

On China Online Dispute Resolution Mechanism

Following UNCITRAL TNODR and Alibaba Experience

Zhang Juanjuan *

Abstract

The booming of cross-border e-commerce has bred online dispute resolution (ODR) mechanisms, to adapt to the growth of cross-border high-volume and low-value e-commerce transactions. China is the largest B2C e-commerce market in the world. However, along with a prosperous e-commerce market, a great number of disputes have erupted. Under this circumstance, how to establish a reasonable, convenient and efficient online dispute settlement (ODS) method is significant. This paper will briefly look at various ODS channels. By comparing the existing Chinese mechanism and UNCITRAL documents, the paper intends to help provide the reader with greater understanding of the Chinese style, point out the obstacles and challenges in China with quantitative and qualitative analysis, and make some suggestions on the future direction of China ODR system.

Keywords: Online Dispute Resolution (ODR), China, UNCITRAL TNODR, Alibaba experience.

1 Introduction

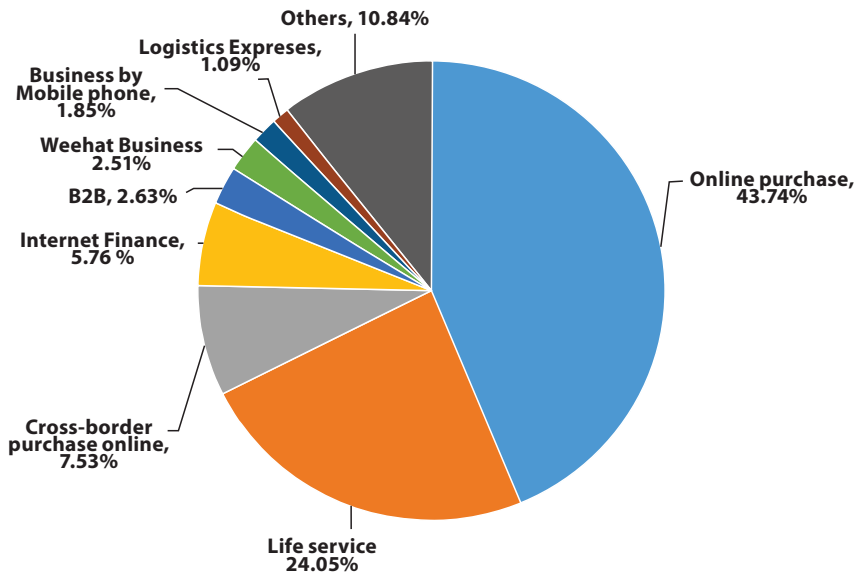
The world's largest one-day online sale, the Global Shopping Festival of 2016, generated RMB 120.7 billion (\$17.79 billion) in gross merchandise volume in just 24 hours over Alibaba's e-commerce platforms – mostly on the B2C site Tmall.com and the C2C site Taobao Marketplace. It generated 657 million delivery orders and covered 235 countries and regions.¹ With the economic globalization and construction of 'One belt, one road', the development of Chinese internet and e-commerce has shown vigorous growth. According to iResearch Global, in 2014, Chinese e-commerce market transactions amounted to RMB 12.3 trillion, which surpassed the USA as the biggest global internet retailing market. In 2015, the amount had increased to RMB 16.4 trillion.²

* Zhang Juanjuan is a senior lecturer at the Faculty of Law and researcher at the Centre of Latin American Studies at the Southwest University of Science and Technology, China. She is also a PhD candidate at the Faculty of Law, University of Macau, Macau, China.

1 '11.11 Mega-Sale Breaks Rmb 120 Billion Gmv'. Available from <www.alizila.com/2016-11-11-global-shopping-festival-wrap-up/>.

2 '2015 Development Condition of Different Sub-sector of E-commerce in China'. Available from <<http://news.iresearch.cn/zt/260791.shtml>>.

Figure 1 *Distribution Condition of Complaints from Different Platforms in 2015*



Source: CECRC, 2015 Annual Report on Consumer's Experience and Complaints Monitoring of China E-commerce, <www.100ec.cn/zt/upload_data/2016315/images/2015bg.pdf>.

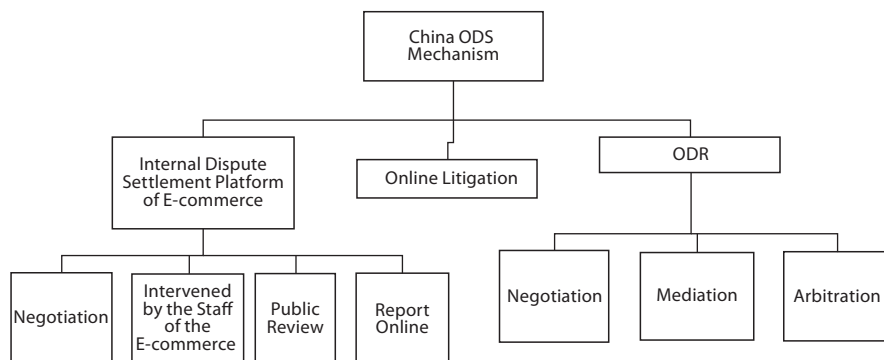
Increasing the value of transactions amount will inevitably lead to an increase of disputes. Statistics of the China E-Commerce Research Center (CECRC) showed that in 2015, China e-commerce complaints and rights protection public service platforms received more than 100,000 complaints, among which online purchase accounted for 43.74 per cent and cross-border online purchase accounted for 7.53 per cent (Figure 1).³

In these booming times, traditional dispute settlement mechanisms are not suitable. Accordingly, in the field of international law, online dispute resolution (ODR) mechanisms emerged, combining information technology and traditional Alternative Dispute Resolution (ADR),⁴ to respond to the development of the large number of high-volume and low-value e-commerce transactions.

3 CECRC, 2015 Annual Report on Consumer's Experience and Complaints Monitoring of China E-commerce, 10 March 2016. Available from <www.100ec.cn/zt/upload_data/2016315/images/2015bg.pdf>.

