

RisoltiOnline, Médiateur du Net and Internet Ombudsmann: Have They Experienced a Significant Evolution Lastly?

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Abstract. This paper aims at monitoring the evolution of three European ODR providers that were studied in our previous paper “Mediation for B2C Disputes: Results of a Study of Three European ODR Providers”. We focus on quantitative data such as the number of disputes managed, their type and their nature for 2007, 2008 and 2009 to see if any development has taken place. The question of whether the world financial crisis has affected these institutions and some facts in this respect are presented, as well as other issues such as the specialization of the organisation for the success of the service. Finally, future European and worldwide challenges are mentioned with regard to online dispute resolution (ODR) evolution.

Keywords: ODR provider, mediation, e-commerce, RisoltiOnline, Médiateur du Net, Internet Ombudsmann, ECC-Net.

1 Introduction

Online dispute resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It provides a faster and cheaper way to get disputes solved than ordinary litigation, as well as it relieves courts and administrations. ODR may be used in different fields where technology helps the parties to reach an agreement, for instance e-commerce. This method was born in North America around twenty years ago and, during its history, several projects, commercial initiatives and others have taken place. As Conley Tyler stated in [1], the four stages of ODR development are the hobbyist phase (1990-1996), the experimental phase (1997-1998), the entrepreneurial phase (1999-2000) and the institutional phase (started in 2001)¹.

Taking these four stages as starting point, this paper aims at monitoring the evolution of three European ODR providers which appeared at the end of the entrepreneurial phase and during the institutional phase. RisoltiOnline (2002),

¹ Further information on the different phases can be found in [2] and [3] (this last reference is a paper of this volume).

Méiateur du Net (2001, although free service was opened in 2004) and Internet Ombudsmann (2000) are these institutions that deal with e-commerce disputes using mediation. The statistical data on their performance was already collected and compared in [4] for 2007. Now the goal is to go further in this study by collecting and comparing data from 2007, 2008 and 2009 to see whether or not there has been a significant change and what the future trends may be. In this respect, we have found interesting to ask the question of whether the financial world crisis has affected ODR providers.

The paper is organized as follows: section 2 briefly describes the three providers; section 3 gathers all the data found in the institutions' websites focusing the attention on the number of cases per year, the type of cases and the nature of the disputes; and section 4 presents a set of conclusions and issues for further research.

2 The Three Institutions

This section explains shortly the main features of the three ODR providers which will be analyzed. The three institutions were chosen because (i) they only offer online mediation and no other ODR mechanism is used; (ii) they are owners of ODR technology [3]; (iii) one or the unique domain they manage is e-commerce; and (iv) the main or unique type of disputes handled are B2C.

2.1 RisolviOnline

RisolviOnline² is a service of the Chamber of Arbitration of Milan (Italy). It offers services of offline and online dispute resolution for B2B, B2C and C2C (individuals, businesses and representatives such as solicitors), no matter the economic value and the nationality of the parties. This organization provides a mediator—chosen from a panel of mediators—and the tools for the conflict resolution process to occur. The service is managed by the Secretariat and its personnel shall be and appear to be impartial in the management of the disputes and towards all the parties involved, they shall not enter into the details of the dispute nor shall they give legal advice nor engage in conciliation activities.

2.2 Méiateur du Net³

Méiateur du Net⁴ is managed by Marie Françoise Le Tallec. This service is a part of the *Forum des droits sur l'internet*, a non for profit organization which counts with

² <http://www.risolvionline.com>

³ This provider has stopped its activity while this research was being carried out (see <http://www.cio-online.com/actualites/lire-le-chant-du-cygne-du-forum-des-droits-sur-internet-et-de-ses-services-3287.html>). This issue and its consequences are commented later on in this paper.

⁴ <http://www.foruminternet.org/particuliers/mediation/>

over 70 members, public organizations, associations and private companies. Médiateur du Net is based in France and it deals with national and international B2C, C2C, P2P disputes and .FR domain name conflicts. To mediate in any of these cases, there is a team of three qualified people or an external mediator can be appointed. He must be neutral and impartial towards the case and the parties and he has to use the platform to manage the dispute.

