

## ADR, the new skyrocket to solve e-commerce conflict<sup>1, 2</sup>

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### ABSTRACT

The e-commerce industry is expanding in the world. We are focusing in this paper on the binding contract dispute in the e-commerce industry. We found seven different alternatives methods of settlement among the most used extra-judicial ways of contract issues solving. After a brief description of each one, we have compared them regarding nine criteria specific to the e-commerce. Our analysis allowed us to affirm that the negotiation is the most efficient way to solve a contract dispute even if prevention is the most used by the different companies.

**Keywords:** E-commerce, Online buying, Dispute, dispute process, Dispute resolution, E-commerce project manager.

### INTRODUCTION

The advent of the internet in the 2000s and e-commerce have led to several changes in the consumers' minds. A shift has been observed in the consumer buying behaviour and a transformation of traditional stores into a virtual place called website. "According to a Wavestone study, in France, 58% of consumers interrogated, buy on the internet each month"<sup>3</sup>

"For e-commerce industry the main project is to sell products and services on the Internet via a platform and through a licence to operate. Even if your business doesn't have a physical location, an **asset** that often has an intrinsic effect on the value of your business is its URL. The other assets are the platform, the traffic and all the product present in on the e-commerce platform.

**The Programme** will deliver assets and benefits that are critical to the sponsoring organization's day to day operation, the role of the **programme manager** within the e-commerce company will

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<sup>3</sup> 1 Echos, L. (n.d.). 58 % des consommateurs achètent sur internet chaque mois. Retrieved from <https://business.lesechos.fr/directions-marketing/commercial/e-commerce/0301433984208-58-des-consommateurs-achetent-sur-internet-chaque-mois-319487.php>

be to ensure all stakeholders (internal & external) are engaged in the program, He will be responsible for shipping new features, for new product introductions. He will be involved in requirements analysis, functional and technical design discussions, testing, proof-of-concept and working with partners.

**The portfolio of projects** is no different than any investment portfolio; the objective is to minimize the risk and maximize the return. Any organization, be it Owner or Contractor, has a portfolio of assets (resources) available to dedicate to projects, with the objective being to develop the best “mix” of projects which will generate the most favorable return on those assets. In e-commerce they will create a safe platform, user friendly and simple to create.

**The portfolio of assets** constituted by the **Information Assets** are normally controlled by functional groups such as IT or Engineering; in e-commerce it will be all the information concerning the customer, their credit cards and e-mail. **Human Assets** are controlled by HR, it's all the employees working for the e-commerce platform and finally the **Financial Assets** are controlled by accounting or finance that will record all the transactions in the platform.

The legal framework is created by the signature of a **binding agreement** between the platform, the sellers and the buyers. This agreement includes the Transactional Terms and the General Terms that describe the terms and conditions on which you can conclude online transactions for products and services by using the online transaction site.”<sup>4</sup>

However, conflict may arise between these 3 parts contracts. For the project managers, these problems are the result of misleading on product information, lack of checking, defective products or delivery delay due to an intentional misbehavior or mistake. The role of the project manager is a key liaison between the product, marketing, vendor and buyers. This position enables him to develop solutions to ensure that the internal and external resolution of conflict are the most suitable for the business, benefits customers, sellers and the e-commerce platform. Logically, with an increase in the number and rapidity of contracts, traditional ways to solve conflict appear inefficient.

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<sup>4</sup> 2 GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>

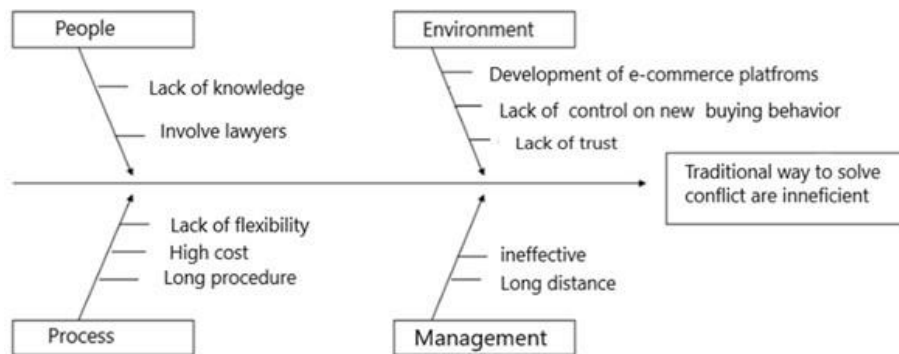


Figure 1 : Fishbone diagram showing the inefficiency of traditional way for solving conflict in the e-commerce industry

To preserve his company, interest the asset manager and the project manager must determine the asset allocation and balancing risk against performance and find the most suitable processes: the alternatives to resolve disputes in e-commerce platforms. They will have to identify several alternatives for dispute resolution in order to facilitate the process, take into account the cost, the flexibility of the procedures, the duration, the empowerment of the verdict and the discretion. It is imperative that the disputes are resolved adequately, to create a legal framework that secure both consumers and companies to do business in the e-commerce marketplace. Through our paper we will answer these questions:

- 1) What are the different alternatives to resolve disputes on online purchasing on e-commerce platforms?
- 2) Which one of these alternatives is the most efficient and adapted to the e-commerce industry?

