

Online Retail

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

November 7, 2016

The Study

- Background & objectives
- Scope and methodology
- Key findings
- Recommendations





Objectives

1

To gauge the state of online retail behaviour and consumers' satisfaction

2

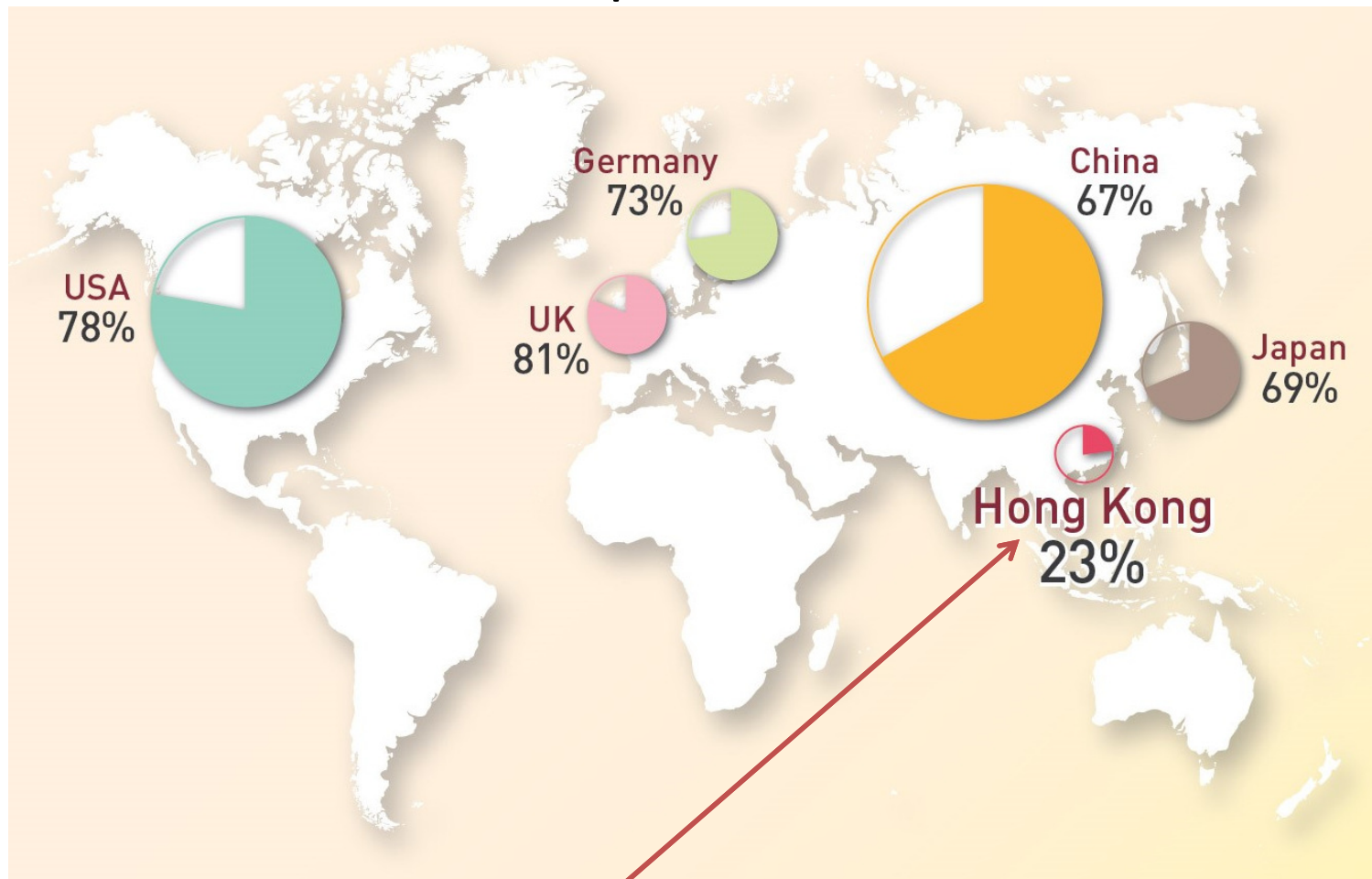
To understand the development of trade practice and to review the legal protection to online shoppers

3

To recommend measures to strengthen consumer protection



Online shopping – state of development across countries



- Grew from 7% to 23% between 2004 and 2014

* Thematic Household Survey Report No. 54 of the Hong Kong Census and Statistics Department





Scope and methodology

Consumer behaviour study

- On-street survey (Jan – Feb 2015) of 1,010 face to face interviews
- Responses from both online shoppers and non-online shoppers

Trade practices study

- Focus on 4 sectors: Airlines & Travel; Food & Beverages; Clothing & Beauty; Computer & Electronics
- Engage 47 online retailers (Jul 2015 – Apr 2016) and interview (24)
- Desktop research (23) and mystery shopping (15)
- Meeting with regulator and trade associations

Legal protection review

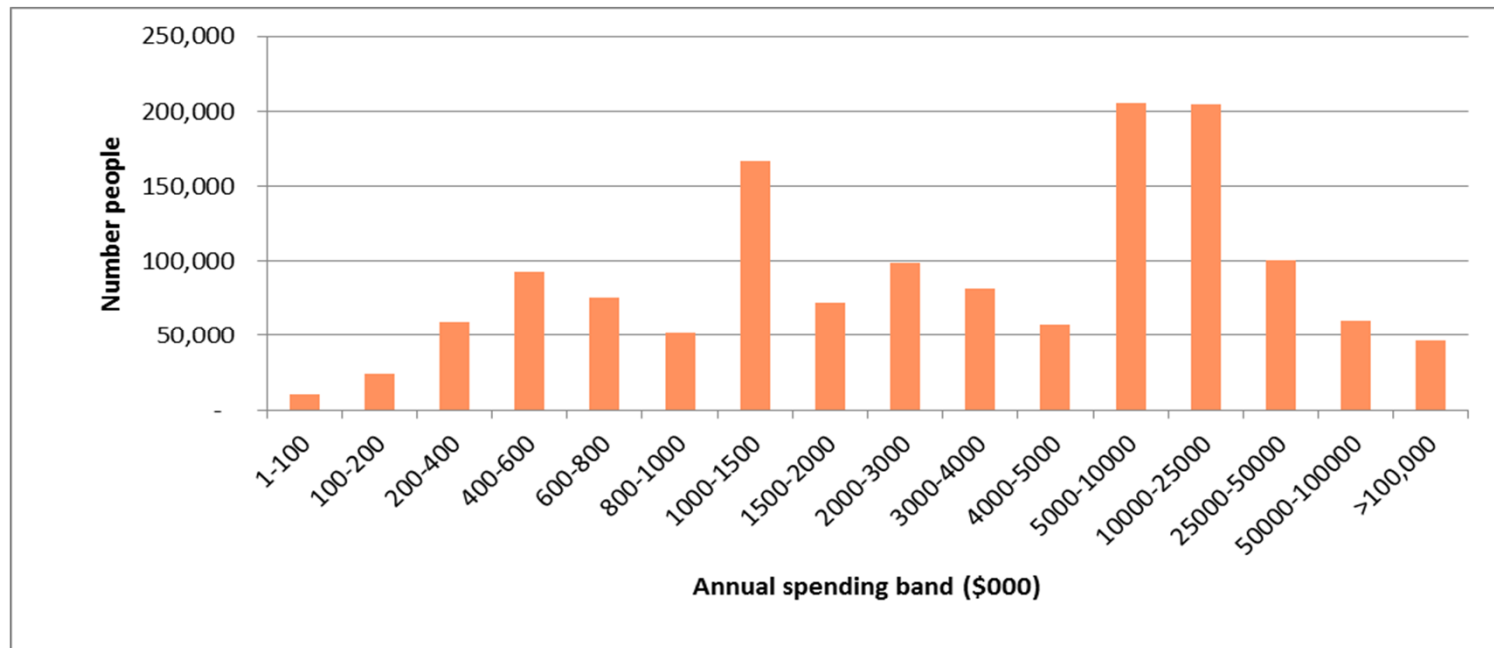
- Review of overseas legislation (EU, UK, Mainland China and Taiwan)
- Online dispute resolution mechanism

