

## Manage a dispute caused by delivery issues in the online shipping industry between an online seller and a customer <sup>1, 2</sup>

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### ABSTRACT

The online business permit to the world to buy a product from a country and be delivered in another one. However, a dispute between an owner and contractor in this area frequently happens caused by delivery issues. A dispute in this area comes from a claim of the customer generally. This issue can impact the performance and the image of the company. Moreover, resolve a dispute can take time, and it's expensive. In this paper, by using different documents, we discover nine feasible alternatives to resolve a dispute. Combing with eight relevant criteria, we identify that prevention is the best solution to avoid a reduce the effect of a dispute. Following that, thanks to the additive weighting technique, negotiation is the second-best solution. These two different alternatives assembled would be the most efficient way to solve a dispute with effectiveness.

**Keywords:** Consumer Dispute, Online Transactions, Online Shipping, E-commerce, Complaint, Alternative Dispute Resolution (ADR), Online Dispute Resolution (ODR), Prevention, Negotiation, Mediation, Arbitration, Negotiation

### INTRODUCTION

Each day, the technological advance pushes the world to be in a perpetual evolution. A new way of business is born thanks to the technology in 1979. Michael Aldrich invented the online transactions. Few years after that, Amazon and eBay opened they first e-commerce website in 1995.<sup>3</sup> Nowadays a consumer can buy whatever he wants online from a seller. It can be an electronic device, clothes, books... anything he wishes. In 2017, the global market of e-commerce

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<sup>3</sup> L'Histoire du E-commerce: un marché en constant évolution. (2017, August 2). Retrieved from <https://www.twenga-solutions.com/fr/insights/histoire-e-commerce/>

represented 1 800 billion euros. The activity has continued to explode and has grown its business by 17% compared to 2016<sup>4</sup>.

However, the seller and the buyer are not the only two actors. It's important to notice that a third part appeared, the transport company. In the online sales industry, a single project is to sell a good online to a consumer and engaged a transport company who will transport the product from a point A to a point B (the consumer) without any damaged and deliver it on time. The transport and the conditions have been agreed between the seller and the transport company. The transport company has a specific schedule to respect, some deliverables, a budget and quality constraint. On the program level, we can talk about multi-project program in this sector<sup>5</sup>. An online sales company need to manage all his deliveries around the world, coordinated them to save costs, time and to respect all the deliveries dates requested by the buyers. The projects have common traits; the goal is to achieve synergies and to benefit from them. Finally, the portfolio of assets in this business will be first the Information Asset. The buyer has access to online information about the product and after the sale, he can track his delivery. Following that, there are human assets, that the people who prepare the package for example. And finally, there are physical assets like the machines used to transport the goods.

In this business, two types of contracts exist. The first one is the contract made between the seller and the customer. The seller must deliver a good at a precise date or within the time indicated to the consumer<sup>6</sup>. Following that, another contract exists between the seller and the shipping company. The shipping company must deliver a good to a consumer at a special date or within the time indicated by the seller. From this last contract, the seller expects performance in terms of delivery and management of the time from the transport company.