2.3 Internet Ombudsmann

Internet Ombudsmann⁵ is a neutral and independent organization located in Vienna which receives funds from the Austrian Ministry of Social Affairs, Labour and Consumer Protection and the Chamber of Labour. The service offered is online dispute resolution for e-commerce and the Internet, especially for national and international B2C disputes, although C2C and B2B issues may be also helped. A mediator to manage the conflict is appointed out of a team of experts in the fields of Internet, law, consumer consultation and communication. In addition, Internet Ombudsmann also offers legal information, advice on alleged “free offers”, conferences, etc.

3 The Evolution of the Institutions from 2007 to 2009

In [4], there were nine points which were analyzed for the three providers for 2007: the process, the toolkit, the cost, the number of cases, the type of cases, the nature of the dispute, the outcome of the process, the duration of the process and other data. The aim of that paper was to draw a picture of how ODR providers worked and to identify common patterns. However, for the purposes of this study we will focus on the number of cases per year, the type of cases and the nature of the dispute as these are the features that will allow us to see the evolution. The process, the toolkit, the cost and the duration are not covered as they remain the same and do not offer quantitative data on the development of the institution. Finally, the outcome of the process (which remains with high rates of agreement) and other data have neither experienced significant changes with regard to the evolution.

⁵ <http://www.ombudsmann.at>

3.1 Number of Cases per Year

When gathering the number of cases of the three institutions, we can see that the differences are huge especially for RisolviOnline which has very low case management figures. Therefore, we will devote our attention to Médiateur du Net and Internet Ombudsmann. Table 1, 2 and 3 show the number of requests received during the different years, the number of cases which were managed and the percentage of acceptability.

Table 1. Number of cases of RisolviOnline (adapted from [5]).

Year	Number of requests	Number of cases managed	Percentage of acceptability
2007	117	8	6.83%
2008	181	9	4.97%
2009	188	6	3.19%

Table 2. Number of cases of Médiateur du Net (adapted from [6], [7] and [8]).

Year	Number of requests	Number of cases managed	Percentage of acceptability
2007	3559	1317	37%
2008	1739	981	56.41%
2009	2003	974	48.62%

Table 3. Number of cases of Internet Ombudsmann (adapted from [9], [10] and [11]).

Year	Number of requests	Number of cases managed	Percentage of acceptability
2007	8096	7456	92%
2008	7353	6471	88%
2009	10009	8808	88%

There are two aspects which should be noted for Médiateur du Net and Internet Ombudsmann: on the one hand, the fact that the percentages of cases accepted for mediation is becoming lower or remains the same; and on the other hand, the relation between the number of cases and the population of the country. Concerning the first aspect, there are two reasons stated in [8] that may explain the tendency of the percentage of acceptability:

- The number of companies in compulsory liquidation has increased due to the world financial crisis, so the service can not help the consumer and has to redirect him.
- The number of frauds has also increased, so the service can not handle these disputes and has to address them to the police or to courts.

Therefore, if the financial crisis and the increase of frauds have affected the percentage of acceptability, the number of requests should also have increased significantly. Nonetheless, it did not: the numbers for 2009 grew in comparison with those of 2008, but slightly with those of 2007. By this short and variable evolution, it

is hard to guess whether the providers will receive more complaints or on the contrary they will not. Probably, once the economic recession is far away, consumer income will be higher again so we will see a growth in the number of disputes.

With regard to the population of the countries and the number of requests, there are interesting figures to analyze. According to the Chamber of Commerce and Industry of Dijon, there were 278,000,000 online transactions in 2009 in France⁶. In that year, the French population amounted to 64,321,400 inhabitants⁷ and 45% of them bought or ordered goods or services for private use over the Internet⁸ (about 28,940,580 people). Taking into account the total number of inhabitants and comparing it with the 2003 requests received by Médiateur du Net, we can see that the provider only received 3.11 per 100,000 inhabitants. This figure is surprising, as the French General Direction for Competition, Consumption and Repression of Frauds, its regional services, the consumer associations and even the registers of the courts address, if possible, the complaints to this institution. As a result, the provider is well-known by the French and there is not a lack of information. So what is happening? We may think of the lack of specialization as a possible hypothesis: Médiateur du Net deals with B2C, C2C, P2P and domain name disputes. Later on we will devote a section to analyze the types of disputes, but we may already back up this idea looking at the figures of the Austrian provider.