Consumer Online Purchasing Behaviour



How much do online shoppers spend?

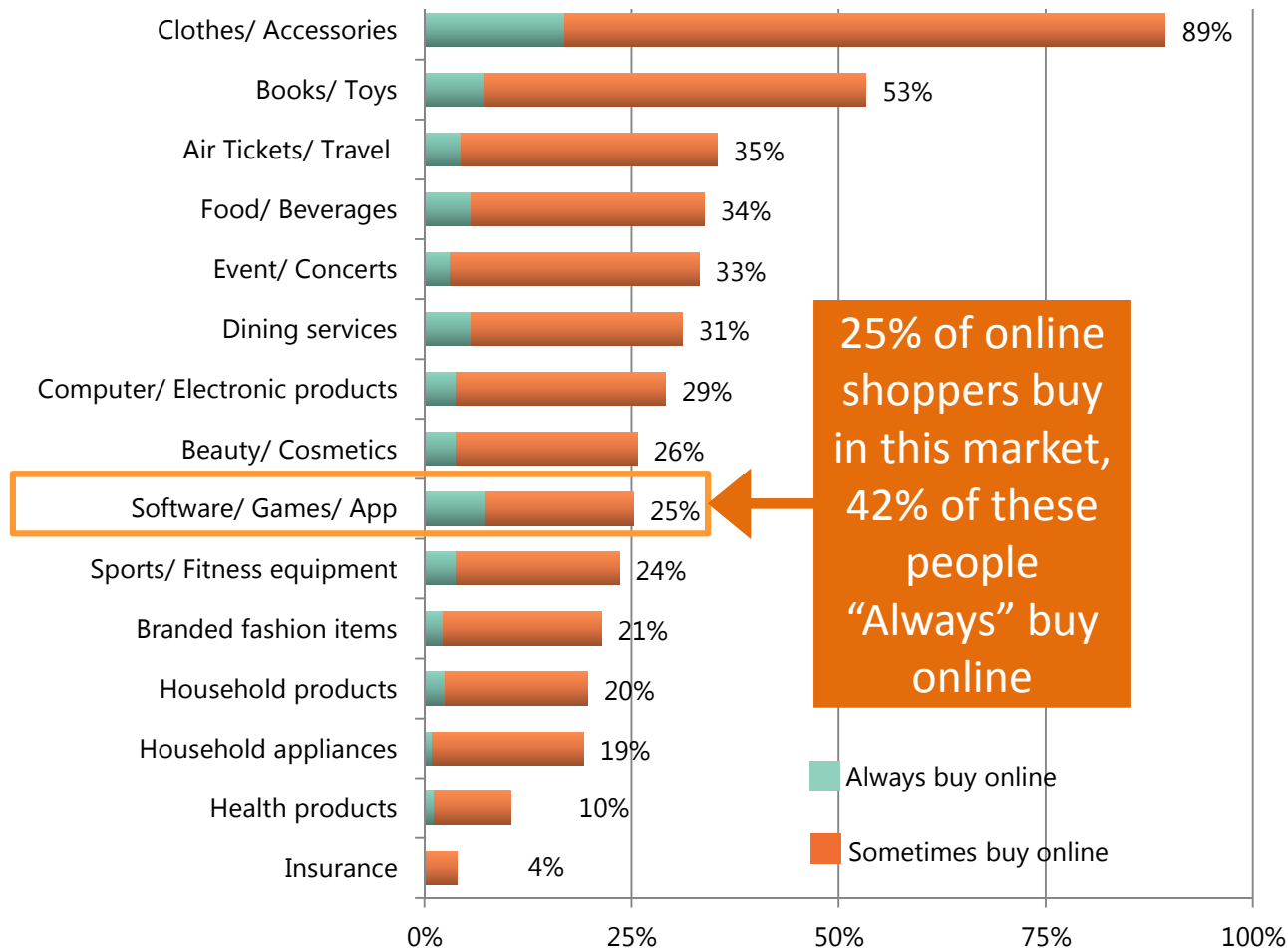
- Uneven distribution of spending from online purchasing population



- Half online shoppers spend \$3,600 per year or less
- Average annual spend per online shopper = \$15,250
- Average purchase = \$790
- Average frequency = every 10 days
- Customers who buy frequently tend to buy from a wide variety of markets