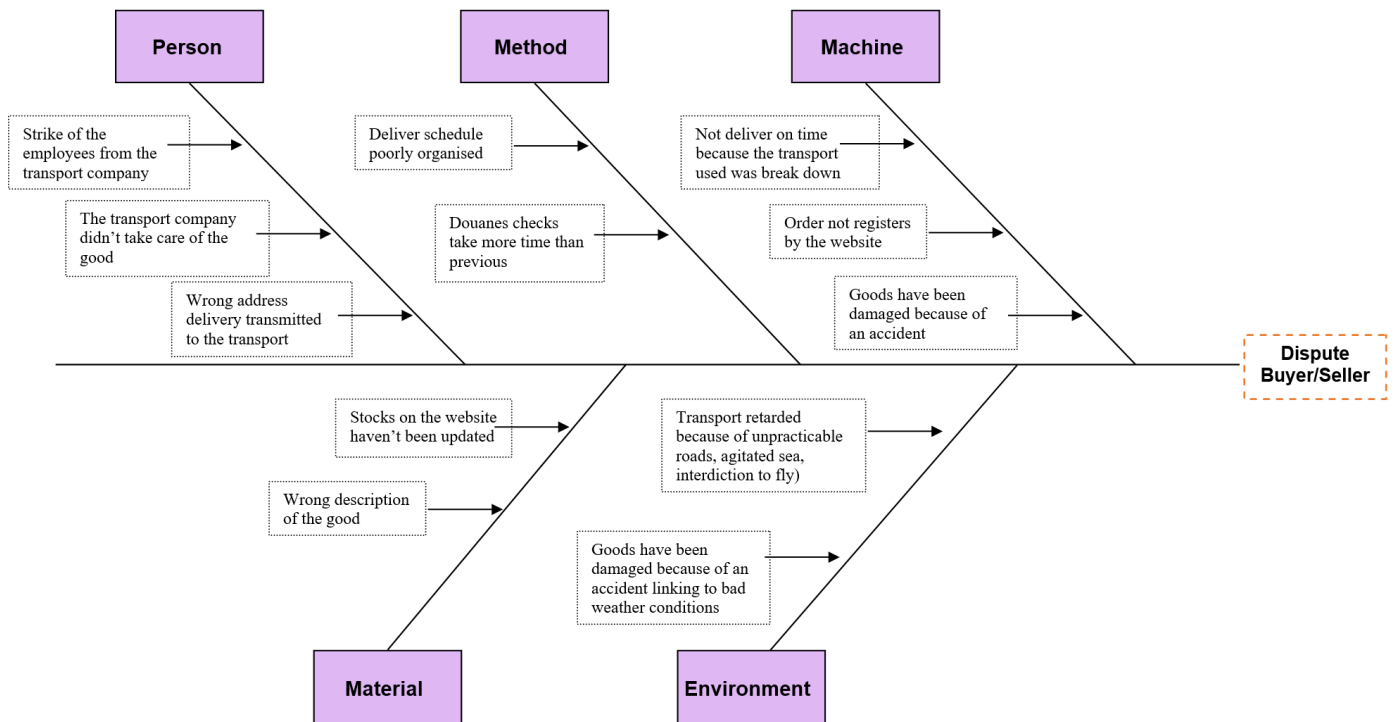
The E-commerce sector is growing every year and many services linked to the online shipping continues to be added and changed. For example, once ordered, a customer can choose to be delivered at home, in a store or a relay point. The price of the delivery will change regarding his choice. Nevertheless, since the creation of this online business, the e-commerce world has seen disputes between sellers and buyers appeared too. Following an online shipping, the buyers can make a complaint regarding one of the services provided by the seller or even the good itself.

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<sup>4</sup> Mazars. (2017). Forte accélération du e-commerce dans le monde, un marché évalué à 1 800 milliards d'euros, en hausse de 17% en 2017. Retrieved from <https://www.mazars.fr/Accueil/News/Communiqués-de-presse/Etude-E-commerce-risques-et-opportunités-en-2017>

<sup>5</sup> 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>

<sup>6</sup> Sfez, B., & Deleporte, B. (2014, June 19). E-commerce: les nouvelles obligations légales nécessitant une mise en conformité des sites web. Par Betty Sfez et Bénédicte Deleporte, Avocates. Retrieved from <https://www.village-justice.com/articles/commerce-les-nouvelles-obligations,17180.html>



“Dispute between Seller and Buyer in the E-commerce” Root Cause Analysis<sup>7</sup>

Thanks to this root cause analysis, we can highlight all the possible causes that lead to a dispute between the customer and the seller. We notice that most of the causes happened during the delivery process. According to Michelle Childs, the most significant number of complaints have come from a failure to deliver on time (32,7%)<sup>8</sup>. For example, if a buyer asked and paid an extra for express delivery, it can arrive that due to several causes the good is not delivered on time. This problem is strongly linking to the performance and the methods of the transport company, not the seller. Different external and internal causes can impact the delivery process. Another example, goods can be damaged during the transport. Once the product is delivered to the customer, he will discover that the product is broken or doesn't fit with the description. He will certainly complain to the seller.