## METHODOLOGY

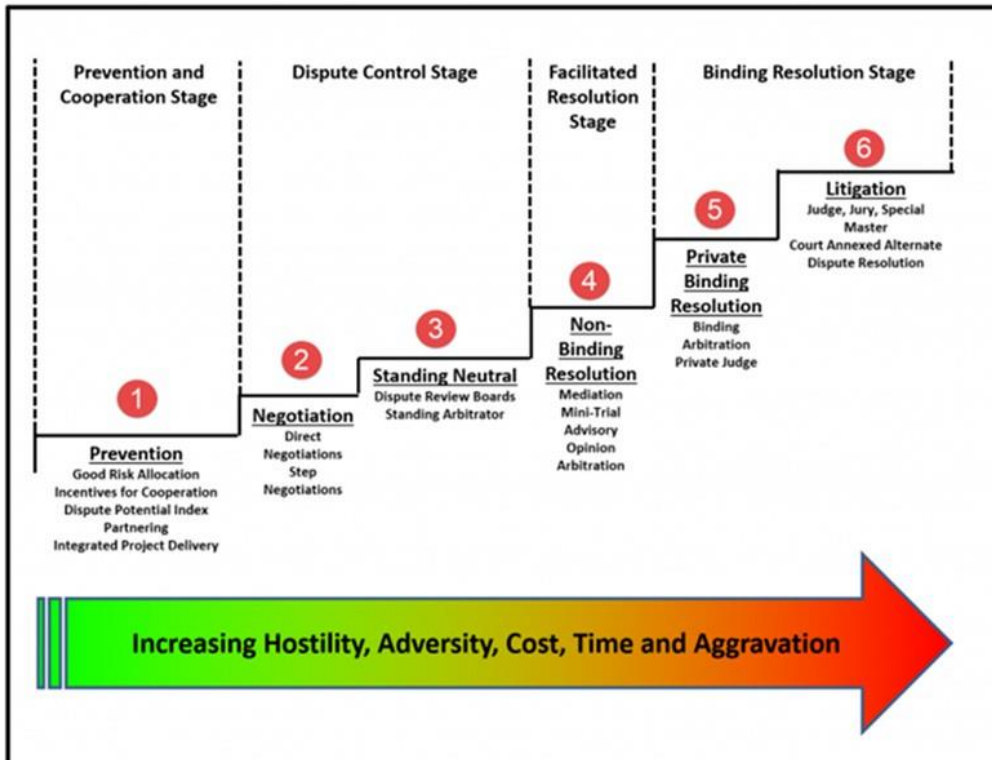
TABLE 1-1 The General Relationship between the Engineering Economic Analysis Procedure and the Engineering Design Process

Engineering Economic Analysis Procedure	Engineering Design Process (see Figure P1-15 on p. 18)
Step	Activity
1. Problem recognition, definition, and evaluation.	1. Problem/need definition.
2. Development of the feasible alternatives.	2. Problem/need formulation and evaluation.
3. Development of the outcomes and cash flows for each alternative.	3. Synthesis of possible solutions (alternatives).
4. Selection of a criterion (or criteria).	4. Analysis, optimization, and evaluation.
5. Analysis and comparison of the alternatives.	
6. Selection of the preferred alternative.	
7. Performance monitoring and post-evaluation of results.	5. Specification of preferred alternative.
	6. Communication.

**Step 1 Problem recognition, definition, and evaluation**

The disputes are rising with the development of e-commerce platform, the objective of the paper is to benchmark and analyze the different alternatives for conflict resolution in e-commerce to facilitate the procedures for e-commerce Project manager.

**Step 2 Development of the feasible alternatives**



Following the ADR process and the American Arbitration Association we have selected 7 alternatives: Prevention, Mediation, Negotiation, Dispute review board, Arbitration, Litigation and Online dispute resolution that is a new alternative created to fit perfectly the dispute in e-commerce, Arbitration and litigation.

**Step 3 development of the outcomes and cash flow for each alternative**

**1. Prevention**

The prevention is a set of preventive measures against risks, it's all the tools that will help the consumer and seller to conclude a contract based on accurate information available for both parts (description, opinion of other consumer...). The purpose of prevention is to avoid conflict before it happens and complicate the situation. The procedure is easy to implement and cost nothing but If prevention is not enough, other post-buying alternatives exist.