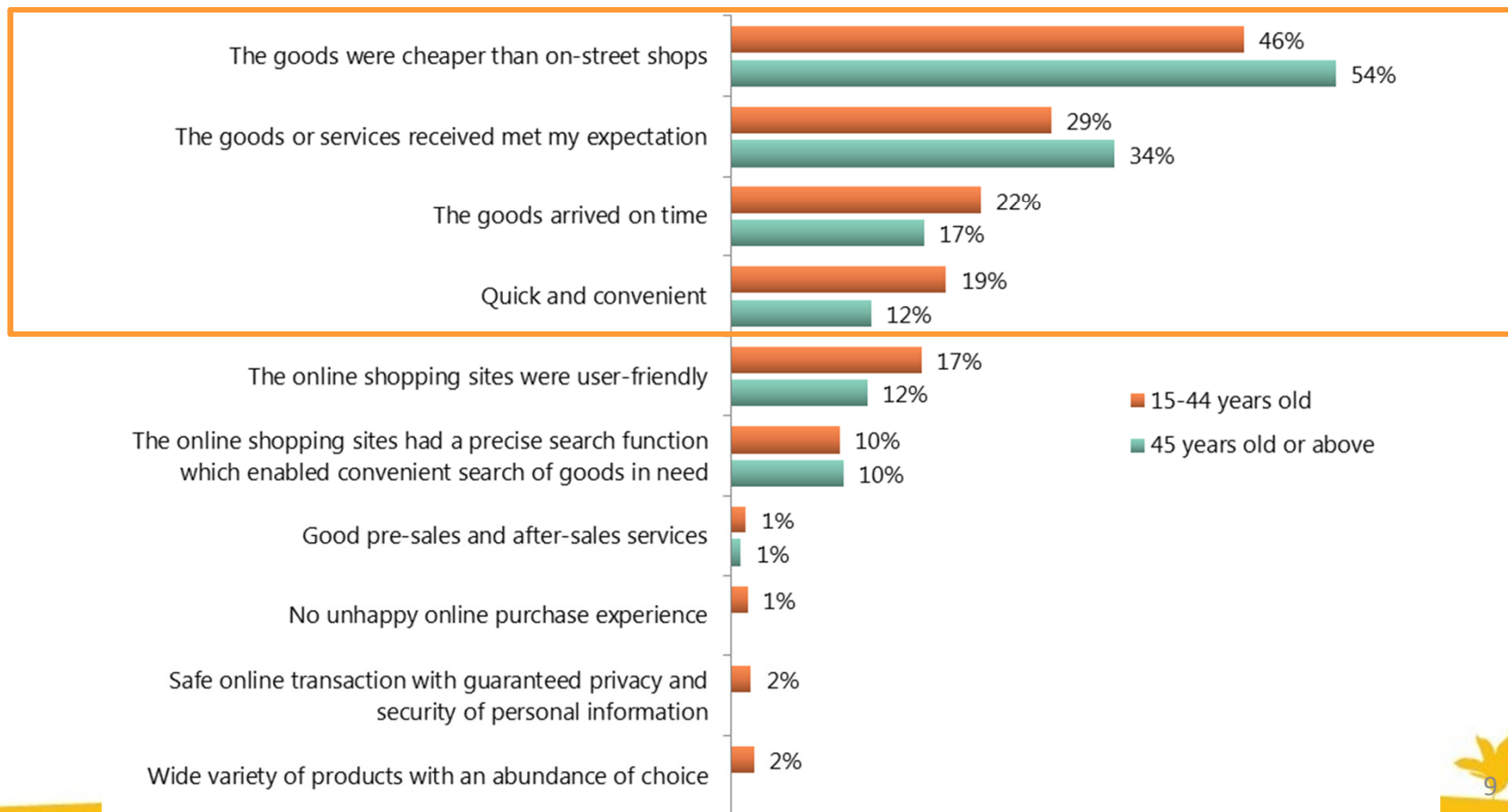
What sectors are most popular?

- Non-branded “Clothing / Accessories” are the most frequently bought online
- Average “Always” buy online across sectors: 16%, share of “Always” buy online is highest in “Software / Games / App”



Why are online shoppers satisfied?

- Goods are cheaper than on-street and quality meet expectations
- Younger consumers appreciate goods arriving on time and online's convenience more than older shoppers

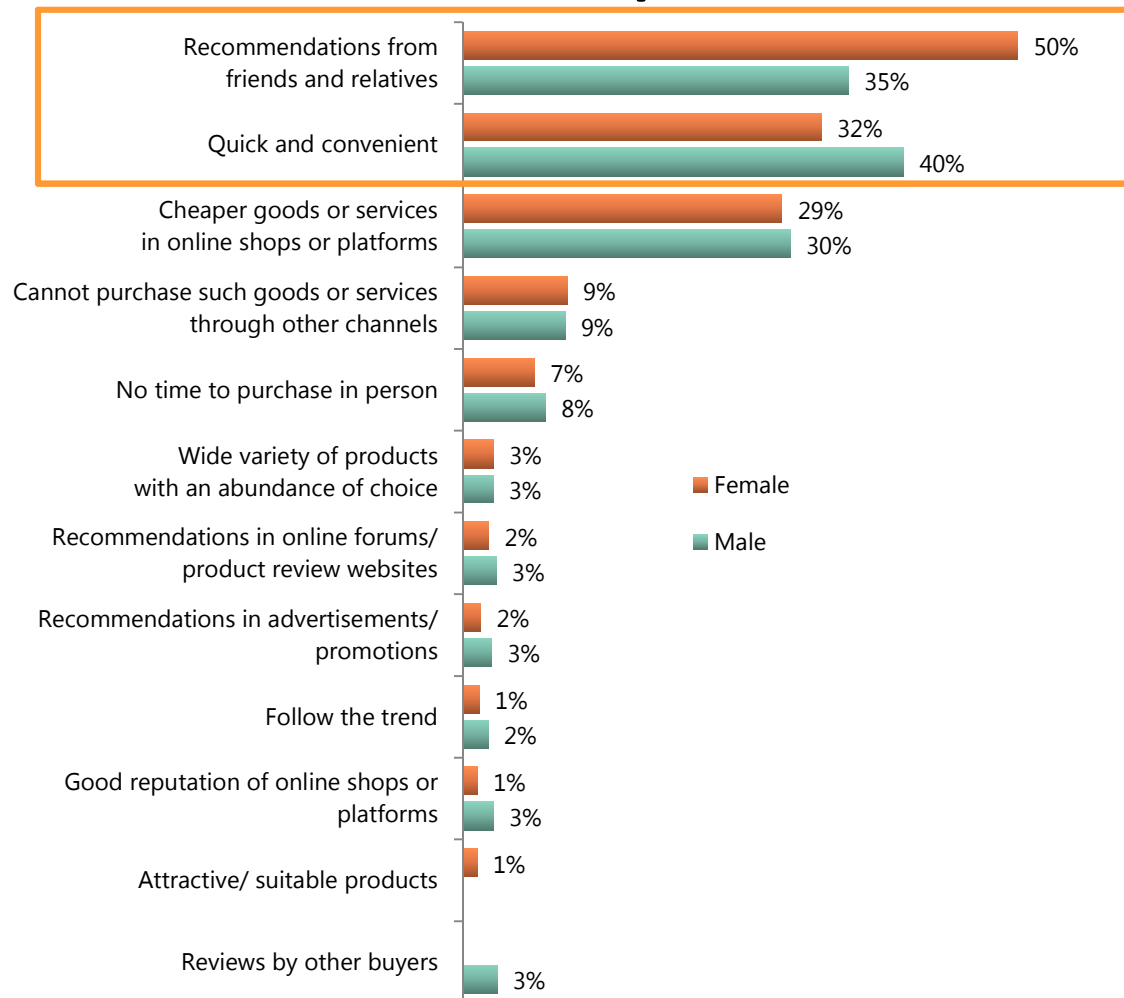


What drives first time online purchase?