4 ADR supplies the theoretical bases of ODR, computer technology provides an online environment affecting. See D. Walton & D.M. Godden, 'Persuasion dialogue in online dispute resolution', 13 *Artificial Intelligence and Law*, Vol. 13, No. 2, 2005, p. 274.

Zhang Juanjuan

Figure 2 Existing Channels and Standard Rules of Chinese ODS

This article will look briefly over the channels of China e-commerce dispute settlement. Through some quantitative and qualitative analyses, as well as through cases studies, it will evaluate the current situation of Chinese ODR. It intends to make the reader more aware of the Chinese style, evaluate the performance of different dispute settlement methods in China, point out the obstacles and challenges of ODR in China, and find some directions with the reference of UNCITRAL ODR for cross-border electronic commerce transactions: Technical Notes on Online Dispute Resolution (TNODR)⁵ and the Alibaba experience.

2 Existing Channels and Standard Rules of ODS Mechanism of China

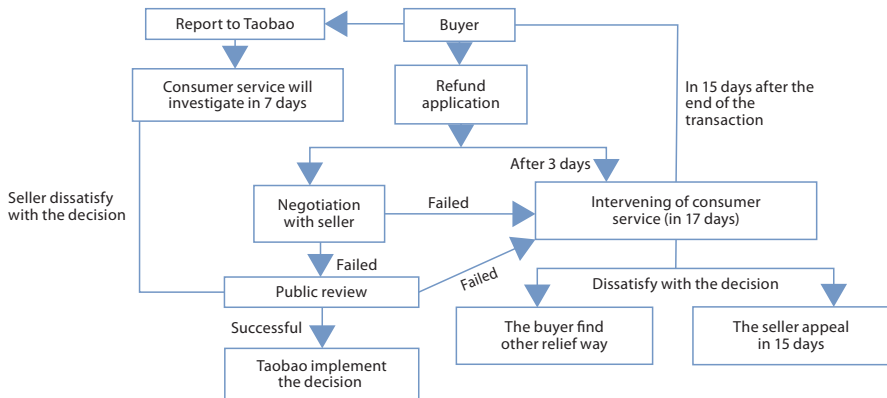
The three channels of ODS in China, respectively, are: e-commerce internal platform, online court and ODR with the involvement of a third party (Figure 2).

2.1 E-commerce Internal ODS Platform: Taking Alibaba as the Example

The e-commerce internal ODS mechanism in China involves a “dispute settlement system with the intervening of a civil third party in connection with the parties”.⁶ Some e-commerce platforms themselves supplied the civil settlement system when the transaction dispute happened internally. It conforms to the characteristics and needs of the transaction online, resolves many online transaction disputes of low-value, which not only maintains the stability and credibility of their own platform, but also are helpful to protect the legitimate interests of

5 General Assembly of UN, ‘Resolution Adopted by the General Assembly on 13 December 2016’, GA Res. 71/138, 19 December 2016. Available from <www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/138>.

6 X.L. Luo, ‘A Study on the Disputes Settlement Mechanisms in Online Transactions – Based on the Visual Angle of Complementation between Fold Law and State Law’, *Hebei Law Science*, Vol. 28, No. 8, 2010, p. 60.

Figure 3 *The Procedure of Taobao Dispute Settlement Mechanism*

Source: <<https://rule.taobao.com/index.htm?spm=a2177.7231193.1998145763.1.HKwXzk>>

the parties. Alibaba,⁷ being the biggest e-commerce platform, has established a well-operated ODS mechanism. Among the Alibaba Group entities, Taobao and Tmall, respectively, concentrate on the C2C and B2C markets. The following will take them as the example to analyse the category of the concrete dispute settlement methods and its characteristics.

To solve online disputes, Alibaba has published a series of regulations, including: Taobao Rules,⁸ Taobao Rules of Dispute Settlement,⁹ Tmall International Dispute Resolution Rules,¹⁰ Trade Dispute Rules,¹¹ and Convention on Taobao Public Review (Trial Implementation).¹² In addition, Alibaba also provides various online platforms¹³ to solve disputes. Basically, there are four ways to solve the online dispute according to the rules.

- 7 Alibaba is the well-known pioneer of e-commerce, which has the world's biggest B2B market – Alibaba, world's biggest C2C market – Taobao, biggest domestic B2C market – Tmall, and the most excellent pay instrument – Alipay. It is the most advanced internet comprehensive market in the world. Through the development of many years, it has established its comparatively perfect legal system.
- 8 Taobao Rules. Available from <<https://rule.taobao.com/detail-14.htm?spm=a2177.7231193.0.0.8qLTRA&tag=self&cid=114>>.
- 9 Taobao Rules of Dispute Settlement. Available from <<https://rule.taobao.com/detail-99.htm?spm=a2177.7231193.0.0.MaUIEz&tag=self>>.
- 10 Tmall International Dispute Resolution Rules. Available from <http://help.world.taobao.com/rule/rule_detail.htm?spm=0.0.0.0.pSMnHg&id=1519&tag=self>.
- 11 Trade Dispute Rules. Available from <<http://rule.alibaba.com/rule/detail/2055.htm?spm=a271m.8038972.1999288231.3.wp1WDA>>.
- 12 Convention on Taobao Public Review (Trial Implementation). Available from <<http://pan.taobao.com/jury/help.htm?spm=a310u.3036333.0.0.lrsikh&type=standard>>.
- 13 Including Taobao Rules: <<https://rule.taobao.com>>; TMALL Rules: <http://help.world.taobao.com/rule/rule_detail.htm?spm=0.0.0.0.pSMnHg&id=1519&tag=self>; Alibaba Rule Center: <<http://rule.alibaba.com/rule/detail/2060.htm?spm=a271m.8038972.1999288231.10.ccNTkU>>; Taobao Judgment Center: <<http://pan.taobao.com>>.

Zhang Juanjuan

2.1.1 *Negotiation between the Parties*

If a transaction dispute occurs, the 'autonomy' principle allows the parties to report it to Taobao for negotiation, the Taobao consumer service intervening, public interview system or judicial method.¹⁴ The choice should be made after the request for a refund (Figure 3). The starting point of the application of Taobao Rules of Dispute Settlement is the buyer's application to refund through the Taobao platform.

