



**Asia-Pacific
Economic Cooperation**

Advancing Free Trade
for Asia-Pacific **Prosperity**

Promoting Consumer Protection in Digital Trade: Challenges and Opportunities

Puerto Varas, Chile | 22 August 2019

APEC Electronic Commerce Steering Group

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APEC Project: Promoting Consumer Protection in Digital Trade: Challenges and Opportunities (ECSG 03 2018A)

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APEC ECSG Workshop on Consumer Protection in Digital Trade: Challenges and Opportunities

22 August 2019

Puerto Varas, Chile

Summary Record

I. Introduction

On 22 August 2019, the “workshop on consumer protection in digital trade” was held in Puerto Varas, Chile. As consumer protection has been an issue also raised by WTO, the workshop was held to contribute to build WTO e-commerce standards; Importance of consumer protection can be sought on that it has been selected as an agenda by the ‘Electronic Commerce Steering Group (ECSG)’ in APEC for the first time among APEC’s official agendas. This is discussed from the perspective that consumer protection needs to be strengthened as a safety net to revitalize local e-commerce.

The workshop was held with an agenda entitled “Consumer Protection in Digital Trade: Challenges and Opportunities”, hosted by the Ministry of Foreign Affairs of the Republic of Korea(the Regional Economic Organizations Division of the International Economic Affairs Bureau), with cooperation of the National Agency for Consumer Services of Chile. Attendees were consisted of the following: Ho-Yul Lee (Deputy Director-General), Soung-In Park (Deputy Director) and two others from the International Economic Affairs Bureau for the Ministry of Foreign Affairs of the Republic of Korea; Yoo-Rim Pyun (Deputy Director) from Korea Fair Trade Committee; Kyo-Yeong Koo (Deputy Director) from the Ministry of Trade, Industry, and Energy; Korea Consumer Agency; U.S. Federal Trade Commission; Australian ACCC; Chilean SERNAC; U.S. BBB; 60 representatives from 17 other APEC economies.

< APEC Digital Trade Consumer Protection Workshop >

(Goal) Consumer protection has been selected as a discussion agenda for ‘Electronic Commerce Steering Group (ECSG)’ in APEC (for the first time among APEC’s official agendas)

(Agenda) “Consumer Protection in Digital Trade: Challenges and Opportunities”

(Date and Place) August 22nd, 2019, in Puerto Varas, Chile.

(Hosts) The Regional Economic Organizations Division of the International Economic Affairs Bureau for the Ministry of Foreign Affairs of the Republic of Korea, National Agency for Consumer Services of Chile

(Attendees) Ho-Yul Lee (Deputy Director-General), Soung-In Park (Deputy Director) and two others from the International Economic Affairs Bureau for the Ministry of Foreign Affairs of the Republic of Korea; Yoo-Rim Pyun (Deputy Director) from Korea Fair Trade Committee; Kyo-Yeong Koo (Deputy Director) from the Ministry of Trade, Industry, and Energy; Korea Consumer Agency; U.S. Federal Trade Commission; Australian ACCC; Chilean SERNAC; U.S. BBB; 60 representatives from 17 other APEC economies

II. Background

Digital era is making consumers more active than in the past. In addition, cross-border transactions are getting more and more active so the area is also expanding where consumers purchase products. While these changes can be a growth engine for the digital market, they can also cause varied damage on the consumer side. Therefore, it is a very important issue of international community in building trust and increasing consumer convenience in the digital era.

Considering the importance of consumer protection from the perspective of promoting digital transactions and e-commerce, we shared ideas about the institution and policy of member economies throughout this workshop on “Promoting Consumer Protection in Digital Trade.” The topics and questions discussed in this workshop are expected to provide key points for the construction of a consumer protection framework in the APEC digital economy in the future.

And this project was elaborated in order to contribute to one of the priorities for APEC Chile 2019: “Digital Society.”

III. Opening Remark

At opening of the workshop, Mr Ho-Yul Lee, Deputy Director-General of International Economic Affairs Bureau for the Ministry of Foreign Affairs, has stated that APEC’s previous discussions related to digital trade have focused mainly on the supplier side of digital trade, such as free-flow of data, regulatory infrastructure, and technology development;

- However, as the increase in digital trade has led to the need to strengthen international cooperation in dealing with consumer-related issues,

“The workshop aims to share measures to promote consumer protection in APEC economies and to identify the possibility of establishing a framework for international cooperation.”

