenticity of their online purchases and refunds and returns policy. Businesses should clearly set out their policies and make and adhere to performance pledges to enhance consumers' confidence.
3. *Secure handling of customer data:* Businesses should implement security measures to mitigate adverse security impacts of consumers' participation in e-commerce. All uses of personal data should be lawful, transparent and fair and protected with security safeguards.
4. *Summarising T&Cs and making complex T&Cs easier to navigate:* Businesses should include a summary of key provisions (including any unusual provisions) of their contracts and provide signposts/ hyperlinks to the full T&Cs in case a consumer cares to look into the details for any specific provision. The T&Cs that pertain to the contract should be downloadable along with the key terms¹³².
5. *More than one payment option:* To make online shopping more inclusive to consumers that do not have a credit card or choose not to use it for online purchases, businesses should strive to provide payment options other than credit card. This might include options like cash-on-delivery for low value items.
6. *Confused accountability:* The Council has received complaints arising from problems of communications, and acceptance of responsibility when multiple firms participate in supplying a good to the final customer. Retailers should provide clear and accurate information and contacts for all firms that have been subcontracted to supply services e.g. delivery, credit, payment handling. Overall responsibility for any problems remains with the merchant.

¹³² If customers give reasonable advance notice and yet cannot access the service on a suitable date there should be a clear direction about whether their dispute should be directed to the merchant or voucher company. Businesses should not in any circumstances make use of an exemption clause such as making the redemption of a coupon "subject to availability" to escape honouring their offer and commitment.

Recommendations to business to improve e-commerce

Fair price comparison :



Over **60%** of shoppers will

Switch between online & on-street



Clear statement about the online business policies :

48% willing to go online purchase



GUARANTEE

Secure handling of customer data :



30% worry about leakage of personal data

Better transparency of T&Cs :

Easy to Read



- **<50%** online shoppers read T&Cs
- **29%** willing to go online if increase the transparency of the T&Cs

Greater range of payment options :



24% willing to go online purchase

Confused accountability :



How to Claim

Product or service

Delivery

Payment handling



Sector Specific Recommendations

Airline and Travel

More customer friendly websites: The Council urges travel agencies and airlines to build more customer friendly websites and to improve on quality of customer services. Services such as plane ticketing and to improve hotel bookings require customers to input significant amounts of data. It is of course important that data on names, dates and times have to be input correctly. Chapter 2 mentions instances where failures by a website to provide timely feedback on incorrect data input causes nuisance and extra expense for consumers. Online travel agents need to invest in IT interface systems to improve customer experience using their websites, with easy access mechanism to correct errors. These might include:

- Better error checking of customer inputs to exclude any obvious erroneous inputs (wrong date, address formats or common misspellings) so long as they do not violate the terms of the tickets or raise issues with any security regulations.
- Simple and free procedures to allow customers to rectify simple typing errors such as incorrect spelling or names/ contact details. This might include a double validation process so a consumer has to re-enter critical information twice.
- High quality and easily accessed, free telephone emergency customer services to rectify mistakes (wrong dates for a booking) or address time critical changes (bad weather, missed connections).

Data sharing between OTAs and airlines/ hotels: Both the OTA and the merchant hotel/ airline have responsibility for different aspects of the overall delivered service. It is necessary that data is shared between the two parties to ensure smooth operations – for instance information about customer room preferences and dietary restrictions. There should also be clear signposting about who is responsible for handling issues close to the time of contract execution (flight/ check-in time) and the local phone number to contact if any problems are encountered.

Food and Beverages

Online display of mandatory licenses, permits or registered numbers: Food supply is licensed or registered by the Government to ensure customer safety and traceability of food supply. For example, locally based online food shops need to conform to all relevant food hygiene licenses, permits or registration covering manufacture, import, transport, and retail. The Council recommends that their websites observe regulatory obligations and clearly display evidence of up to date licenses, permits or registered numbers that relate to their business activities (manufacture, import, distribution and/or retail of food).