2.1.2 *Taobao Consumer Service Intervening*

There are three ways to initiate the intervention of Taobao consumer service: (1) three days after the submission of a refund request when the seller does not negotiate with the buyer; (2) if the parties fail to reach an agreement, the buyer could enter the appropriate protection channel three days after the refund request; or (3) if the transaction has been finished and the consumer found that the service is needed, he can submit the appropriate complaints within fifteen days after the end of the transaction for reasons such as delay in delivery or violation of the promise (Figure 3). Although the decision made by the consumer service is non-binding, Taobao could directly punish the seller and thereby force the seller to enforce the decision. If the consumer was not satisfied with the decision, he could find other relief measures through litigation or arbitration. At the same time, if the seller did not satisfy, he could appeal to Taobao in fifteen days since the decision made by the consumer service.

2.1.3 *Public Interview System*

Being the biggest e-commerce platform, Taobao not only faced the problem of great numbers of disputes, but also the challenge of fairness. Taobao has found that the majority of the disputes are not complex, so that sometimes an ordinary individual could make the decision to support a party according to his own experience. Furthermore, the knowledge, time and method of the Taobao consumer service are limited. Therefore, Taobao created the public review system and Taobao Judgment Center,¹⁵ which can let the members participate in the Taobao process and save the waiting time for both parties and attempt to enhance the fairness of the decision.

In three contexts, a public review could be launched. After the failure of negotiation, the buyer can choose the Taobao consumer service intervening or public interview system, and the latter also could be initiated by Taobao if necessary, or launched by the seller if the seller is dissatisfied with the punishment decision. The whole public interview team is constituted of 31 interviewers, selected by the platform at random.¹⁶ In 168 hours,¹⁷ any party that gets at least sixteen support

14 Taobao Rules of Dispute Settlement, Arts. 3, 100.

15 Taobao Judgement Center, <<https://pan.taobao.com>>.

16 Convention on Taobao Public Review (Trial Implementation), Art. 9.

17 *Id.*, Art. 10.

votes will win, and an effective final decision constituted; however, if no party gets sixteen votes, Taobao consumer service will intervene to settle the dispute.¹⁸

2.1.4 Report to Taobao

With the rapid development of Taobao, the diversified commodity composition and pluralistic business model have made the Taobao platform close to a social ecosystem. When contributed to transactions among consumers and merchants, the ecosystem also bred many irregularities. To more rapidly and effectively prevent unfair competition, Taobao established the Report platform¹⁹ to delegate netizens to report the irregularities to Taobao and let the social power to participate in the platform governance to construct a fairer and more just e-commerce platform order. Taobao will investigate the report in seven days and then make a decision. If the seller is dissatisfied with the result, he can apply for a public interview.

2.2 Online Court: Taking Zhejiang Online Court as the Example

Litigation is the ultimate process in dispute settlement, which is often assumed to be the 'fairest' method. The proper utilizing of litigation system is important in curbing dispute production and promoting the success of the dispute settlement. Electronic court or online court is not just to apply some internet technology in judicial activities,²⁰ but the model that all trials and relevant litigation activities are conducted through electronic communication method, which is a new court form in e-times with the overall merging of the trial and information technology.²¹ Online courts can not only help consumers and other e-commerce participants to protect their rights, but also take advantage of Big Data to promote the transparency of the judiciary. China has made an attempt in some pilot courts.

China's Civil Procedural Law and its judicial interpretation along with the Contract Law and the Electronic Signature Law have confirmed the legality of using legal instruments in electronic form and the use of evidence transferred in electronic form, as well. A trial with the internet video technology is also permitted. The province or city with a high level of e-commerce could be the pilot for an independent online trial team.²² Therefore, being the province where the leader of Chinese e-commerce, Alibaba, is located, Zhejiang province has become the first pilot to fully utilize the modern information technology to promote judicial efficiency. In 2015, Zhejiang Supreme People's Court established an e-commerce

18 *Id.*, Art. 11.

19 Report to Taobao, <<http://jubao.taobao.com>>.

20 F. Long, 'Development Condition and Future Prospect of China ODR', *Journal of Law Application*, Vol. 10, 2016, pp. 2-7.

21 Z.Y. Zhou, Q. Quan and B. Chang, 'Online Court: Trial Model in Internet Times', *Journal of Law Application*, Vol. 06, 2014, pp. 103-107.

22 Luo, 2010, pp. 57-65.

Zhang Juanjuan

online court.²³ Until recently, there were fourteen basic-level people's courts²⁴ that have involved in online trial and thirteen types of causes of action.²⁵ The concrete procedure of the online court is the same as with offline litigation and restricted to comply with the Civil Procedural Law. It depends on the internet service platform and moves every step, such as launching a lawsuit, accepting a case, burden of proof, trial and judgment, to be completed online, which results in promoting trial efficiency and save the judicial sources.²⁶

2.3 Online Dispute Resolution (ODR)

ODR is a new process in which dispute resolution is supported by information technologies. It allows all participants to communicate without the restriction of space and time. UNCITRAL defines 'ODR' as a solution which can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing, which includes but is not limited to ombudsmen, complaints boards, negotiation, conciliation, mediation, arbitration and others.²⁷ ODR has mainly been employed in countries where there are large numbers of online transactions. Chinese ODR systems are beginning to be established and include online negotiation, arbitration and conciliation. Some ODR platforms supply a specific service, while others supply methods decided upon by the parties.