The Internet Ombudsmann, only dealing with B2C disputes, received 10,009 requests in 2009. By that time, Austria had 8,355,260 inhabitants⁹ and 41% of them bought or ordered goods or services for private use over the Internet¹⁰ (about 3,425,656 people). Therefore, the Austrian provider dealt with 119.79 complaints per 100,000 inhabitants, which surpasses at length the figures of the French provider. We could think that another reason to explain this meaningful difference is that there are other institutions in France dealing with e-commerce disputes as the country has a long ADR tradition [12] and there are different ADR bodies depending on the nature of the dispute¹¹. However, to the best of our knowledge, both the European Consumer Centre of France and the French Direction for Competition, Consumption and Repression of Frauds only address e-commerce disputes to Médiateur du Net. Some complaints may also be submitted to the French e-Commerce and Distance Selling Federation (FEVAD) which may only intervene if the consumer complains about a company associated to FEVAD.

Consequently, even if the French are encouraged to try to solve their complaints by their own means before asking an institution for assistance, we may infer that there is a significant number of complaints in e-commerce which remain unresolved. In fact,

⁶ http://www.dijon.cci.fr/assets/files/pdf_information/e_commerce_france.pdf

⁷ According to the Institut National de la Statistique et des Études Économiques, http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATTEF02133

⁸ According to Eurostat, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-09-046/EN/KS-QA-09-046-EN.PDF

⁹ According to the Bundesanstalt Statistik Österreich (STAT), <http://www.statistik.at/>

¹⁰ Ibid. Eurostat

¹¹ You may find Le Médiateur de la République taking care of individual conflicts with the administration, Médiateur de la Téléphonie dealing with commercial disputes between a consumer and a telephone company, Médiateur du groupe La Poste dealing with disputes between the French Post Office and its clients, etc.

the situation may be worse from now on as Le Forum des Droits sur l'Internet is going through a process of dissolution. The reason is economic: 85% of this organization has been funded by the government, but this funding will be stopped after 31st December 2010. Mediation services have already finished and the General Assembly of Le Forum des Droits sur l'Internet is considering the fact of keeping the document database at least for three years¹².

In any case, the situation in other European countries such as Spain lays far behind for initiatives such as the French and Austrian providers. Alternative dispute resolution does exist in Spain but, on the one hand, the bodies providing it (Arbitral Consumer Boards) have a stronger institutional nature than Internet Ombudsmann or Médiateur du Net and, on the other hand, the process is usually carried out offline. Nevertheless, the Catalan Consumer Agency¹³, an institution belonging to the Catalan Government, deals with consumer complaints in the broadest sense of the word and sometimes the processes take place online. It is indeed a good starting point but needs to be further implemented.

3.2 Type of Cases

The focus of the study was to take providers dealing with e-commerce disputes, especially those relating to B2C. RisolviOnline is the only one to formally accept B2C and B2B. The percentage of the first type (calculated over the total of requests) is much higher than the percentage of the second (see Fig. 1).

¹² <http://www.reseaux-telecoms.net/actualites/lire-le-forum-des-droits-sur-internet-sacrifie-22786-page-2.html>