<sup>7</sup> By Author

<sup>8</sup> Solovay, N., & Reed, C. K. (n.d.). The Internet and Dispute Resolution. Michelle Childs was at the Head of Policy Research and Analysis at the Consumers Association in UK. Retrieved from [https://books.google.fr/books?id=ebpst9j-Y7EC&pg=SA4-PA10&lpg=SA4-PA10&dq=dispute+resolution+for+online+shipping%60%60&source=bl&ots=tIMMliLa\\_M&sig=FI6fSAhyVbhi4d7IJwG8PZ6ZR14&hl=en&sa=X&ved=2ahUKewic9\\_gard\\_dAhUGxIUKHUr-DeIQ6AEwD3oECAMQAQ#v=onepage&q=dispute%20resolution%20for%20online%20shipping%60%60&f=false](https://books.google.fr/books?id=ebpst9j-Y7EC&pg=SA4-PA10&lpg=SA4-PA10&dq=dispute+resolution+for+online+shipping%60%60&source=bl&ots=tIMMliLa_M&sig=FI6fSAhyVbhi4d7IJwG8PZ6ZR14&hl=en&sa=X&ved=2ahUKewic9_gard_dAhUGxIUKHUr-DeIQ6AEwD3oECAMQAQ#v=onepage&q=dispute%20resolution%20for%20online%20shipping%60%60&f=false)

Following this kind of issue, as most of the cases come from the transport company, the seller renounces all responsibilities. It is hard for the seller, the buyer and the transport company to find a compromise. As they do not find any compromise, this issue can go to court. For the seller, it is going to be a loss of time and money. Furthermore, this kind of affairs can impact the seller's business because of bad comments about his company services on the internet for example.

In this case, three distinct parts appear in the process, but the limits of responsibilities between them are complicated to find. In this paper, we will answer the following question:

- How an online seller can avoid or reduce dispute with his customers?
- What policies can be written in a contract in order to be transparent about logistics issues regarding the delivery?
- What are the different alternatives to resolve disputes out-of-court for an online shipping?

## **METHODOLOGY**

### **Step 1 - Problem to solve**

The objective of this paper is to find ways to avoid a dispute between consumers, online seller and shipping companies. Following that in case of dispute, I will propose several alternatives to resolve it without going to court for these three different parties.

### **Step 2 - Identification of feasible alternative solutions to the problem**

To resolve a dispute without going to court, several Alternatives Disputes Resolution (ADR) practices have been set up by state and government systems (litigation, judicial system) involving both legal and judicial resolution of a dispute. However, we will study the litigation as it's the last solution after ADR practices.

These following feasible alternatives are ranked in ascending range regarding these conditions: increasing Hostility, Adversity, Cost, Time, and Aggravation.<sup>9</sup>

1. Prevention
2. Negotiation
3. Mediation
4. Arbitration
5. Private Judge

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<sup>9</sup> 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/formal-disputes-resolution>

6. Mini Trial
7. Summary Jury Trial
8. Special Master/Settlement Judge
9. Litigation

### **Step 3 - Development of both the feasible alternatives and the possible outcome**

#### **1) Prevention**

Before the dispute happened, the contractor can do something to avoid it or at least reduce its effects. First, the e-seller should add in his contract a clause linking to the delivery time as it's the most frequent cause of dispute. Here we can talk about the clauses related to the type of delays. The most suitable for this case can be the *Non-Excusable Delay* clause, in this case, the contractor takes all the responsibilities. The delay is the result of bad performance, inadequate scheduling, equipment breakdowns...<sup>10</sup> The following one which can be relevant is *Excusable Non-Compensable Delay*; it's when the delay is caused by factors that go beyond the contractor's control.