Online negotiation, or 'online conciliation', refers to negotiation with the assistance of online technologies.²⁸ It is a kind of self-help way and especially plays an important role in low-value transactions. It is different with Taobao, because the platform of online negotiation of ODR is independent of both parties; while the latter has interests with both parties. In China, the representatives of the specific online negotiation platform are China Consumers Association Complaint, Conciliation and Supervision Platform ('CCA Platform').²⁹ It is a website created by China Consumers Association (CCA), with the intention of setting

23 Zhejiang Online Court, <www.zjwsft.gov.cn/portal/main/domain/index.htm?spm=a1z8s.8020637.0.0.QYobBd>.

24 14 Online courts in Zhejiang province includes Binjiang People's Court, West Lake People's Court, Yuhang People's Court, Yiwu People's Court, Taizhou Luqiao District People's Court, Lishui Suichang People's Court, Lishui Liandu District People's Court, Taizhou Huangyan District People's Court, Wenzhou Lucheng District People's Court, Quzhou Qujiang District People's Court, Maanshan Yushan District People's Court, Hangzhou Xiacheng District People's Court, Jinyun People's Court, Lishui Yunhe People's Court. Hangzhou Intermediate People's Court is the appealing court.

25 Thirteen categories of cause of action of Zhejiang online court are: e-commerce transaction, copyright, credit card, alimony, trademark, marriage and family, financial loan contract, folk loan, e-commerce small amount loan, traffic, contract, property insurance contract, aliment.

26 Y.X. Shi, 'Accepting the Case and the Trial Don't Need to Go to the Court', 17 August 2015, available at: <<http://zjnews.zjol.com.cn/system/2015/08/17/020791159.shtml>>.

27 TNO DR, Part II, Sections 1, 2.

28 Walton & Godden, 2005, p. 275.

29 CCA platform, <<http://hjxt.cca.cn>>.

up a way “to consult and conciliate with business operators”³⁰ regulated in Law of the People’s Republic of China on the Protection of Consumer Rights and Interests. In addition, Pudong New Area Zero Power Dispute Coordinate Service Platform (Pudong platform) is an e-commerce trusted environmental portal and a third-party public service platform, charged by Shanghai Pudong New Area Commerce Commission and Pudong E-commerce Sector Association. According to the delegation of the government, the platform is to establish a trusted transaction environment and supply the fundamental service for the e-commerce.

Online Mediation refers to a neutral third party working with all the parties in a confidential online chat room, asynchronous discussion space or online video meeting. Presently, few platforms supply the ODR mediation service and most of them are combined with online arbitration, which can give the consumers more choice. Shenzhen Zhongxin E-commerce Transaction Safeguard and Promotion Center (Zhongxin Center) is one example, which is delegated by the government and established by Shenzhen Market Regulatory Bureau and Futian District Government.³¹ Through services of online consultation, online complaint, online mediation, consumer precaution and guidance, and credit evaluation, Shenzhen Zhongxin Center has been able to help the consumers to smoothly resolve the disputes out of court.

Online arbitration has similar operating rules and judgement principles as traditional arbitration, only the carrier and method to transfer the information of the former is the internet. In December 2000, the China International Economic and Trade Arbitration Commission (CIETAC) established the ‘Online Dispute Resolution Center’, to resolve domain disputes online.³² In recent years, CIETAC also began to find a way to resolve online e-commerce disputes. In 2009, it promulgated Online Arbitration Rules of the China International Economic and Trade Arbitration, which was the first formal online arbitration rule in China.³³ To rapidly, economically and efficiently solve e-commerce disputes of high volume and low value, besides the general procedure, it also sets final procedure³⁴ and expedited procedure³⁵ according to the value of the transaction. This is a significant development of China ODR. Moreover, several local arbitration institutions have also attempted online arbitration, such as Guangzhou Arbitration Commission³⁶ and Shenzhen International Arbitration Court.³⁷

30 Law of the People’s Republic of China on the Protection of Consumer Rights and Interests, Standing Committee of the National People’s Congress, Order No. 7 of the President of the People’s Republic of China, 25 October 2013, Art. 39 (1).

31 Zhongxin Center, <www.ebs.org.cn/AboutUs/Index.html?navIndex=5&subNavIndex=0>.

32 Online Dispute Resolution Center of CIETAC, <<http://dndrc.cietac.org>>.

33 Online Arbitration Rules of the China International Economic and Trade Arbitration, <www.cietacodr.org>.

34 Online Arbitration Law, Chapter IV.

35 *Id.*, Chapter V.

36 2015 Online Arbitration Rules of China Guangzhou Arbitration Commission, <www.gzac.org/WEB_CN/AboutInfo.aspx?AboutType=4&KeyID=100b1ae3-9f15-4bfc-bf59-a90273778fa5>.

37 2016 Shenzhen Court of International Arbitration Rules, <www.scietac.org/web/doc/view_rules/856.html>.

Zhang Juanjuan

Table 1 *Assessment index of each way to solve online dispute*

	Internal platform of e-commerce	ODR	Online court
Speed	1	2	3
Procedure	1	2	3
Neutrality	3	1	1
Fairness	3	2	1
Professionalism	3	2	1
Expense	1	3*	2
Validity	3	2	1
Popularity	1	3	2

* Here referred to arbitration, other ODR methods in China are all free.

3 Comparing of the Practice Condition among Various ODS Platforms

In China, the development of different ODS channels is uneven. This paper will evaluate their performance from the aspects of speed, procedure, neutrality, fairness, professionalism, validity, expense and popularity. In the following table, '1' represents the best, '2' is moderate, and '3' is not so good.

The time span of different platforms to deal with a dispute³⁸ varies by provider. In the Taobao or Tmall consumer service and public review, it is seven days after the decision to intervene in the dispute.³⁹ For CIETAC, the most rapid expedited procedure time is fifteen days after the form of the arbitration tribunal⁴⁰. In court, summary procedure can take three months.⁴¹ Therefore, the fastest settlement channel is the internal ODS mechanism of the e-commerce platform, which is one of its biggest advantages.

In fact, the settlement speed is closely linked to the complexity of the procedure. Usually, the simpler the procedure, the shorter the time spent in solving the problem. Comparing the three channels, the procedure of Alibaba is the simplest: consult – apply the intervening of consumer service or public review – submit the evidence – make the final decision. Although the negotiation and mediation procedure is similar to that of Taobao, it is more difficult to collect evidence, because on the e-commerce platform, all transaction marks left on the Alibaba platform could be directly taken as the evidence. However, an ODR platform is an independent third party; all evidence should be collected by the parties and submitted to the platform. Online arbitration procedure is the same as offline arbitration,

38 Not every platform has disclosed the settlement procedure rules. Here and the following comparisons are only about what has been regulated.