Recommendations
from friends &
relations



Quick and
convenient
36%



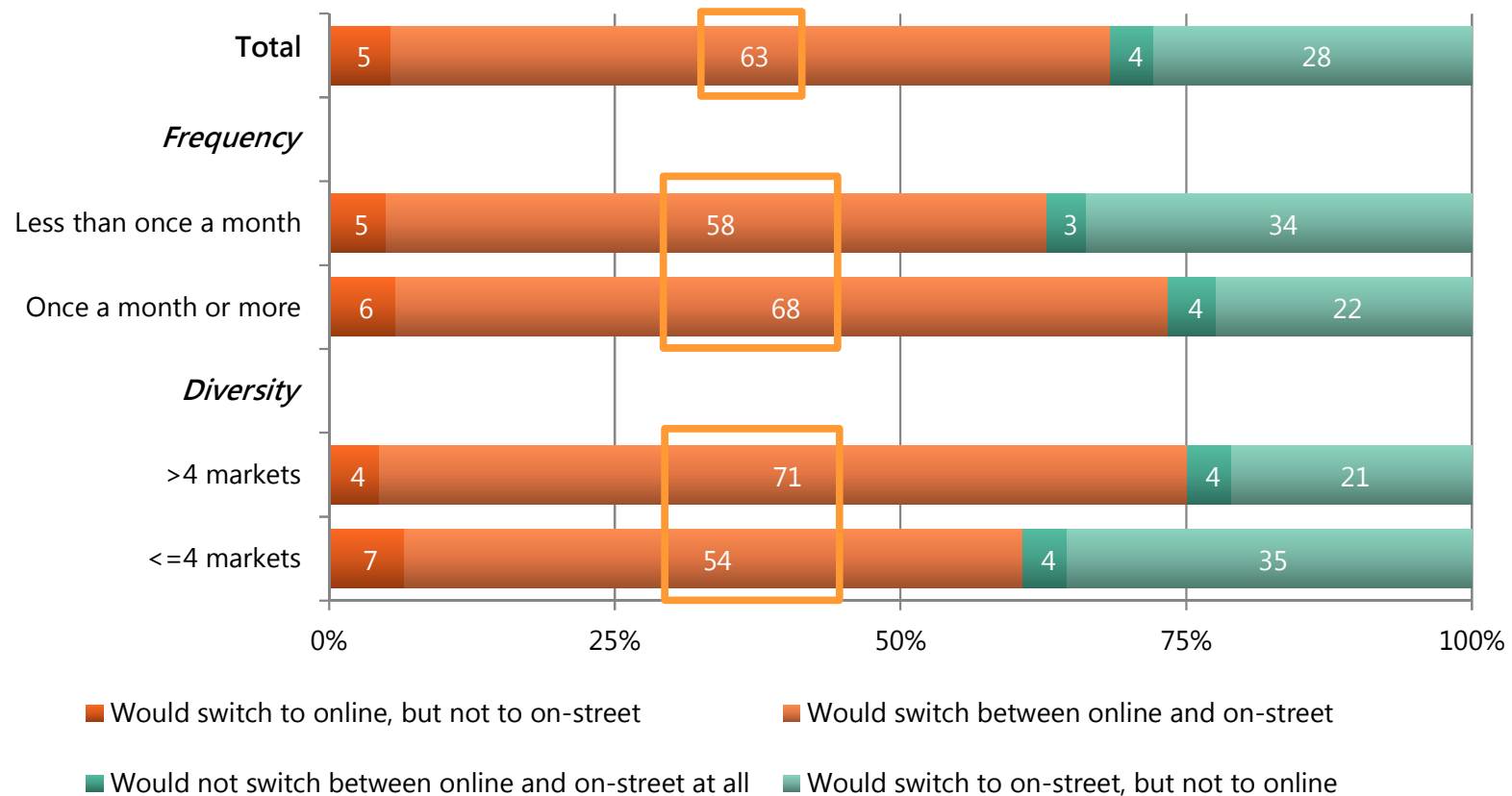
Criteria to select online shopping websites

- Consumers prefer sites with Good reputation (76%) and Track record (62%)
- User friendliness (37%) and Security measures (33%) are also important



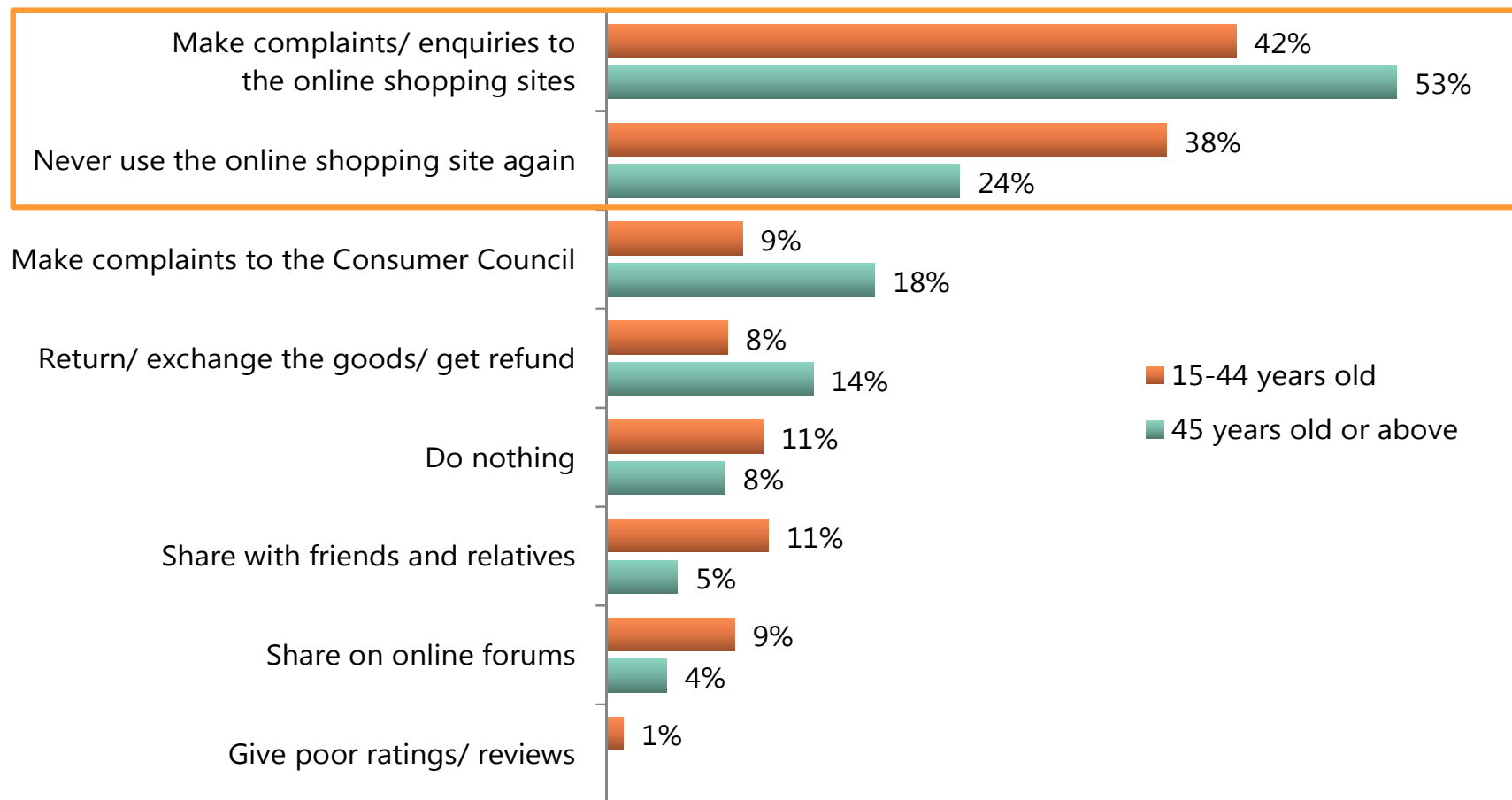
Will shoppers switch for 5% price saving?