Furthermore, in a contract for this type of business, a clause talking about the way they are going to resolve a possible disagreement is written. With this alternative, it offers you the power to manage a dispute before it goes worse and the buyer chooses to go directly to the court. Now let's see which alternative can be included in a contract to reduce the impacts of a dispute.

#### **2) Negotiation**

The negotiation is a voluntary method that consists to let parties talk and search an agreement between themselves to find a solution that saves their common interests. In this alternative, there is no third party involved. This is a win-win or no-loser method, it's informal, flexible and confidential.<sup>11</sup> If the negotiation failed, a mediator is generally called as last resort to try to find a solution before going to judicial court.

#### **3) Mediation**

Generally, the mediation is considering as a proactive method out of legal, moral and cultural influences. A mediator who represents a neutral third party follows the reflection of the parties and helps them find the most satisfying solution for both. The process of mediation is divided into three steps: first, the mediator will ask each party to explain clearly as possible their point of view to the other party. Following that, the mediator will have a meeting with each party individually to understand their interests. Finally, he will

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<sup>10</sup> 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/managing-contracts-managing-the-contract>

try to find a settlement between them by highlighting the common interests of the parties. This method can be applied at any moment of a dispute and doesn't need any clause previously written inside the contract.

#### **4) Arbitrage**

The parts involved use a third party, always outside from the court system. This third party is chosen by the parties, it can be one or more persons. Their missions are to listen to the case, listen to the parties and make a decision. This method of resolution for a dispute can be chosen and integrated inside the contract as an arbitral clause. This clause can be mandatory as it can be imposed by one of the party in the contract. The parties agreed at the moment of the signature of the contract to resolve a possible dispute between them by arbitration without even knowing what the reason of the dispute will be.

However, an arbitration can be binding because one of the parties can choose a judge as the arbitrator of the case. It can be useful when the subject of the dispute necessities a minimum of expertise from the arbitrator. It's important to notice that the more arbitrators the more the case resolution is going to be. I can be difficult for the arbitrators to match their schedules.

Another relevant point, this method can be done online. The online arbitration is permissible under the New York Convention and the E-Commerce Directive<sup>12</sup>. Nevertheless, this online method has a process less regulated and this can be a challenge for the parties.

Anyway, this method stays as one of the most used, faster than litigation but for the cost, it's not advantageous.<sup>13</sup>

#### **5) Private Judge**

This method is close to the litigation but without the disadvantages. The parties retain the services of a retired judge. This assures the reliability of the process. The private judge concept will manage the process as the construction of a litigation but without the need to wait for an available judge and courtroom. The decisions of the judge rented can be an advice or determinative.

#### **6) Mini Trial**

This method is seen as voluntary, confidential and non-binding. The parties present the case and someone neutral advice the parties. Following that he presents the strengths and weaknesses of each side and helps them in the negotiation. He acts as a mediator.

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<sup>12</sup> Online dispute resolution. (2017, July 7). Retrieved from [https://en.wikipedia.org/wiki/Online\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Online_dispute_resolution)

<sup>13</sup> Perceived Advantages and Disadvantages of International Arbitration - Proskauer on International Litigation and Arbitration. (n.d.). Retrieved from <https://www.proskauerguide.com/arbitration/19>

The advantages of this that the neutral assists top management in both parties in finding a solution. The parties can present their case to the neutral as they can do in a court.

### 7) Summary Jury Trial

The summary Jury Trial is like the Mini Trial but it's faster and involved more people. The parties must summarize their case in one hour. Following that, a neutral who can be a judge from the local court or a Rent-A-Judge will explain the law linking to the dispute. A jury of six persons assist to this trail and will individually and anonymously give their view about the case. This process is fast and required less money than litigation.