¹³ <http://www.consum.cat/>

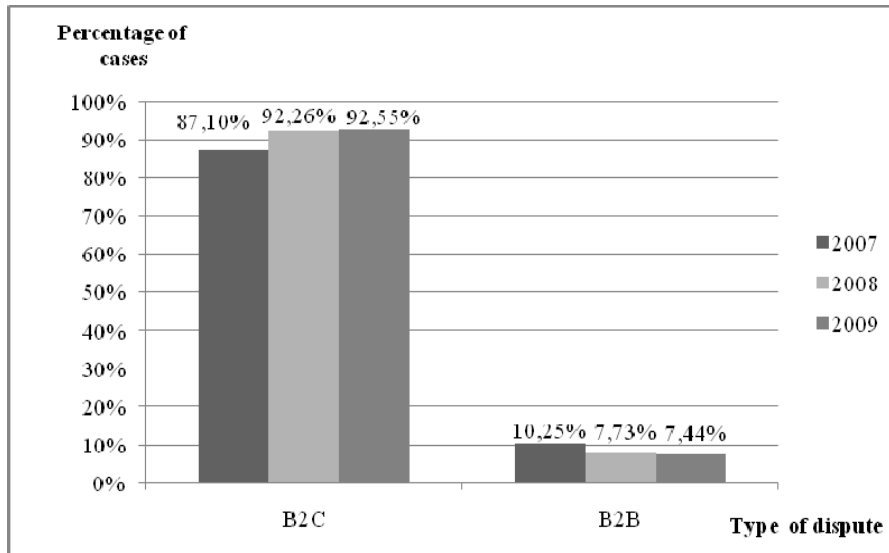


Fig. 1. Percentage of requests per year of B2C and B2B disputes for RisolviOnline (adapted from [5])

As [2] says, B2C are the most common disputes for all the institutions dealing with e-commerce issues. The vast majority of ODR providers worldwide agree that companies do not usually participate in online dispute resolution procedures due to the lack of trust. On the other hand, another reason that may explain this tendency is economic: a litigation process is much more expensive for an individual than alternative dispute resolution, so some companies which may afford the costs of going through the courts would find litigation more suitable to get more benefit.

We have seen very low figures for mediation in B2B. Nevertheless, if data about arbitration for B2B disputes was analyzed, we may observe different trends. Companies more and more include arbitration clauses in their contracts because they are binding [13], so the number of disputes settled in this way is increasing (as a matter of fact, the American Arbitration Association filed 138,447 in 2008). Nonetheless, even if arbitration is popular among companies, there are only 15 ODR providers offering arbitration and 13 of them are located in the USA [2]. This means that, at least in Europe, arbitration mostly takes place offline so further steps need to be taken to foster the use of online arbitration.

Next figure shows the percentage of cases managed by Médiateur du Net. Again, the percentage of B2C disputes (calculated over the total of cases managed) surpasses the others at length. C2C, P2P and domain names have constant figures, although their future would have been quite different if the provider was not about to disappear.

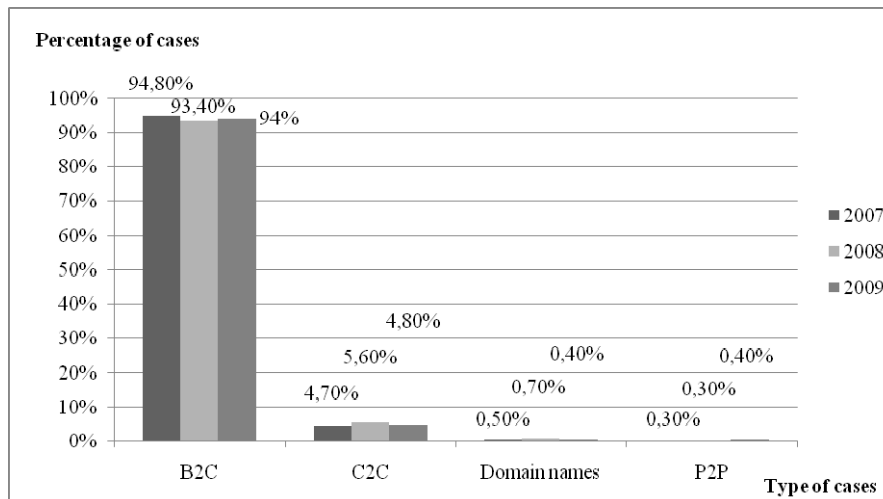


Fig. 2. Percentage of cases managed per year of B2C, C2C, domain name and P2P disputes for Médiateur du Net (adapted from [6], [7] and [8])

Domain names in Médiateur du Net would likely decrease in the following years if the organization continued its activity. In 2009, 4 cases were managed and the role performed by this provider was purely facilitative to restore dialogue and find out a solution [8]. In this field, there were other institutions managing domain name disputes such as the World Intellectual Property Organization (WIPO), the Centre of Mediation and Arbitration of Paris (CMAP) and the French Association for Domain Names and Cooperation (AFNIC) that delivered mediations or arbitrations. According to the AFNIC, there were 201 domain names that went through judicial litigation or alternative dispute resolution¹⁴ in France and were handled by these three organizations. So even if the roles of these three bodies and Médiateur du Net are not exactly the same, there is a notorious difference in the amount of cases that should be taken into account. In fact, Médiateur du Net often addressed disputes to the AFNIC [8] so that it rendered a decision on the case. As a consequence, Médiateur du Net would deal with less and less domain name disputes and people would prefer to go directly to WIPO, CMAP and AFNIC (even if they are not free of charge) to get their dispute directly solved.