- 63% switch between online and on-street
- Shoppers who shop online *more frequently* and from greater *diversity of markets* are more liable to switch

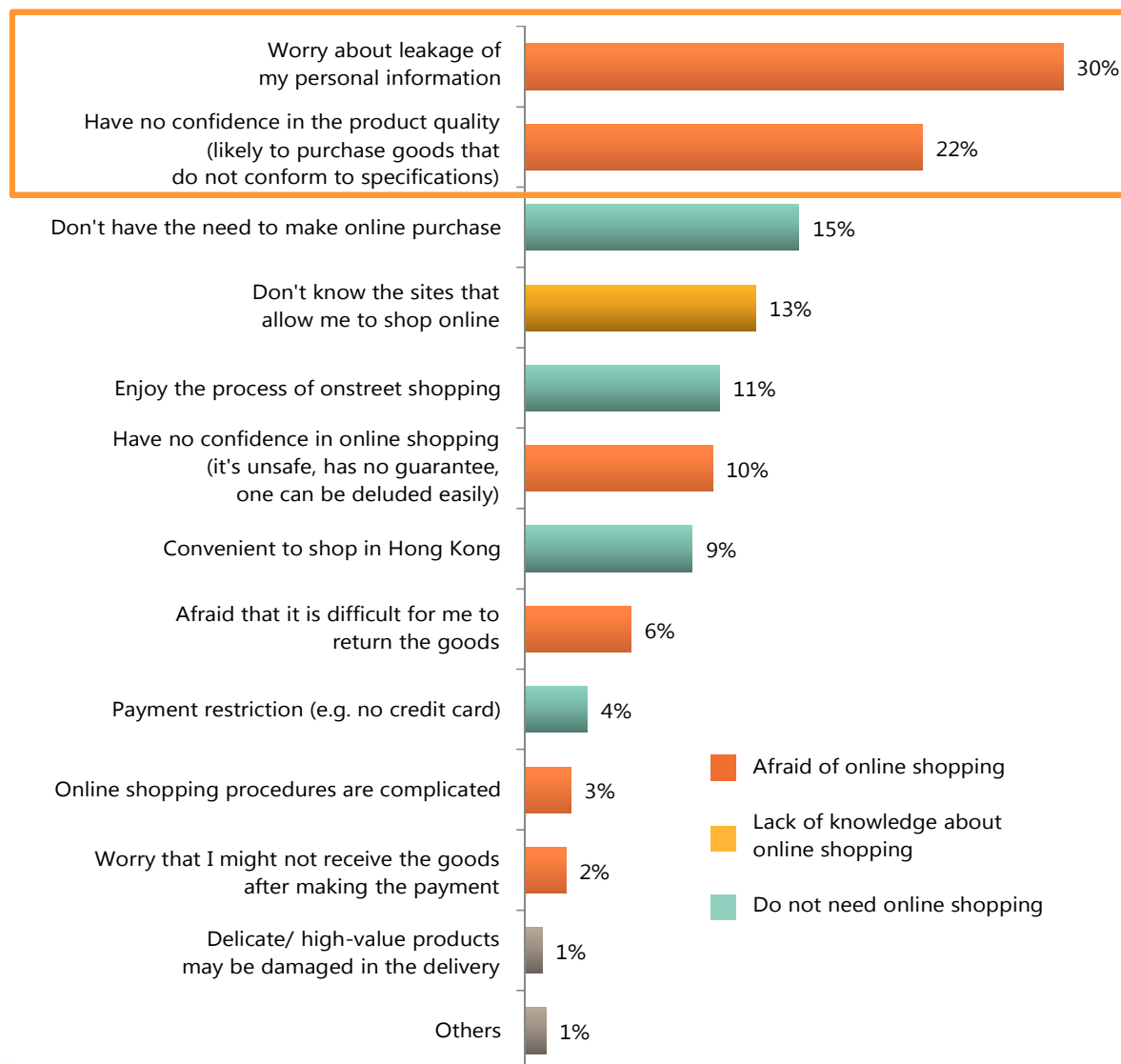


How do consumers seek redress?

- Mostly contact sites directly for redress, but younger customers are less tolerant of bad experiences
- Mature customers tend to seek help from the Council more



Why some people don't shop online?