### 8) Special Master/Settlement Judge

This form of ADR is the last clear chance before trial.<sup>14</sup> The court will choose someone who has the authority and necessary time to control the process. He will replace the job of a judge. The goal of the Master is to facilitate the discussions between the parties to find a solution before going to court.

### 9) Litigation

Finally, when parties choose to resolve their dispute with an alternative dispute resolution, but they didn't find any compromise, they go to court. This ultimate legal method is expensive and takes time, it's certainly not adapted for an online seller.

## Step 4 - Selection of the criteria to accept or not the alternative solutions

In this part, I choose seven criteria coming from the advantages of an ADR<sup>15</sup> to compare those different alternatives. First, by using the disjunctive reasoning technique we are going to measure the weight of each criterion. These criteria are:

**Costs:** How much does this method cost to resolve the dispute?

**Suitable:** Which alternative one can be more suitable for an online business?

**Likelihood:** What is the probability that this alternative helps the parties to find a compromise?

**Speed of settlements:** How many times this alternative requires to resolve the dispute?

**Flexibility of the process:** Regarding the dispute and the parties involved, how flexible can the method be?

**Control:** What is the level of control you can have on the alternative?

**Confidentiality:** Does the alternative can stay confidential?

**Risk:** How big is the risk if this alternative failed?

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<sup>14</sup> Zacks, J. G. (n.d.). Resolution of Disputes — The Next Generation. Retrieved from <http://www.appa.org/Files/PDFs/Zack98.pdf>

<sup>15</sup> Alternative dispute resolution. (2018, November). Retrieved from [https://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Alternative_dispute_resolution)

	Costs	Suitable	Likelihood	Speed	Flexibility of process	Control	Confidentialty	Risk management	Ordinal Rank
Costs		1	1	1	1	1	1	0	6
Suitable	0		0	0	1	0	0	0	1
Likelihood	0	1		1	1	1	0	0	4
Speed	0	1	0		1	0	0	0	2
Flexibility of process	0	0	0	0		0	0	0	0
Control	0	1	0	1	1		0	0	3
Confidentiality	0	1	1	1	1	1		0	5
Risk management	1	1	1	1	1	1	1		7

Table 1: Ranking ADR’s features according to their importance in process resolution<sup>16</sup>

**FINDINGS**

**Step 5 - Analysis and comparison of the alternatives**

Thanks to the eight attributes chosen, we can now compare it to the alternatives through a multi-attribute decision making (MADM) analysis.

	Prevention	Negotiation	Mediation	Arbitrage	Private Judge	Mini Trial	Summary Jury Trial	Special Master	Litigation
Costs	4	4	2	2	2	2	1	1	1
Suitable	4	3	3	2	2	1	1	1	1
Likelihood	2	2	3	3	3	4	4	4	4
Speed	4	3	3	2	2	3	4	2	1
Flexibility of process	2	4	2	2	2	1	1	1	1
Control	4	2	3	3	1	1	1	1	1
Confidentiality	1	3	2	3	2	2	2	2	2
Risk	4	3	3	2	2	2	2	2	1
Total	25	24	21	19	16	16	16	14	12
Order Rank	1	2	3	4	5	6	7	8	9

Table 2: Ranking of alternatives regarding criteria<sup>17</sup>

By looking at this table, we can directly delete some alternatives. As comparing them to the criteria chosen, we calculated the score of each alternative. Prevention, Negotiation, and Mediation are the best out of nine. However, we can note that Summary Trial, Special Master, and Litigation seem to be the less appropriated alternatives to resolve a dispute between parties for online shipping business. In fact, those three alternatives are particularly expensive, take time and the confidentiality of the process is not sure. Confidentiality is especially important in this business because it may impact the image of the seller. Now let's use the additive weighting technique to measure the weight of an alternative with the weight of criteria.