39 Taobao Custom Interest Protection Center, <http://support.taobao.com/myservice/rights/right_main.htm>.

40 Online Arbitration Rules of CIETAC, Art. 50.

41 China Civil Procedural Law, Art. 161.

which would have been more complex than that of Taobao.⁴² Furthermore, the procedure of online trial should accord with the Civil Procedure Law, which is the most complex generally.

As for neutrality, ODR and online trials are superior to that of the Alibaba process. The internal ODS mechanism is supplied by the e-commerce transaction platform itself, the consumer service is the employee of the platform, and the reviewer of the public review platform is also the buyer or seller from the platform. It is inevitable that the third party has an interest with the platform, which will impact the neutrality of the third party. Whether it is ODR or an online trial, the mediator, arbitrator or the judge needs to be an independent third party.

Neutrality and independence will influence the fairness of the final decision. In practice, there are many complaints about the fairness of the consumer service of Taobao. What is more serious is the corruption problem in consumer service: from the early disguised means such as reputation forgery and bad evaluation deletion, to directly obtain improper benefits such as accepting the bribe.⁴³ Since 2012, Taobao has closed many e-commerce shops forever and launched the judicial procedure, which has brought suspected bribery to the consumer service.⁴⁴ However, the third party of ODR and the judge of an online trial, which has no interest with the parties, would be fairer. Combining the consideration of the professionalism and the coercive power, online trial is comparatively fairer than ODR.

One of the reasons why the consumer service is easy to be involved in bribery may be because there is no specific qualification requirement to be a consumer service and the auxiliary supervision and penalty system is blank. Similarly, except for the arbitrator, other third-party ODR systems may have no qualification requirement, which results in lack of faith in ODR. On the contrary, in the public review system, to be a reviewer, one must satisfy with several requirements. No matter the buyer or seller, each can apply for the reviewer only if he is a Taobao member for one year and Alipay has verified its real ID. At the same time, the buyer and the seller should meet other prerequisites such as credit, transaction amount and rule compliance condition, etc.,⁴⁵ which could guarantee that the reviewer makes a more professional judgement.

As for the expense of low-value disputes, the internal ODS mechanism of the e-commerce platform and ODR methods, except arbitration, are free. The online court is RMB 50 for each case if the object sum is under RMB 10,000.⁴⁶ The most expensive method is arbitration. In 2014, the online Arbitration Rules of CIETAC regulated the calculation of the case fees according to the value of the case, the

42 The arbitration procedure in China is: arbitration agreement – the claimant apply for the online arbitration – the form of the online arbitration panel – the respondent make the defence – evidence submission – arbitrate online – make the decision.

43 'Surprising Internal Investigation of Taobao Corruption', 17 July 2017, <<http://b2b.toocle.com/detail-6185290.html>>.

44 H.C. Sun, 'Anti-corruption of Alibaba', 25 March 2015, <<http://tech.qq.com/a/20150325/026972.htm>>.

45 Convention on Taobao Public Review (Trial Implementation), Art. 4.

46 Measures on the Payment of Litigation Costs, State Council, 19 December 2006, Art. 13(1).

Zhang Juanjuan

minimum being RMB 100.⁴⁷ Therefore, online arbitration is the most expensive way to settle low-value e-commerce disputes.

Finally, consider the popularity of the different channels in China. In general, the dispute settlement mechanism of Alibaba has operated well. Although there is lack of recent statistics, according to the Consumer Protection White Book, published by Taobao in July 2011, in the early half year of 2011, Taobao has accepted and dealt with 2,631,000 complaints and successfully protected RMB 190,000,000 in damages.⁴⁸ From 25 December 2015 to 25 October 2016, the report platform of Taobao has attracted more than 800,000 persons to participate in the platform governance and accumulatively received 4,230,000 report messages through Report to Taobao.⁴⁹ Until 26 November 2016, there were 1,026,117 public reviewers to make a judgement on 2,174,498 cases through public review platform. Comparatively, online trial cases were much less. From 12 August 2015 to 26 November 2016, Zhejiang e-commerce online courts accepted 1,897 cases, among which e-commerce transaction disputes accounted for 1,052 cases.⁵⁰ Regarding the cases settled by ODR, the evidence is surprisingly poor. Viewing the typical cases in the platform of CCA, although it has published some cases, no evidence is shown that they were settled by the CCA platform. Besides, from 1 March 2013 to 17 July 2014, there were seventy cases solved on Pudong platform, and after 2014, no cases were disclosed.⁵¹ Additionally, since April 2014 till now, only eighteen cases were resolved on the Zhongxin Center platform, including two cross-border disputes.⁵² As for online arbitration, there is no specific number about online arbitration, but the total number as of 2015 is 1,968 cases.⁵³ Although the above statistics are not in the same period for the transparency problem, it is enough to get the conclusion because of the gigantic difference among them, that is, in China, the internal ODS system of the e-commerce platform is the most welcomed.

4 Obstacles and challenges to Chinese ODS development

An impartial, quick and affordable dispute resolution system can reduce the uncertainty associated with e-commerce, and enhance confidence in online mar-

47 'Arbitration Fee', <www.cietac.org/index.php?m=Page&a=index&id=121>.

48 'Taobao Has Conducted 2,600,000 Cases Concerning Consumer Right Protection in the Early Half Year', 6 August 2011, <www.ebrun.com/ebnews/23911.html>.

49 Alibaba Group, 2016 Alibaba ecosystem Internet volunteers Research report, p. 6. Available from <<http://i.aliresearch.com/file/20161010/20161010180743.pdf>>.

50 Zhejiang Online Court, <www.zjwsft.gov.cn/portal/main/domain/index.htm>.

51 Pudong Platform, <www.shodr.org/Article/ArticleTagSearch.aspx?Dir=54&Page=5>.

52 'Customs Launched Online Mediation for the Delayed Issuing Goods', 14 April 2016, <<http://kj.ebs.org.cn/news/detail/bdeb4dfa-7abb-4c7e-9848-612f3c9ba61a>>. See also 'There is no Issuing and Response After Online Purchase 45 Days', 4 December 2015, <<http://odr.ebs.org.cn/news/CaseDetail/3e05ec69-2bcc-4915-91ee-0c91a3bbaf69>>.