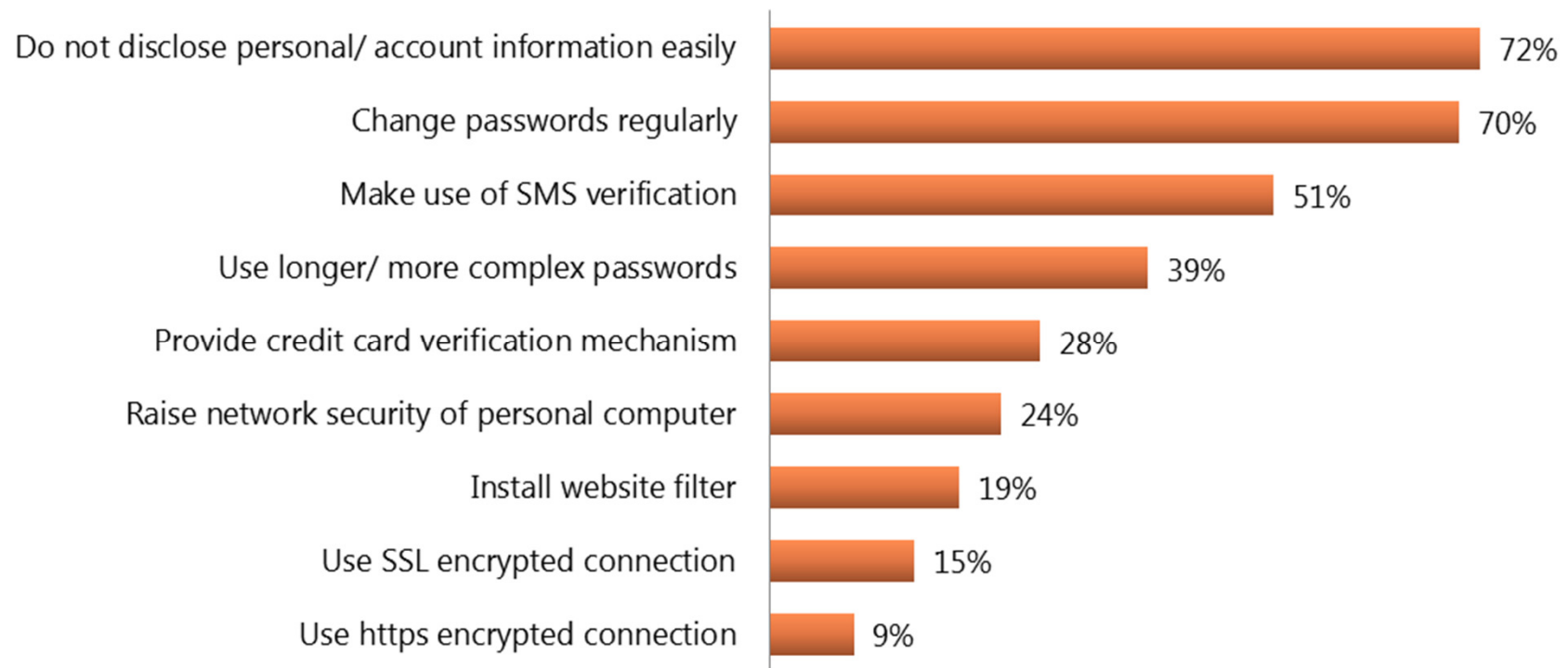
What drives for an attempt?

- Better refunds / returns policy is the most popular encouragement
- Lack of clarity in the terms and conditions second most cited impediment



What online safety measures used?

- Widely suggested safety measure are *not disclosing information* (72%) and *changing password regularly* (70%)
- Using encrypted connections (9-15%) or providing credit card verification (28%) were seldom mentioned





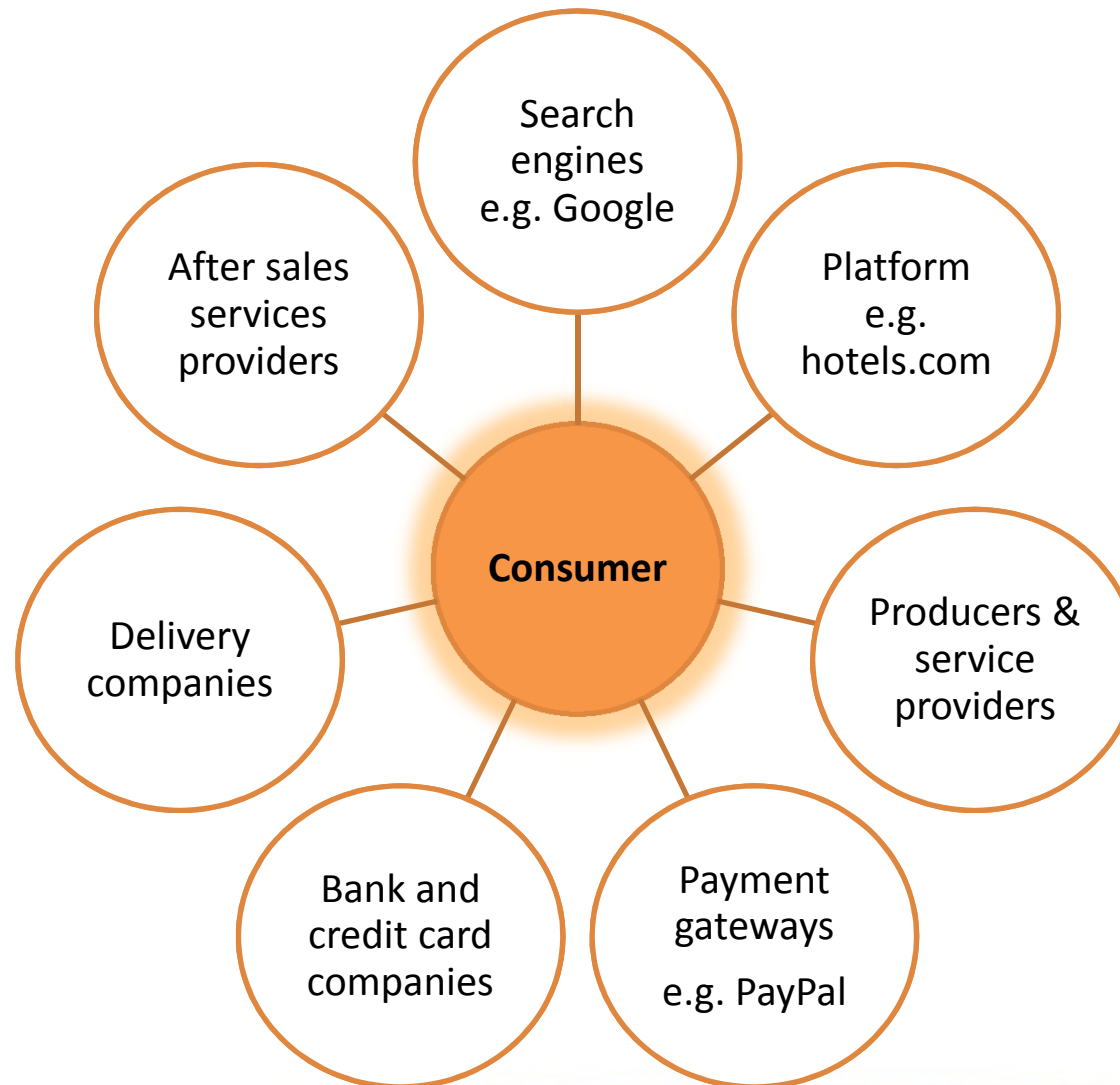
Conclusions – consumer survey

- Online shoppers have high satisfaction.
- They buy from a diverse range of markets and appreciate cheaper prices, and goods meeting expectations.
- Non-shoppers nervous about data leakage and product quality. Better and clear return policies and terms and conditions are necessary to boost confidence.
- Consumers lack knowledge of certain key security measures and could be exposed to risks.