## **2. Negotiation**

This is the search for an agreement in the interest of the parties, with the help of a third party, the negotiator. Negotiation is based on values, interests, issues. In terms of negotiation, we talk about power relations. negotiation is better to the dispute to be resolved may be highly sensitive in nature.

## **3. Dispute review board**

A dispute board or dispute review board (DRB) or dispute adjudication board (DAB) is a 'job-site' dispute adjudication process, typically comprising three independent and impartial persons selected by the contracting parties. The significant difference between Dispute Review Boards and most other Alternate Dispute Review techniques is that the Dispute Review Board is appointed at the commencement of a project before any disputes arise and, by undertaking regular visits to the site.

## **4. Mediation**

Mediation" is a procedural technique of conflict resolution where people who are opposed by a dispute, or who wish to avoid one use a third part, the mediator, to facilitate the flow of information, clarify and restore the relationship established in the contract. the procedure is conditional to the will of both parts. The mediation has several advantages, it's confidential, the procedure is quick and low-priced.

## **5. Arbitration**

It is a private justice. The arbitrator is chosen by the parties to settle the dispute. It does so in accordance with the principles of law. His role is similar to a judge. Moreover, the arbitrator sentence has the authority of "res judicata". he listens to the parties and decides. The arbitration has several advantages, it's quick and low priced and the parts can choose the arbitrator.

## **6. Litigation**

Litigation is the last legal method for resolving the disputes between seller and buyers. Once court proceedings have been issued, the litigation process by which the case gets to a final trial can be long and onerous for the parties involved.

## **7. Online Dispute Resolution (ODR)**

Online Dispute Resolution (ODR) is a branch of dispute resolution that uses technology to facilitate the resolution of disputes between parties. This mainly involves negotiation, mediation or arbitration, or a combination of the three.

In this respect, it is often considered the online equivalent of ADR (alternative dispute resolution). However, the ODR can also extend these traditional means of conflict resolution by applying innovative techniques and online technologies to the process.

#### **Step 4 Selection of a criterion**

At this stage, we have explained and analyzed the different possibilities. Now, we are going to compare them to find out which one is the most adapted for a project manager in e-commerce industry. We have selected five criteria retrieved from the “agency for dispute resolution”<sup>5</sup> “the Hawaii state judiciary that defines the advantages of Alternative dispute resolution. They are flexible, cost-efficient, time-effective, and give the parties more control over the process and the results.”<sup>6</sup>

#### **The duration of the procedure**

A quick procedure is a successful one, the parts engaged in the contract want a quick procedure that do not require energy because it’s often for small benefits.

#### **The cost**

The cost of each of the alternatives will define if an alternative is worth it to be started to ensure that each part can easily benefits from their rights.

#### **Flexibility**

The alternative dispute procedure must be adapted to the e-commerce industry, that require often long distance between the parts.

#### **Empowerment of the decision**

The procedure is useful only if the decision produced can be enforced afterward.

#### **Discretion**

E-commerce platforms are big companies, it’s important their reputation is not tarnished by public and long litigation.

#### **Voluntary**

The parties choose to use ADR;

#### **Choice**

The parties have control of their destiny.

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<sup>5</sup> Agency for Dispute Resolution - FAQ. (n.d.). Retrieved from <http://www.agencydr.com/faq/alternative-dispute-resolution-qa/what-are-the-unique-characteristics-of-adr-processes.html>

<sup>6</sup> Judiciary | Advantages of Alternative Dispute Resolution (ADR). (n.d.). Retrieved from [http://www.courts.state.hi.us/services/alternative\\_dispute/advantages\\_of\\_adr](http://www.courts.state.hi.us/services/alternative_dispute/advantages_of_adr)

**Expeditious**

Parties avoid components of traditional litigation that prolong and delay resolution;

**Non-Judicial**

Decision-making remains with the parties to the dispute rather than a third-party who has no stake in the outcome;

**TABLE 1: Multiple Attribute Decision Making tool<sup>7</sup>**

	Prevention	Negotiation	Review board	Mediation	ODR	Arbitration	Litigation
Duration	Very Fast	Fast	Fast	Moderate	Moderate	Long	Long
Flexibility	Moderate	High	High	High	Moderate	Low	Low
Cost	0 \$	0 \$	5000 \$	1000 – 4000 \$	3500\$	40 000 \$	> 10 000 \$
Empowerment	Low	Low	Moderate	Moderate	High	High	High
Discretion	High	High	Moderate	Moderate	High	High	Low
voluntary	high	high	high	high	high	high	Low
Choice	high	high	moderate	high	moderate	moderate	Low
non judicial	yes	yes	No	yes	No	No	No
Expeditious	yes	yes	yes	yes	yes	yes	No

\*: all the costs given are estimations calculated regarding the USA uses

In order to maintain the analysis integrity of the feasible alternatives we decided to eliminate the prevention that is process upstream from the dispute and the Review board that is a procedure mainly used for the construction industry. We will also eliminate the litigation that is a long and extreme procedure that does not fit the e-commerce industry.