53 'The Total Accepting Cases Data', <www.cietac.org/index.php?m=Page&a=index&id=24>.

kets and trade.⁵⁴ In looking at the various indexes in Table 1, it seems like online trial should have been the most popular channel in China because it has received the most No. '1'. Additionally, in China, there is always a traditional 'Moderate' ideology⁵⁵ existing. In the assessment, ODR has received the most No. '2', which should have been the most correspondent to Chinese traditional culture. But the truth is just the contrary: the internal DSM mechanism is much more welcomed than the other two channels, followed by the online court.

4.1 Inadequate Legislation

The internal e-commerce platforms each have their own rules on dispute settlement; and although the online court has also no specific regulation, there are relevant procedural laws that apply. But ODR, except for arbitration, has no specific rules. Therefore, it is difficult to negotiate or mediate "in the shadow of the law".⁵⁶ For the traditional ADR, the disputing parties are aware of the legal rules governing the area of their dispute. The outcome that the law will impose if no agreement is reached gives each party a reasonably good idea of its bargaining position.⁵⁷ Cortes indicates that "the establishment of a legal framework in the ODR field for B2C disputes will increase legal certainty, facilitating the expansion of quality and fair ODR methods."⁵⁸ Moreover, parties in the internet environment, especially cross-border transaction, would find it difficult to solve the problems of law application, jurisdiction and implementation, etc., which is still not clearly prescribed in the relevant arbitration regulations.

4.2 Limited Acceptance Scope

In China, there are relatively few ODR platforms, no matter the specific ODR supplier, or traditional mediation or arbitration institutions which could supply ODR service. Furthermore, ODR platforms typically only accept cases concerning its member enterprises, which restricts the consumers to utilize the platform. Currently, only 48 enterprises are registered on the CCA platform⁵⁹ and nine on the Pudong platform.⁶⁰ As for arbitration, it only supplies binding arbitration, and non-binding arbitration is illegal in China.

54 O. Turel & Y.F. Yuan, 'Online Dispute Resolution Services for Electronic Markets: A User Centric Research Agenda', *International Journal of Electronic Business*, Vol. 5, No. 6, 2007, pp. 590-603.

55 'Moderate' ideology is a compromise attitude to avoid leaning on either side and the 'middle' is the best. It is a Confucian idea and from the famous classic literature 'Zhong Yong'. Later, it became one of the life philosophy of Chinese people.

56 R. Cooter, S. Marks & R. Mnookin, 'Bargaining in the Shadow of the Law: A Testable Model of Strategic Behavior', 1982 *The Journal of Legal Studies*, pp. 225-251.

57 E.V.D. Heuvel, 'Online Dispute Resolution as a Solution to Cross-Border E-Disputes – An Introduction To ODR', p. 16. Available at <www.oecd.org/internet/consumer/1878940.pdf>.

58 P. Cortes, 'Accredited Online Dispute Resolution Services: Creating European Legal Standards for Ensuring Fair and Effective Processes', *Information & Communications Technology Law*, Vol. 17, No. 3, 2008, p. 224.

59 CCA Platform, <<http://hjxt.cca.cn>>.

60 Pudong Platform, <www.shodr.org/Article/List_72.aspx>.

Zhang Juanjuan

4.3 *Casual Quit System*

Any method to get jurisdiction over a case needs the consent of both parties. Except for binding online arbitration, in ODR, if any party is not willing to utilize ODR, he can retreat from ODR at any time without any cause.

5 Following the Experience of Alibaba

The internal dispute settlement mechanism of the e-commerce platform is the most popular channel in China. The huge numbers have shown that the design of this internal ODS system is reasonable, of low cost and high efficiency. With the reference of Alibaba's experience, it has shown a scientific design of its internal ODS system.

5.1 *Modularization of the Platform Design*

Taobao has found that under different categories of the commodities, the dispute causes and settlement results are always in convergence. Through market investigation and statistical analysis, Taobao summarized the most regular disputes causes, including item damaged; wrong or missed distribution; the item needs repair; the item does not conform with the description; quality problem; and the commodity is not delivered at the promised time, etc. And the settlement methods are summarized as change, return or refund, etc. When designing the dispute settlement procedure, Taobao utilized this kind of modularization method to give the complainants choice. For the complainant, on the one hand, it could save time to describe what problem he has met; on the other hand, the result could be predicted. Moreover, it could influence the consumer services to be more professional when they intervene in the disputes.⁶¹

5.2 *Strictly Comply with the Time Limits*

Figure 3 shows that each step of the dispute settlement procedure is controlled with deadlines. For example, after three days of the submission of the application for a refund, the buyer could request Taobao to intervene, make the decision to intervene in the dispute in two days and then make the final decision in fifteen days.⁶² Dispute settlement should comply with this pace, which is also important to safeguard procedural justice. Any party who could not submit the evidence in the prescribed time would fail. This could prevent protracted controversies and safeguard the Taobao's commitment to resolve the dispute efficiently. However, for ODR, except for arbitration, the time limit is vague.

5.3 *Coincided with the Characteristics of E-commerce*

According to the comparison, the Taobao ODS platform has the characteristics of a high speed, simple procedure and low expense. Its popularity is evidence that in

61 X.W. Shen, 'Taobao Internet Dispute Settlement Mechanism – Structuring Right Protection and Its Judicial Value', 2016 *Inside & Outside of Court*, pp. 7-11.

62 'Question on Time Used to Deal with the Dispute by Consumer Service of Taobao', 24 April 2014, <<http://wangdian.hznzcn.com/wenti/4519.html>>.

B2C and C2C disputes, efficiency and economy are more important than fairness, neutrality, professionalism and validity.