Clothing and Beauty Care

Baiting: There are some examples of discount coupons bought on the Internet being used to attract consumers to the physical stores where sales personnel who are paid on commission are incentivised to persuade a customer to purchase expensive products other than the product they came to collect. Attracting customers to retail shops and using high pressure sales techniques is likely to annoy most customers. Bait advertising and aggressive commercial practices are also forbidden by the TDO.

6.3 Actions for the Council

Integrating Work on Online into the Council's Regular Activities

The Consumer Council will continue its on-going work in monitoring the trade practices of online commerce to promote fairness and reasonableness in terms and conditions and trade practices. It will continue to survey and publish articles on different online markets and consumer satisfaction.

Development of an Online Dispute Resolution (ODR)

One major challenge for safeguarding consumer interest, especially in a small territory like Hong Kong is how to better protect the Hong Kong consumers for online purchase from overseas, where Hong Kong law no longer applies. In Chapter 5 the Council described the progress being made in other countries in fostering online dispute resolution mechanisms to help customers settle grievances with a business rather than go to court. Such ODR systems are particularly valuable in the online retail world where transactions often straddle national or regional borders and litigation is often not a practical option. It is an effective mechanism that can help consumers identify the party answerable and facilitate an out-of-court settlement in a cheap, fast and fair manner through the use of electronic communications.

The Council will support initiatives by business or with sister organisations in greater China and East Asia in the development of a faster channel to settle online consumer disputes without recourse to the courts. The Council is open-minded whether industry or a consumer body leads the development.

Consumer Education

The Council has an important role to play in educating consumers about the risks from online retail and the actions they may take to mitigate those risks. The Council proposes to use various channels to increase awareness and also supply factual information to help consumers in general on how to safely engage in online shopping. These channels include the Council's monthly magazine *Choice* and the Council's website, or even by expand that service to other channels through partnership development. Some important messages to alert consumers are given at the end of this chapter.

6.4 Recommendations to the Government

To enhance consumer confidence and strengthen consumer safeguard in online retail, the Council's recommends that the Government considers the following recommendations:

New Regulations to Protect Consumers in Online and On-street Markets

Right to Withdraw and Mandatory Information Provision

Results from the Council's Survey in Chapter 2 suggest two measures that might encourage the three-quarters of Hong Kong people who do not shop online, to make an attempt. They are: (i) the provision of a guarantee of after sales refunds and returns, and (ii) better transparency of terms and conditions. As seen in Chapter 4 the European Union, Mainland China and Taiwan have introduced legislation that obliges retailers to offer a no-questions-asked right for consumers to return goods for 1-2 weeks period after their orders arrive except for some perishable or sterile purchases to alleviate the anxiety of not being able to inspect goods or services purchased online.

As yet the penetration of online shopping in Hong Kong, at 23%, is lower than in many other advanced countries. But it is quite possible it will rise to levels seen in other countries as today's younger consumers – with their higher propensities to shop online – grow older and retain their online shopping habits. Consumers might have more confidence in using Hong Kong based e-retail sites, over those in other jurisdictions if a widely understood right-to-withdraw is enshrined in law.

The Council recommends that the Government explore the merits of developing legislation to provide consumers with statutory cooling off periods for different types of consumer contracts. Within this wider consumer right there might be a specific right-of-withdrawal for online purchases that can be exercised for a short duration to allow consumers to properly inspect the goods if the quality fails consumer expectations, with exemptions for some classes of goods (e.g. perishables) and services (e.g. fully performed services).

At the same time, to improve transparency retailers should be required to provide information to ensure full disclosure of essential information before the purchase is concluded. This information should include the total price of the goods or services inclusive of delivery charges, taxes and any other costs, full identity and contact details of the trader, duration of contract, details about the right-to-withdraw and complaints handling policy.

Digital Content

As mentioned in Chapter 4, the rapid growth of digital technology boosting consumption of digital content such as e-books, music download and online films and games should be accommodated through necessary legislative changes as in the UK which enacted the Consumer Rights Act in 2015. Prior to that, the UK law was failing to keep up with technological changes¹³³. Without specific legislation dealing with digital content, the courts had struggled to fit the rights found in the sale and supply of goods

¹³³ Para.5, Explanatory Notes of the Consumer Rights Act 2015.

and services legislation to digital content transactions. The law on consumer rights for digital content was uncertain and unclear¹³⁴. It appears that Hong Kong shares the pre-Consumer Rights Act situation in the UK, which is not desirable in terms of consumer protection. For similar reasons, Hong Kong consumers need statutory provisions clarifying the rights and remedies they may have under the law. Most importantly, the Council believes that consumers as well as businesses will benefit from legal clarity.