On the other hand, C2C and P2P disputes would have a growing tendency during the following years due to the development of new kinds of interaction through the net; for instance, auction websites and social network interactions respectively. In the words of [14]:

“Every day, new types of interactions appear online that have the potential to generate disputes: harsh restaurant reviews on Yelp, privacy violations on Facebook, non-working music and movie downloads on iTunes, or faulty virtual tractor purchases in Farmville, to name only a handful. Unofficial estimates put the

¹⁴ According to *Rapport d'activité 2009*, AFNIC, <http://www.afnic.fr/data/divers/public/afnic-rapport-activite-2009.pdf>

number of online disputes into the hundreds of millions of cases per year, maybe even into the billions.”

The C2C model is proving to be one of the most successful developments in electronic commerce after the dot.com bubble burst which made Internet business change [15], so the possibilities regarding disputes arisen in this model are endless. However, the figures for C2C in Médiateur du Net (5 cases for 2009) are very low and the provider argued that these cases were difficult to handle. If we compare this number with eBay, we will see a huge difference because the nature of the institutions and the procedure to manage complaints is completely different. In any case, Médiateur du Net could have taken a look at eBay’s example if there was to be a future strategy. eBay –the most well-know auction website in the world—has a volume of 60 million managed disputes a year thanks to advanced tools that resolve the vast majority of cases without human intervention or to the eBay Community Court ¹⁵[14]. Médiateur du Net might not have a “crowd sourcing”¹⁶ option for several reasons but it might have thought of advanced tools to give faster outcomes to the complainants, as speed is one of the reasons why some ODR providers have limited success (complainants expect to have a solution in a matter of minutes)[14].

Finally, no figure is provided for the Internet Ombudsmann as all the cases they manage are B2C. However, C2C or B2B are accepted in special cases if there is enough time, for example when one side is inferior economically (one-man business against a telephone company)¹⁷. Unfortunately, as these are not the usual cases, there is no percentage about them.

To sum up, we cannot really see an evolution in the type of disputes managed by the three providers as data remain constant during these three years. A study comprising more years and more European and worldwide ODR providers should be carried out in order to have more data, compare it and present more precise future trends. Nonetheless, we have been able to note a significant difference in the number of cases managed when comparing one provider to another (see section 3.1) that we have linked with the type of disputes managed, so our hypothesis is whether specialization makes providers to be more successful to receive cases. It seems that complainants prefer to address their disputes to the “expert” in a particular kind of dispute. As a matter of fact, the Internet Ombudsmann had a high amount of disputes and it only deals with B2C disputes. Another example is Cybersettle which deals with insurance disputes. Over the past 10 years it has handled over 200,000 transactions and has facilitated over \$1.6 billion in settlements, including bodily injury and other

¹⁵ The Community Court is composed by jurors who were previously members of the eBay community and applied to be jurors. When there is a complaint, the buyer can upload images, text or other digital files to support his point of view. Then the Community Court contacts the seller, who has the same opportunity. The jurors look at the evidence they have and they say whether they agree with the buyer or with the seller. Then, the feedback is given by eBay and it is what more than half of the jurors said.

¹⁶ Crowd sourcing is the act of taking a job traditionally performed by a designated agent (usually an employee) and outsourcing it to an undefined, generally large group of people in the form of an open call (http://crowdsourcing.typepad.com/cs/2006/06/crowdsourcing_a.html)

¹⁷ According to Piotr Luckos, working at the Internet Ombudsmann in charge of information and advice, case management and dispute settlement.

types of insurance claims¹⁸. The figures speak for themselves but, in any case, we would need further research to prove this hypothesis and to get to know whether there are other causes which make the complainants submit their dispute to one institution or to another.