5.4 Social Participation to Jointly Construct E-commerce Ecosystem

Through public review and report to Taobao, Taobao provides social pressure to jointly participate in the construction and governance of Ali e-commerce ecosystem. There are so many transactions on Taobao every day, it is hard to avoid that sometimes the consumer service is not familiar with the dispute object. Furthermore, since the evidence principle of Taobao is “the product and the description are identical on surface”,⁶³ public review could bring in a more knowledgeable person to judge a case. From the justice aspect, the system could select the interviewer at random⁶⁴ and challenge the system to effectively prevent the reviewer to select cases for his own interests.⁶⁵ Moreover, either the buyer or the seller could participate in the public review and report, so it is a good chance to make the market educate the participants to let them know the causes of the disputes, and then to avoid the disputes. The most outstanding point is that the system is a way to realize social cooperative governance.⁶⁶

Of course, the problems of the Taobao ODS mechanism is also obvious, such as the rules are uncertain; the judgement has no legal binding; the fact ascertaining methods are limited;⁶⁷ the third party to help to settle down the dispute has the interests with both parties; lack of supervision and regulatory mechanism; the fairness of the decision may be doubted.⁶⁸ That is just the reason why other channels are also necessary. Being a non-independent third party, the internal ODS mechanism could never substitute for other external systems. However, in the context that there are still no relevant formal e-commerce laws in China, for the characteristics of rapid, big-amount and low-value B2C and C2C transactions, the internal ODS model is undoubtedly the most direct and efficient way to resolve online disputes.

6 Future Agenda for Chinese ODR Establishment

Since the beginning of the twentieth century, various e-commerce enterprises, business organizations, governmental institutions and international organizations have actively advocated and promoted ODR. ODR is regarded as necessary to guarantee e-commerce safety, enhance the consumer's trust and confidence in e-commerce, and establish a good environment to the development of e-commerce.⁶⁹ For the establishment of a Chinese ODR mechanism, besides the micro

63 Taobao Rules of Dispute Settlement, Art. 101.

64 Convention on Taobao Public Review (Trial Implementation), Art. 9.

65 *Id.*, Art. 5.

66 Shen, 2016, pp. 7-11.

67 J. Zheng, 'On Development of ODR in China – Taking Taobao Dispute Settlement Model as the Example', 2014 *Legal System and Society*, pp. 44-45.

68 Luo, 2010, pp. 57-65.

69 Y. Ding, 'Online Settlement of Online Consumer Dispute – Taking Taobao Platform as the Example', 2014 *Wuhan University International Law Review*, p. 211.

Zhang Juanjuan

design of the concrete system, it also requires the macro model guide and the significant technology support.

6.1 *The Third Party Who Helps to Solve the Dispute*

In the author's opinion, the third party means all participants in ODR except the opposing parties, not only the administrator and neutral, but also the technology.

'Technology third party' refers to all electronic and information technology support required in ODR, including hardware and software environment. Some scholars have pointed out that code – the number combination of the regulations in the cyberspace – is the law,⁷⁰ which has totally transformed the regulation order in cyberspace. Unlike physical space, the software and hardware make cyberspace what it is and also regulate cyberspace as it is.⁷¹ Ethan Katsh called it the 'fourth party'.⁷² The author does not agree with the name because technology support is the most important composition of ODR, which "provides both disputants and third parties with unprecedented procedures and capacities".⁷³ Sometimes traditional ADR does not need the participation of the third party. However, technology is the necessary requirement of ODR, which has created the possibility to fulfil ODR. Technology is already being widely used as both an assistant and a full participant in the dispute resolution process,⁷⁴ *i.e.*, it not only facilitates the dispute settlement, but the code and its self-implementing nature could also breed the ODS mechanism, such as Smartsettle.⁷⁵

'Administrator third party' is the organizer or host of ODR, which would be responsible to control the whole ODR procedure according to the relevant rules, as well as regulate and adjust the internet environment. TNODR has mentioned that the ODR administrator is the important facet to guarantee the procedural justice of ODR. ODR proceedings cannot be conducted on an *ad hoc* basis involving only the parties to a dispute and a neutral (*i.e.*, without an administrator).⁷⁶ Its main functions include confirming, notifying⁷⁷ and disclosing⁷⁸ various information about the dispute settlement procedure; selecting, training⁷⁹ and super-

70 W.J. Mitchell, *City of Bits: Space, Place, and the Infobahn*, MIT Press, Cambridge, 1995, p. 111; J. Reidenberg, 'Lex Informatica: The Formulation of Information Policy Rules Through Technology', 1998 *Texas Law Review*, pp. 553-593. L. Lessig, *Code: Version 2.0*, Basic Books, Cambridge, 2006.

71 Lessig, 2006. p. 5.

72 E. Katsh & L. Wing, 'Ten Years of Online Dispute Resolution: Looking at The Past and Constructing the Future', 2006 *University of Toledo Law Review*, p. 112.

73 M. Poblet, 'Introduction to Mobile Technologies, Conflict Management, and ODR: Exploring Common Grounds', in M. Poblet (Ed.), *Mobile Technologies for Conflict Management*, Springer, Netherlands, 2011, p. 6.

74 A.R. Lodder & J. Zeleznikow, 'Artificial Intelligence and Online Dispute Resolution', in M.S.A. Wahab, E. Katsh & D. Rainey (Eds.), *Online Dispute Resolution: Theory and Practice, A Treatise on Technology and Dispute Resolution*, Eleven International Publishing, The Netherlands, 2012, p. 61.

75 X.H. Fang & Y.Z. Wen, 'Internet + Times: Opportunity to Introduce the 'Fourth Party' of ODR – Taking Smartsettle as the Example', 2015 *Enterprise Economy*, pp. 101-104.

76 TNODR, para. 27.

77 *Id.*, para. 31.

78 *Id.*, paras. 11, 42.

79 *Id.*, paras. 13, 15.

vising⁸⁰ the neutral person; coordinating the whole ODR procedure, such as extending deadlines.⁸¹ The administrator third party could be part of the ODR platform. In this context, the software and working procedure are set in advance. In fact, it will partly overlap with the technology third party. The software and hardware requirements of the network platform would be very high, not only to support the whole process of the system, but also the design of the system must be reasonable, scientific and enforceable. However, it is unlikely that technology and administrator can be totally merged into one. After all, the technology is required for the design, operation, management and repairing by human beings. Therefore, the legal status of the administrator third party should also be clearly reflected.