The Council recommends that proper consideration be given to exploring the legislative options of specifying the legal rights and remedies for purchasing digital content. Such options may for example include (i) amending the definitions of goods to include digital products, or extending the application of the Sale of Goods Ordinance to digital products regardless of their status as goods or otherwise. It also requires suitable amendments to ensure the practical application of the rights and remedies of the goods framework to digital content, for instance, transfer of property and delivery provisions cannot be easily applied to intangibles; (ii) enacting a new subject specific "digital content" legislation; and (iii) a more long-term and holistic approach, following UK experience where a wider reform is undertaken of consumer protection law, with an aim to consolidate consumer protection provisions covering contracts for goods, services and digital content etc. in one single statute.

Research on Online Markets

Competition issues: Chapter 3 discusses the emerging issue arising from the fact that online platforms become more important intermediaries between the customer and the underlying service provider. These firms provide a convenient shop-window to businesses such as hotels, airlines and restaurants and provide consumers with a convenient means of searching for availability, provide consumers with an assurance of supply and also provide legitimate peer-to-peer reviews.

It is also possible that the growing dominance of online platforms could have a deleterious effect on competition. This could arise in cases where the platforms restrict smaller businesses' freedom to market their goods and services at a lower price elsewhere, namely the so-called "Best Available Rates" clause in their contracts. The Government should monitor how online platforms exercise their growing market power, and review international best practice in developing remedies for any problems that have been discovered to date.

Examples in sectors reviewed by the Council which might raise competition concerns are:

- *Travel:* Evidence that large OTAs have significant market power compared to small- and mid-size hotels. This raises concerns about whether this market power is being abused in preventing competition through the use of Best Available Rate agreements offered by the OTA.
- *Food:* Food delivery companies also impose Best Price guarantees preventing restaurants from displaying food at a lower price to customers.

¹³⁴ Para.4.18, Enhancing Consumer Confidence by Clarifying Consumer Law, Department for Business Innovation & Skills, Consultation on the supply of goods, services and digital content, July 2012.

Big Data: There is much hype about the "Big Data" in the market. Large online retailers already harvest data about their customers' history of purchases to propose tailored suggestions for future purchases. "Big Data" is the integration of large datasets from different sources to draw insights, either at the individual, customer segment or population level. Such exploitation of "Big Data" may provide benefits to consumers in terms of better targeting of products that are appropriate for their needs.

Prohibitions on transferring personal data forbid the sharing of data in which individuals can be identified. However, such prohibitions do not apply on data where personal identifiers have been removed. Although privacy is not an issue in these circumstances, consumer profiling of certain spending patterns could strengthen the market power of traders. The Council, perhaps working with sister organisations internationally, should seek to understand how personal data and de-personalised aggregated data from social media, search engines, e-commerce sites is being analysed, transacted and sold, to ensure that consumer interests are being upheld. Government agencies also need to understand any risks that "Big Data" causes to customers and to the marketplace in fostering fair competition. For instance, "depersonalised" aggregated data (Big Data) may be used to the disadvantage of consumers, for example in setting differential pricing to different classes of customers, or to further increase the market dominance of larger players against smaller players.

Online sales of pharmaceutical and health products: Chapter 4 discusses the problems of online pharmacies which are a major source of unregistered/ counterfeit pharmaceutical products or health products. No pharmacy in Hong Kong has been authorised to sell controlled medicines via the Internet. Consumers buying medicine online place themselves outside the umbrella of the local public health protection framework. The Council urges the Government to review the extent of this issue, to tightly enforce existing regulations and from time to time review whether there is a need to make responsive changes if consumers are buying a significant amount of drugs over the Internet.