<sup>16</sup> By Author

<sup>17</sup> By Author



Criteria	Ordinal Ranking	Normalized weight (A)	Prévention		Negotiation		Mediation		Arbitrage		Private Judge		Mini Trial	
			(B)	(A) x (B)	(C)	(A) x (C)	(D)	(A) x (D)	(E)	(A) x (E)	(F)	(A) x (F)	(G)	(A) x (G)
Costs	7	0,19	0,4	0,08	0,4	0,08	0,2	0,04	0,2	0,04	0,2	0,04	0,2	0,04
Suitable	2	0,06	0,4	0,02	0,3	0,02	0,3	0,02	0,2	0,01	0,2	0,01	0,1	0,01
Likelihood	5	0,14	0,2	0,03	0,2	0,03	0,3	0,04	0,3	0,04	0,3	0,04	0,4	0,06
Speed	3	0,08	0,4	0,03	0,3	0,03	0,3	0,03	0,2	0,02	0,2	0,02	0,3	0,03
Flexibility of preprocess	1	0,03	0,2	0,01	0,4	0,01	0,2	0,01	0,2	0,01	0,2	0,01	0,1	0,00
Control	4	0,11	0,4	0,04	0,2	0,02	0,3	0,03	0,3	0,03	0,1	0,01	0,1	0,01
Confidentiality	6	0,17	0,1	0,02	0,3	0,05	0,2	0,03	0,3	0,05	0,2	0,03	0,2	0,03
Risk	8	0,22	0,4	0,09	0,3	0,07	0,3	0,07	0,2	0,04	0,2	0,04	0,2	0,04
Sum	36	1	SUM	0,32	SUM	0,30	SUM	0,26	SUM	0,24	SUM	0,20	SUM	0,22

Table 3: Additive Weighting technique<sup>18</sup>

**Step 6 – Selection of the preferred alternative**

Following researches, disjunctive method and the additive weighting analysis, we can say that the two most efficient alternatives to resolve a dispute in the online shipping industry are prevention and negotiation. Prevention is well scored at five out of eight criteria. This alternative doesn't require a lot of time, resources or money. Another relevant point for this solution is that it will increase the trust between the customers to the seller. Anyway, it must be well done and clear. The online seller and the shipping company should anticipate possible issues of delivery. (Cf. "Dispute between Seller and Buyer in the E-commerce" Root Cause Analysis) and be transparent with the customers into the contracts. Furthermore, to increase the likelihood criteria of this solution, the seller online can add information about possible logistics issues on his website when the customers are finalizing a purchase or into the mail of confirmation that is sent to the customer. This will considerably reduce the impact of a possible issue into the mind of the customer.