'Neutral third party' is independent of the opposing parties, technology third party and administrator third party.. Neutral third party is the biggest difference between ODR and the Alibaba model. TNDOR has prescribed the qualification, power and duty of the neutral. It requires that the neutral has the relevant professional experience as well as dispute resolution skills to enable them to deal with the dispute in question. However, subject to any professional regulation, ODR neutrals need not necessarily be qualified lawyers.⁸² Additionally, the neutral should be required to declare his impartiality and independence, and disclose at any time any facts or circumstances that might give rise to likely doubts as to his impartiality or independence.⁸³ He is appointed by the administrator and will intervene in the ODR procedure in the second stage.⁸⁴ The main duty of the neutral is to fairly, independently and effectively communicate with the parties to get to conciliation,⁸⁵ and to assist in obtaining substantial justice. If failed, the neutral will notify the parties of the nature and the possible means of the final stage.⁸⁶

Turn to China. Except for online arbitration, most ODS platforms of China have no regulation on the neutral party. However, we can deduce that maybe the contents of different platforms are different, but the neutral should at least be independent and just, and meet the qualification requirements. To safeguard procedural and substantive justice, the technology third party, the administrator third party and the neutral third party must cooperate well.

6.2 *Innovate a 'Sector-Oriented, Government Regulatory and Public Participation' ODR Mechanism*

The good operation of the internal ODS system of Taobao has proved how important the sector is. After ODR develops, it should strengthen the self-discipline of e-commerce sector, as also the autonomy of ODR platform. Additionally, from the experiences of developed ODR platforms in other countries, voluntarily submitted the disputes to ODR provider and promised the implementation of the

80 *Id.*, para. 16.

81 *Id.*, para. 32.

82 *Id.*, para. 47.

83 *Id.*, para. 48(b).

84 *Id.*, para. 40.

85 *Id.*, para. 49.

86 *Id.*, para. 45.

Zhang Juanjuan

decision, to create the trust relationship among the e-commerce merchant, the e-commerce platform and the consumer.

Another important force to promote the development of ODR is society. At the stage of dispute settlement and the enforcement, social power could play a great function, which would be helpful in making the result fair and just, the qualification of the participant clear and the dispute within the knowledge of the social power. On this point, Taobao has been a model with the system of public review and report. Furthermore, the social power is very important to safeguard the implementation of the decision. Taobao has also depended on other social institutions such as credit card company, insurance company, and the third payment platform Alipay to help in the enforcement of the dispute settlement decision. This method is to extend the application of credit guarantee theories of Civil Law, Mortgage Law and Security Law to the ODR implementation field.⁸⁷ Because of the supervision of social power, it is easier to manage the ODR decision.

7 Conclusion

In China, presently, almost every e-commerce platform has its own internal ODS mechanism and the operating condition is comparatively good. The numbers that utilize e-commerce internal platforms are large and the rules of dispute settlement are rich, but the result has no legal effect. While the online court is the latest channel and the enforceability is the strongest, but because of the high cost and complex procedure, it is not the main institution to solve low-value commercial disputes. ODR is the most important way. On the one hand, it invites the third party to neutrally judge, which could be more just and fairer than the e-commerce internal platform. On the other hand, compared with the online court, ODR costs less and the procedure is simpler.

The main challenges to China's use of ODR include limited legislation, developing technology, government ignorance, etc. To analyse the international practice of UNCITRAL and Alibaba experience, the future directions of Chinese ODR may focus on the scientific procedure design, the important function of the third party, and the new operating way of ODR, that is, 'Sector-oriented, Government regulatory and Public participation'.

Since 2015, the State Council of China has advocated an 'Internet +' strategy, which is to combine the internet with different industries, among which 'internet + e-commerce' is one of the most important.⁸⁸ Under the circumstances, eWTP (Electronic World Trade Platform) has been recently promoted by Jack Ma, who is the director of Alibaba. Additionally, to safeguard the success of the 'internet +' strategy, the State Council also requires the legislation for 'internet +'.⁸⁹ Being an

87 S.B. Zheng, 'On Compulsory Enforcement Mechanism of ODR Decision', *Law Review*, Vol. 185, No. 3, 2014, p. 166.

88 State Council Guiding Opinion on Actively Promoting 'Internet +' Activity, State Council, 1 July 2015, Section II (8).

89 *Ibid.*, Section III (3) 4.

Table 2 *Target Comparison between eWTP and ODS*

	eWTP	ODS
Target 1	Through the dialogue between the public and the private to improve the trade environment and cultivate the cross-border e-commerce trade rules	Through the dialogue between the public and the private to improve the ODS environment and cultivate the cross-border e-commerce ODS rules
Target 2	Cooperate with WTO to enhance the requirements of developing e-commerce and perfect WTO Agreement on Trade Facilitation	Follow UNCITRAL to enhance the requirements of developing e-commerce and perfect TNODR
Target 3	Assist the development of cross-border e-commerce	Assist the development of cross-border e-commerce

important sector, the completion of eWTP cannot ignore the ODS mechanism. Comparing the eWTP and ODS (Table 2), their targets and realized methods are greatly similar. The final dream of eWTP is to create a global e-commerce platform, with the characteristics of global buy, global sale, high efficiency, and complete transparency without obstacles. Consumers and merchants from every country could cross the national boundary and physical barriers, and arrive at any corner of the world.⁹⁰ This is totally consistent with that of an ODS system. Thus, what can be predicted is that with the complete development of eWTP, the auxiliary ODS mechanism will be further developed. For China, it is urgent to grasp the opportunity to develop the e-commerce sector under the circumstances of ‘internet +’, and at the same time, to utilize eWTP, to improve its ODS mechanism, especially ODR, and try to become the legislator of new rules on e-commerce.

90 ‘11.11 of This Year is the First Step toward EWTP’; <www.alibabaneews.com/article/alijinnianshuang11shimaixiangewtpdediyibu>.