Online Retail Trade Practices



A diverse range of actors in an online transaction





Issues arising from trade practice study

1. Lack of transparency about traders' geographic location
2. Complexity arising from third-party platforms
3. Redirection to third-party links
4. Privacy and right to be forgotten
5. Payment options
6. Price display, delivery arrangement and refund
7. Courier and package consolidation services



Key findings across all markets (1)

1. Lack of transparency about traders' geographic location

- “.hk” does not imply business is Hong Kong based
- Expensive and inconvenient to resolve disputes with overseas traders

2. Complexity arising from third-party platforms

- In some sectors traders are highly reliant on platforms
- Improper data sharing or untimely transfer between platform and merchants can create risk to consumers

3. Redirection to third-party links

- Websites sometimes sub-contract to third parties ancillary services e.g. insurance product bought along a good/service
- Can cause problems as a separate contract with different terms and conditions that consumer may be unaware of

Key findings across all markets (2)

4. Privacy

- Two thirds of websites researched required customers to register as a member to make a purchase
- Around 20% of websites did not ask whether users could opt-out of data being used for marketing

5. Payment Options

- Only 20% of websites Council researched allowed customers to pay cash-on-delivery, cheques or bank transfers



Key findings across all markets (3)

6. Price Display, Delivery Arrangement and Refund

- Drip pricing and disclosure of additional charges shown at a late stage during order
- 8 of the 15 purchases made by Council did not offer refunds unless goods deemed sub-standard by retailer

7. Courier and Package Consolidation Services

- Overseas purchase has increased demand for courier and consolidation services
- Pricing basis for charge is based on either weight or volume. Customers sometimes charged on the more disadvantageous basis





Competition concerns

- Online platforms might establish a dominant position in the *distribution* markets which they operate in
- Could materially affect the ability of suppliers to independently reach their customers

Examples:

- Small- and mid-scale hotels rely on the Online Travel Agents (OTAs) for a high proportion of their bookings
- OTAs required best available rate (BAR) contracts
- Food delivery companies ask for Best Price Guarantees

Sector highlights – airlines and travel

- Substantial growth of online travel agents
- Concerns for consumers
 - Online bookings offer more flexibility for travelers, but less personalisation of services
 - Insufficient system capacity can generate complaints, especially double-booking of price-sensitive tickets
 - OTAs might not share data with airline/hotel in a timely manner
 - Some price comparison sites don't quote fuel surcharges at search, biasing ranking of prices



Sector highlights – online food retail

- Low penetration of online in food retail though new businesses developing in marketing and delivery of cooked food
- Concerns for consumers
 - Regulatory gaps were filled with new licensing requirements to govern selling of fresh foods online, surveillance of compliance is required.
 - Risks of failing to maintain proper temperature of fresh food during delivery (chilled meat and sashimi 0°C - 4°C)
 - Cooked food delivery companies face complaints about incorrect order, food arriving late or cold.
 - Company might insist restaurants offer a Best Price Guarantee



Sector highlights – Electronic products and Clothing and beauty care

Electronic products

- Unlike Europe and North America local retailers have not developed strong online presence and offers
- Concerns for consumers
 - Problems encountered with late delivery outside a reasonable timeframe, especially for goods with high demand (like new smartphones)
 - Risk that appliances bought online from overseas sites do not meet EMSD's electrical standards

Clothing and beauty care

- A high proportion of online shoppers already purchase products from this market
- Concerns for consumers
 - Some beauty clinics use coupons and high pressure techniques to bait customers to purchase higher cost products