**FINDINGS**

**Step 5 Analyse and comparison of the alternatives**

**TABLE 2 : Relative weighting<sup>8</sup>**

Discretion	
High	2
Medium	1
Public	0

Flexibility	
High	2
Medium	1
Public	0

<sup>7</sup> Table 1: Multiple Attribute Decision Making tool “by author”

<sup>8</sup> Table 2: Relative weighting “by author”

	Negotiation	Mediation	ODR	Arbitration
Duration	1,5	1	1	0
Flexibility	2	2	1	0
Cost	2	1	1	0
Empowerment	0	1	2	2
Discretion	2	1	2	2
voluntary	2	2	2	2
Choice	2	2	1	2
non judicial	2	2	0	1
Expeditious	2	2	2	0
<b>Total</b>	<b>15,5</b>	<b>14</b>	<b>12</b>	<b>9</b>

Attributes	Step 1	Step 2	Negotiation		Mediation		ODR		Arbitration	
	Relative rank	Normalized weight (A)	(B)	(A) x (B)	(C)	(A) x (C)	(D)	(A) x (D)	(E)	(A) x (E)
Duration	4	0,08	1,5	0,12	1	0,08	1	0,08	0	0
Flexibility	1	0,02	2	0,04	2	0,04	1	0,02	0	0
Cost	2	0,04	2	0,08	1	0,04	1	0,04	0	0
Empowerment	3	0,07	0	0	1	0,07	2	0,14	2	0,14
Discretion	5	0,09	2	0,18	1	0,09	2	0,18	2	0,18
voluntary	6	0,13	2	0,26	2	0,26	2	0,26	2	0,26
Choice	8	0,17	2	0,34	2	0,34	1	0,17	2	0,34
non judicial	9	0,2	2	0,4	2	0,4	0	0	1	0,2
Expeditious	7	0,15	2	0,3	2	0,3	2	0,3	0	0
<b>total</b>	45	1		<b>1,72</b>		<b>1,62</b>		<b>1,19</b>		<b>1,12</b>

### Step 6: Selection of the preferred alternatives

Regarding the tables above, using the Additive Weighting Technique produces a true ratio scale. It means that now we can say how much better or worse any option is, when compared to one of the others. Negotiation and mediation appears to be the best choice of alternatives in the e-commerce industry. Let's compare them to Arbitration:

Negotiation →  $1.47/1.06 = 1.38 \times 100 = 138\%$

ODR →  $1.62/1.12 = 1.44 \times 100 = 144\%$

We can conclude that Negotiation and ODR are a better choice by 138% and 144%.

### Step 7: Performance monitoring and post-evaluation results

The project manager role is to assess the risk, the tolerance and the quality of each project he is in charge. When the final user is not satisfied with the final product, it means someone failed



somewhere and dispute can arise. We need to understand that online dispute resolution and arbitration are not the most used alternatives in the reality on the general basis. To avoid conflict the project manager will prefer have recourse to prevention or negotiate with the customers to avoid procedures. They will ensure a preliminary work to avoid the issues, instead of debating on deficient products, delivery delay both owner, contractor and e-commerce platform will try to find an agreement for a quick resolution.

## CONCLUSION

Through our paper we have define the role of e-project manager, responsible to run the day to day business by ensuring the key requirements of e-commerce platforms, assessing the risks and tolerances. In this particular case, the e-project manager was in charge to develop the best alternatives for dispute resolution.

### **What are the different alternatives to resolve disputes on online purchasing on e-commerce platforms? Which one of these alternatives is the most efficient?**

To recap and answer our research paper question, we have studied the 7 possible alternatives, we are now able to affirm that several alternatives were at the service of the project manager on e-commerce platforms. The best solution to resolve a conflict is the prevention made by the project manager toward the contractor and the customer via the transactional terms and the general terms of the binding agreement. If the prevention appears to be not sufficient, the negotiation will become the most efficient alternative in term of cost and flexibility. Finally, I would like to award the Online Dispute resolution that I believe is the future for a lot of dispute alternative resolution.

ODR has not arisen as the best possible alternative however it's a brand-new procedure that appeared in the recent years. For now, the general public does not know about it, but I believe in its potential to solve conflict by using the new technologies as Virtual Reality, skype and others new technologies.

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**Bastien Bonneau** is currently an Msc student in Project and Program Development and Business Development at Skema Business School, Paris. After several experiences in the banking industry as a fixed term employee. He realized that big companies need to reinvent their way of functioning to face new challenges. These experiences have developed his leadership and communications skills and sparked his interest in management consulting. He has spent 5 months in New Zealand and 4 months in Taiwan. He is currently looking for consulting/project management/HR opportunities in Taiwan.

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