Reducing Security Risks from Online Shopping

In our survey, non-Internet shoppers cited leakage of personal information as their most common reason (30%) for not making online purchases. Some of this risk can be reduced by consumers themselves adopting relatively straightforward behavioural habits. Other risks arise from newly released viruses, or phishing emails or vulnerabilities in software. There are two public organisations that enhance general level of knowledge about Internet security: InfoSec operated by the Government and HK Computer Emergency Response Team (HKCERT) operated by the Productivity Council.

The Government's InfoSec seeks to provide a one-stop portal for the general public to effectively access information and resources on information security as well as measures and best practices for prevention of cybercrimes. It already has a public face and educational role and the Council encourages the organisation to undertake more outreach to reassure and educate the general public about security issues.

HKCERT collaborates with local bodies to collect and disseminate information and coordinate response actions to safeguard Internet security. Some of the incidents identified by HKCERT might pose risks to online shoppers – for instance attempts to


commit financial fraud, or certain computer viruses that might be spread from online retail sites or communications or attacks by phishing emails. It is noted that HKCERT publishes the quarterly Hong Kong Security Watch Report to provide information of compromised systems (including phishing websites, malware hosting websites and defaced websites) that are useful to companies having online ecommerce services¹³⁵.

In addition to InfoSec website, the Government also maintains the Cyber Security Information Portal (www.cybersecurity.hk). The portal provides practical advice and step-by-step guidelines for consumers how to conduct health check on computers, mobile devices and websites. The Council is looking forward working with these organisations to promote consumer awareness about the security issue in the online shopping market place.

6.5 Consumer Alerts to Safeguard Consumer Interests

Consumers can also take some small steps and adjust the way they purchase online to enhance their security, reduce the risk of fraud and avoid unwanted marketing emails.

Pay Using a Secure Payment Method and Ensuring Security of Personal Data

When placing an order online, consumers should ensure the site/ payment gateway is secure. Generally for a secure site, the URL begins with "https://" and there "closed padlock"  in the lower right hand corner of the browser.

While there might be a reluctance by some consumers to use credit cards, and the Council has suggested that various non-card options should be considered by traders, consumers should ideally consider paying with a more secure method such as by credit card or through a trustworthy payment gateway if security is a major concern for them. Under certain circumstances, the practice of chargeback of card issuers may allow consumers to reverse a transaction if there is a problem with the goods or services they have purchased.

Consumers should avoid disclosing personal data that is not necessary for the online purchase or delivery, for example their HKID card number. They should think twice before supplying personal data to any party in exchange for privileges. Consumers should avoid storing passwords/ username on a device, especially a portable device that might be prone to be stolen. If sensitive information has to be stored on the device they should ensure it is protected with passwords. Undertaking online retail on public computers and public Wi-Fi should be avoided since the security level is unknown and there is the risk of interception.

Consult Trusted People and Websites before Making Purchase on an Unfamiliar Website

Before shopping online, consumers should research the online retailer to ensure it is reputable. For instance consumers can look at others users' comments about the website. Another option before making purchases from an unfamiliar website is to consult with friends, colleagues or family members who may have a shopping experience with the site.

¹³⁵ A study on *Transaction Mobile Apps Security of Hong Kong* in 2015 to alert mobile app owners and developers of the importance of good implementation of encryption that identified problems in over 30 apps among 130 tested apps in Hong Kong and had referred them to HKMA, SFC and PCPD to follow up. https://www.hkcert.org/my_url/en/articles/15091201.

Be Aware of Terms and Conditions

Before making a payment, consumers are usually asked to tick a box indicating that they agree to the website's terms and conditions (T&Cs). Consumers should make sure that they have read them before ticking the box. Consumers should download a copy of the T&Cs for reference as the site may alter its T&Cs *after the transaction*. The T&Cs prevailing at the time of the transaction are the ones that are applied to the purchase.

Reducing Nuisance from Unwanted Marketing

Consumers should remember to exercise their right to refuse, or opt out of direct marketing activities if they do not wish traders to use their personal data for direct marketing purposes, or to transfer their data to others.

If a consumer believes their personal data has been used for unauthorised purposes or disclosed to other parties for direct marketing without consent they can complain to the PCPD.