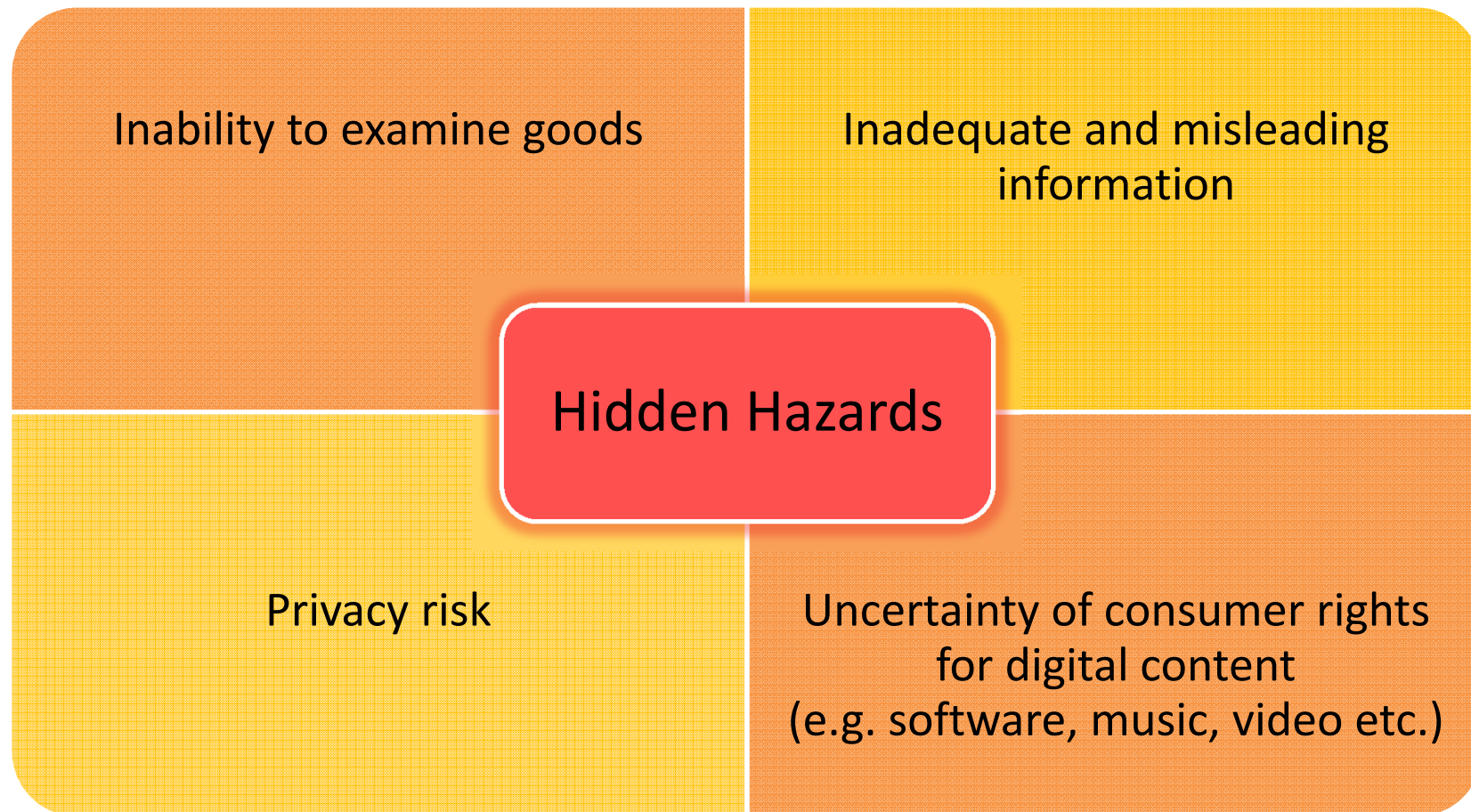




Legal Protection for Online Retail



Online shopping common hidden hazards





Inability to examine goods – right of withdrawal in other jurisdictions

	EU & UK	China	Taiwan
Cancellation period	14 days	7 days	7 days
Exemptions	Vary between jurisdictions, but in general are: <ul style="list-style-type: none">• “Investment” type products• customised goods• time limited goods like perishable goods and newspapers• goods that have to be sold sealed e.g. hygiene products or audio-visual products• services which have been fully performed		



Misleading and deceptive trade practices

Trade Descriptions Ordinance

- Applies to online and offline transactions
- Forbids false or misleading trade descriptions of the goods or services e.g. fake quality standards or outdated test results
- Wrongly accepting payment, misleading omissions, bait advertising, bait and switch and aggressive commercial practices



Inadequacy of Information

- No specific provisions in Hong Kong legislation to govern information disclosure regarding online purchases, but exists in Mainland China, Taiwan and EU

UK Consumer Contracts Regulations 2013

1. Identity of the trader
2. Address and contact details of the trader
3. The conditions, time limit and procedures for exercising “right to cancel”
4. Arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the services
5. Any additional delivery charges and any other costs
6. Duration of the contract, or the conditions for terminating the contract

Digital content – goods or services, or something else?

- Supplied in tangible form (on a disk) or intangible form (by download, streaming etc.)



Goods?

- Data is by nature intangible, but goods usually denotes tangible object
- Sale involves transfer of ownership: But buyers of digital content products only get a user licence but not ownership



Services?

- *Usually denotes actions, i.e. doing something* : But digital content is a “thing”, though intangible



Digital content – an uncertainty in HK legal protection

- Hong Kong has no specific rights for digital content under:
 - The Sale of Goods Ordinance
 - Supply of Service (Implied Terms) Ordinance
- Specific consumer rights for digital content in the UK Consumer Rights Act 2015
- Digital content products are treated as far as possible as physical goods
 - Quality of the digital content to be reasonably satisfactory
 - Should match any description of it given by the trader to the consumer
 - 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 consumer.


Privacy risk

- Traders have to comply with Personal Data (Privacy) Ordinance and its 6 data principles
- Risk of misuse of personal data
e.g. passing of personal data to delivery agent without sufficient data protection measures, such as confidentiality undertaking
- Consumer education is needed – from consumer survey, 1/3 quoted privacy and security measures as critical to establish trust



Resolving Disputes over Online Purchases





Litigation impractical for resolving online disputes, especially for overseas purchase

- Modest value involved
- Complicated legal procedures
- Disproportionate legal costs
- Jurisdiction and enforcement problems



What
alternative
countries
have

Online Dispute Resolution (ODR)

Examples:

BBB Online (North America), Modria (USA – Members only) and EU ODR platform (EU)



Online Dispute Resolution

Benefits

- Mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology
- A simple, fast, flexible and effective option for the resolution of cross-border online transactions
- Avoid jurisdiction issue

Attributes of Good ODR

- Fairness
- Visibility
- Accessibility
- Timeliness
- Finality
- Enforceability

Recommendations





Recommendations to business

1. Observance of legal obligations

- Strengthen policy on delivery problems
- Uphold privacy ordinance for marketing
- Fair Contract terms for pre-paid services and promotions

2. Voluntary introduction of best practice

- Transparent information provisions
- Summary review before concluding the transaction

3. Dispute resolution mechanism

- Clear policies and channels for redress
- Ease of access and friendly procedures

OECD best practice behaviours

- Fair price comparison
- Clear statement about the online business policies
- Secure handling of customer data
- Summarising T&Cs and making complex T&Cs easier to navigate
- More than one payment option
- Clear accountability between merchant and platform

Industry specific recommendations

- **Airline and Travel**
 - More customer friendly website
 - Improve quality of online customer service
 - Better error checking of customer inputs
 - Local telephone contact for emergency customer services
 - Simple and for free procedures to correct errors
 - Data sharing between service providers
 - Contact details
 - Clear signposting of responsibility
- **Food and Beverage**
 - Improve online display of mandatory licences





Government – New regulations to be considered

1. **Right to withdraw**


- Government to explore merits of statutory cooling off period for different types of consumer contract
- May include online purchases with suitable exemptions

2. **Mandatory information provision**

- Price display: Total price with breakdown of delivery, taxes, etc
- Full identity and contact details for trader
- Complaints handling policy and procedures

3. **Digital content**

- Statutory provisions to clarify consumer rights and remedies



Recommendations to Government

– Monitoring and surveillance

1. Competition issues

- Impact of the growing dominance of online platforms
- Proactive measures to enable competition

2. Big Data

- Analysis of consumer data might help business to customise products to meet consumer needs, but also enable discriminatory pricing which is against consumer interest

3. Online sale of pharmaceutical products

4. Reducing security risks through scaling up security centre and consumer education

5. Strengthen or ensure enforcement meets needs

- Data privacy
- Trade Description Ordinance

Consumer alerts

- Pay using a secure payment method & ensuring security of personal data
- Consult trusted people and websites before making purchase on an unfamiliar website
- Be aware of terms and conditions
- Reducing nuisance from unwanted marketing
- Consumers should make sure they know their rights of refund
- Don't believe claims that appear too good to be true