3.3 Nature of the Dispute

In [4], an effort was made to try to unify the nature of the disputes of Médiateur du Net and Internet Ombudsmann to see if there were shared causes of the disputes (RisolviOnline was not included because it did not have these data). It was found out that both providers had managed an important percentage of incidences regarding product delivery. However, we have now drawn two different figures (Fig. 3 and 4) as the focus is to work out the evolution of the providers and then, if possible, compare them.

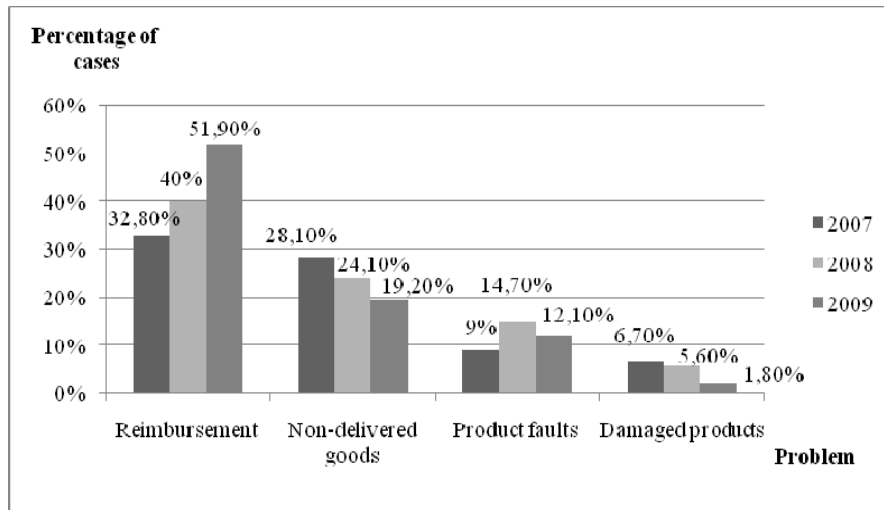


Fig. 3. Nature of the complaints submitted to Médiateur du Net (adapted from [6], [7] and [8])

As we can observe in Fig. 3, reimbursement¹⁹ is the most common cause of the disputes, followed by non-delivered goods. Nevertheless, their evolution is opposite: while reimbursement problems grew, the percentage of non-delivered goods diminished. If the service was to continue, the tendency with reimbursement problems would probably increase during the following years as the buyers have more and more offers and hence can be more demanding. On the other hand, non-delivery problems have decreased due to the French Act of 3 January 2008 for the competition

¹⁸ <http://www.cybersettle.com/pub/home/about.aspx>

¹⁹ According to Médiateur du Net, it happens when the buyer has received a product but is not happy with it. Then he wants to keep it and asks the seller for reimbursement.

development for consumer service²⁰ and the improvement of the sellers' delivery services [8]. More and more sellers try to implement their delivery services to get the buyer satisfied, so non-delivery problems would have a decreasing tendency. In this respect, damaged products by the courier were also less and less common and no constant trend is seen as regards product faults.

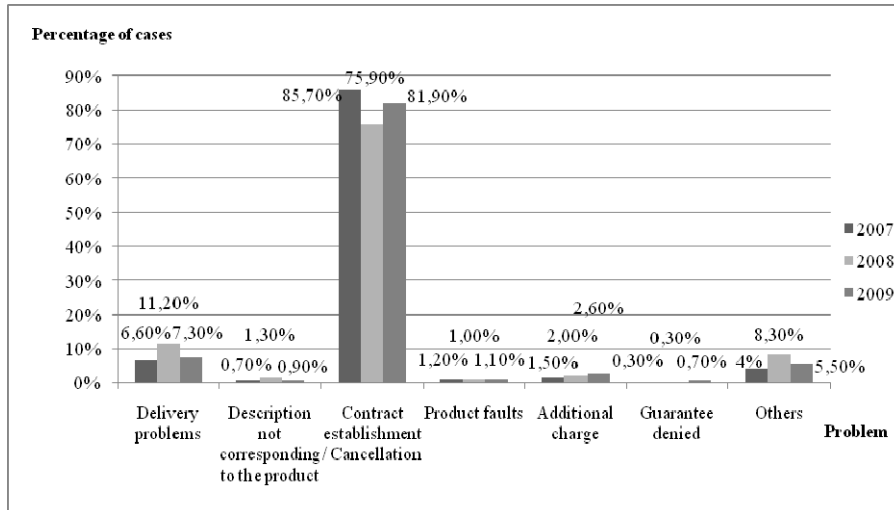


Fig. 4. Nature of the complaints submitted to Internet Ombudsmann (adapted from [9], [10] and [11])