Consumers Should Make Sure They Know Their Rights of Refund

It is vital for consumers to know whether they have any right to a refund if they are not happy with the items purchased. The right to full refund varies under different policies. Some refund policies allow the return of goods without providing a reason while others only allow a return of substandard goods. Consumers should be aware of how far they are protected by the refund policy.

Consumers should be vigilant about online retail from overseas websites. It is difficult and expensive to obtain redress when the trader is located outside Hong Kong.

Don't Believe Claims that Are Too Good to be True

When encountering product reviews or appraisal of products, beware of the claims which are "too good to be true".

For instance, consumers should consult healthcare professionals on any health claims that appears to be miraculous. They should consult their healthcare professionals if they are considering a 'miracle' or 'instant-fix' claim about medicines, supplements or other treatments.

No Hong Kong pharmacy has been authorised to sell drugs online. Consumers should therefore avoid self-diagnosis and self-prescribing and remember that fake and banned drugs are rife in online pharmacies. Consumers should never purchase through Internet sites or consume drugs with unidentifiable or doubtful ingredients. Taking unauthentic drugs is highly hazardous to health. The ingredients of these drugs are unidentifiable, or adulterated. Even when the drug carries the same active ingredient, its dosage remains unclear. As for parallel imports, the health impact on consumers could be increased if the quality and effectiveness of these drugs are compromised due to improper storage during transportation.

Issues consumer may take note of

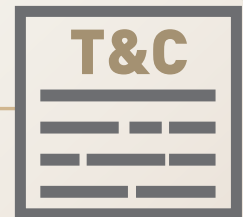
Pay with a more secure method : through a trustworthy payment gateway



Consult friends, colleagues or family members when making purchase via an unfamiliar website



Beware of claims which are "too good to be true" in product reviews



Download a copy of T&C for reference and read the T&C carefully before ticking the "agree" box

Find out if there's right to a refund and what is the refund policy



Exercise your rights to refuse or opt out from direct marketing activities under PDPO



6.6 Concluding Remarks

As noted, the share of Hong Kong consumers currently shop online is growing gradually. If Hong Kong follows the path of other countries this is set to change. In the above recommendations the Council highlights a number of key changes that business, the Government, the Council and consumers should take forward to ensure a safe and beneficial online retail environment. However, while the market continues to develop, one immediate safeguard is to strengthen enforcement of the existing laws to tackle violation of regulations in selling goods and services online. To foster a safe and healthy environment, all stakeholders have to play their part in applying good standards and measures for the purpose of serving consumers' rights.

The PDPO prohibits personal data being used for purposes other than the purpose for which it was collected. While 80% of the websites the Council investigated sought the customer's permission for data to be used for marketing purposes, it is unclear if and how the remaining 20% of firms used any customer data they may have collected. The Council is unaware how the data provided by consumers to the traders was ultimately used. Though it may not be illegal, it seems Hong Kong consumers are often at the receiving end of unwanted marketing phone calls and emails. The Council recommends the law prohibiting personal data being misused for marketing should be tightly enforced. All websites should ask permission if the company wishes to use any data collected for marketing purposes.

It is also necessary for the Customs and Excise Department taking proactive investigations on malpractices by online retailers. Any misleading and deceptive conduct online or on-street is regulated by the Trade Descriptions Ordinance. As more consumers shop online, the department's enforcement strength should be proportionately stepped up, reflecting the increasing need to safeguard consumer interests.

The development of online retail is a game-changing evolution in the way that Hong Kong consumers shop. It is not a passing fad, but a whole new way of conducting business. Over time new companies will develop that are best able to capitalise commercially on this technology. It is an exciting time for Hong Kong retail.

The Council hopes this Study will prove useful to businesses and the Government in helping the future development of a safe and beneficial environment in which online retail can prosper in Hong Kong. Together with stakeholders including the Government, business and the region, the Council looks forward to playing an important and on-going role in educating consumers, the Council will continue to advocate on their behalf and to support the development of a regional ODR platform with business and other consumer groups in the greater China area. It is a hope that a fair and sustainable online marketplace will flourish in Hong Kong.



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