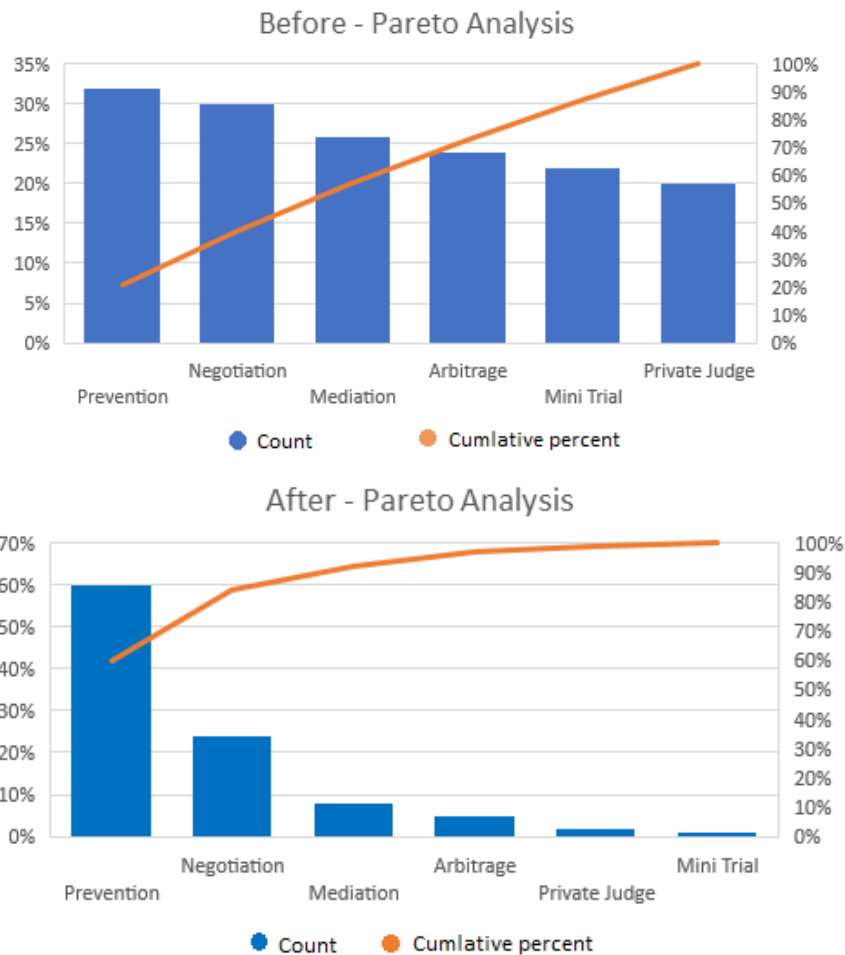
Nevertheless, adding clauses to a contract do not guarantee the fact to reduce or avoid a dispute in the future and it may not fit every type of dispute. That's why, even if the prevention method is the most efficient way, in case of a dispute happens, we need to find another solution. We can say that negotiation is the logical following alternative and it can even be included into prevention part. Indeed, thanks to our quantity comparison above, we can notice that negotiation is a better alternative than mediation by 115% ( $0.3/0.26 = 1.15 \times 100 = 115\%$ ) and better than mini-trial by 136% ( $0.3/0.22 = 1.36 \times 100 = 136\%$ ). However, this alternative can be complicated to use between a seller and a consumer online who lived far away from each other. That's why they can use the automated negotiation process<sup>19</sup> proposed by the Online Dispute Resolution (ODR) platform. This is the same process as an ADR, but the parties communicate through the website.

<sup>18</sup> By Author

<sup>19</sup> Online Negotiations | ODR - Online Dispute Resolution. (n.d.). Retrieved from <http://www.odreurope.com/odr-services/online-negotiations>

**Step 7 – Performance monitoring and post-evaluation**

After all those analyses, we can confirm that Prevention is the best solution to resolve a dispute in the online shipping industry. By using the Pareto Analysis, these two tables show the performance of the prevention methods.



Before-and-After Analysis Using Comparative Pareto Chart<sup>20</sup>

<sup>20</sup> By Author

## CONCLUSION

Through this paper, we lead some researches to find the best way to avoid or reduce the impact of a dispute in the online business industry. Most of the dispute appeared between the seller and the buyer because of delivery issues are done by the transport company. By comparing several alternatives with criteria, we can say that prevention is recommended as the best way to avoid or reduce dispute resolution. The online seller should work on his contract and improve the transparency of possible logistics issues through the mail and on his website. Following that, if a dispute happens, the online seller should include the automated negotiation on internet process as a clause of the resolution of dispute into the contract.

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**Marion Beghain** is an enthusiastic PGE student in SKEMA Business School following the MSc Program and Project Management & Business Development. (PPMBD) She was previously graduated from a Bachelor of Management in 2017 from Toulouse Business School. In 2017, she worked for the company “Wine & Business Club” as a project manager assistant in Paris in the luxury event sector. She also had been involved in few associations at her school like HOPE (Humanitarian Organisation Promoting Equity) by working on a project in Cambodia and Brazil. And in Shoot’In (photography association) by working on the project “Shoot’In Pro”. In 2018, she organized with other students two charity Gala for her school.

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