For Internet Ombudsmann (Fig. 4), data is too variable to clearly guess its future evolution. Contract establishment or cancellation figures remain very high and include an important number of alleged “free offers”, so if no specific regulation on this issue is enforced, this kind of problem will continue to have high figures.

As mentioned before, we have observed that both Médiateur du Net and Internet Ombudsmann share delivery problems as the second most common cause of the disputes handled. The ECC-Net [16] points at delivery incidences as the most common cause of consumer complaints but with a decreasing tendency. This fact is related to the economic crisis, since consumers are significantly more cautious when ordering online. Nonetheless, the ECC-Net warns that the high amount of non-deliveries has a negative impact on consumer confidence and hinders the development of European cross-border e-commerce. Therefore, the relevant stakeholders of the cross-border e-commerce market should address this issue for the sake of consumers and traders.

²⁰ This act establishes that the seller must tell the buyer the deadline for the product delivery before the contract ends.

4 Conclusions and Future Work

In this paper we have studied the evolution of three European ODR providers – RisolviOnline, Médiateur du Net and Internet Ombudsmann – during 2007, 2008 and 2009. They were chosen because they only offer online mediation, they are owners of ODR technology [3], they manage e-commerce disputes and the main type of disputes handled is B2C. Our goal was to work out whether a development in these organizations had occurred to have an idea of how ODR has evolved in Europe, as they have been three representative examples. To achieve our objective, we took a look at the number of cases that the institutions had received, the type and the nature of the complaints.

First of all, we have to point out that three years is a short-time period to be able to see a real evolution and present clear future trends. However, we noticed that data was very variable for these years (most of the time data experienced a downward trend in 2008), so we may infer that we have gone through and we are still in an unstable period for online dispute resolution. Second, we can relate this instability to the financial crisis that is taking place right now. We can state that it has generally affected ODR providers as (i) their percentage of acceptability of complaints has decreased or, at the very best, maintained stable because a lot of businesses were in compulsory liquidation so consumers could not be helped by the provider; and (ii) less cases were received by the institutions because of the cutbacks in consumer income. The economic recession has particularly affected Médiateur du Net as the French government will stop financing the institution at the end of 2010, although some activities such as mediation have already finished some weeks ago. Therefore, other ODR providers receiving public funds may follow the same path if their country of origin is deeply immersed in the crisis; for instance, RisolviOnline.

As regards the types of disputes, it is worth to underline that C2C and P2P are an emerging and powerful market, so once the economic recession is away, this kind of disputes may increase. In connection with the nature of the disputes, the ECC-Net is quite concerned about the high numbers of complaints related to delivery problems and warns about the negative effect that this may have in consumer confidence and European e-commerce development.

Finally, we have also seen meaningful differences in the amount of disputes managed by the institutions. We have pointed out at the hypothesis of specialization as the reason why some providers have more success when receiving complaints than others. Looking at the examples of Internet Ombudsmann and Cybersettle, we may agree with this supposition but further research taking more providers needs to be carried out. In this study, we would include European organizations and worldwide institutions with a twofold purpose: on the one hand, we would have more data and a wider perspective on specialization issues and, on the other hand, we could see how the impact of the economic crisis on ODR providers from other continents has been. Hopefully, we will see a significant evolution of ODR in the following years once the global financial situation has returned to normal, since the EU is thinking of a common European alternative dispute resolution scheme that could be also used

online and the international community working in this field is making efforts to implement a global system for ODR²¹.

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²¹ This was one of the main goals of the Colloquium “ODR and Consumers 2010” held on last 2nd and 3rd November in Vancouver, <http://www.odrandconsumers2010.org/2010/11/10/leigh-minutes/>

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