IV. KEY ISSUES

A. Session 1: Discussions on Consumer Protection Standards in Digital Trade

Ms Stacy Feuer - Assistant Director of the United States FTC (Federal Trade Commission)

- E-Commerce Guidelines (OECD, 1999) have impacted the establishment of consumer protection standards in many economies, including the United States, and have been playing a role of 'High-level Principles' with the revision in 2016, which established an additional set of principles to new issues, including 'non-monetary transactions', 'privacy', 'data security', and 'C2C transaction on peer platform marketplaces.'
- Other standards of international organizations include UNCTAD's United Nations Guidelines for Consumer Protection (revised 2015) (and related implementation resource, 'Manual on Consumer Protection',) OECD's Guidelines for Multinational Enterprises (2011) ("consumer interests" chapter)' and related policy documents and business guidance, e.g., the 2019 Good Practice Guide on Online Advertising) and ASEAN's High-Level Principles on Consumer Protection (and related implementation resource documents e.g., 'Case Study1: The Online Consumer Marketplace'.
- APEC also had established voluntary guidelines for consumer protection in e-commerce in 2002, which were based on the first version of the OECD E-commerce Guidelines (1999) and adopted to APEC context, e.g., principle on private sector leadership. Unfortunately, these APEC Guidelines were not very widely disseminated or adopted. Nonetheless, they could provide a starting point for an effective framework.

OECD, UNCTAD, and others now considering newer issues such as ;

- o 1) access to information on digital products,
- o 2) clear statement on terms of use,
- o 3) consumer protection against deceptive practices,
- o 4) privacy and data security protection, and
- o 5) measures to provide effective remedies and redress.

"Technical Assistance & Capacity Building"

- Implementation is the key part of any framework. Technical assistance and capacity building is important to guidelines' implementation. UNCTAD is working to provide technical assistance and capacity building to diverse economies through IGE (Intergovernmental Group of Experts on Consumer Protection Law and Policy).

"International Cooperation"

An effective framework also needs to have mechanisms for international cooperation "baked in." An example of an overarching framework with

international cooperation mechanisms is the APEC Cross-Border Privacy Rules System, which is based on APEC's Privacy Framework. There is also an APEC mutual enforcement arrangement, which provides a mechanism for governmental authorities, privacy agencies of participating economies to cooperate on enforcement of program requirements.

“Ongoing Policy Development”

- As consumer protection-related issues are rapidly changing, it is important to analyze new issues and develop ongoing consumer policy based on the high level principles similar to the work the OECD has done in areas such as online advertising, the Internet of Things, and peer platform/sharing economy platforms.

Ms Mattia Tempini - Public Officer of European Commission

- EU currently has 10 directives on its consumer and market-related law, including 'Consumer Rights Directive', 'Consumer Sales and Guarantees Directive', and 'Price Indication Directive', and will have 'Directive on Provision of Digital Contents and Digital Services' and 'Directive on the sale of goods' to be implemented in 2022.
 - o Consumer Rights Directive(2006) applies to the sales of B2C goods and services, public services, and digital contents, and provides the provision of information before the contract, delivery of goods, and recognition of withdrawal rights (14 days).
 - o Unfair Commercial Practices Directive(2005) aims to protect consumers from unfair commercial practices (false statements and omissions on information, coercive selling, etc.), and provides supplement and prohibition to practices and rules for financial instruments.
 - o

“ADR, ODR”

- ODR refers to online dispute resolution platform to settle disputes over a purchase made online, and 430 ADR organizations have handled over 110,000 disputes (57% domestic and 43% international) since the platform's launch in 2016.
- EU is planning to establish a consumer protection framework in a direction of expanding the application of EU consumer protection regulations (in public and private sectors) and raising awareness of consumer rights.

-
- Directive on Provision of Digital Contents and Digital Services (effective from 2022) also contains regulations concerning sales and the processing of personal data and privacy.
- EU includes, and will include information related to online customer protection in international agreements, such as FTA with Colombia/Peru(2013), EPA with Japan(2018), trade negotiations with Australia and New Zealand(2019), Mexico/South America Common Market(MERCOSUR)(TBD), and WTO eCommerce.

“A key principle should be aiming for a win-win approach between business and consumer by focusing on addressing consumer trust issues.”

- While international cooperation on consumer-related laws is very important, it should be noted that different domestic circumstances make it difficult to coalesce around a common rule.

Mr Hosuk Lee-Makiyama - Director of ECIPE*

* ECIPE(European Centre for International Political Economy) : A Belgium-based trade policy research think tank

- General consumer protection is vital, but having consumer protection regulations that apply specifically for e-commerce should be avoided.
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- The development of the internet has allowed consumers to have more leverage against businesses, with a better access to information it provided; it also helped addressing the issue of market dominance by big businesses caused by the limitations in distance.
- The free trade system has contributed to strengthening consumer rights by guaranteeing consumers‘ right to choice.
- Expanding consumer-related regulations can possibly act as a barrier to the free trade and thus can cause decrease in consumer welfare.
- Some sort of a system that helps to cooperate with each other is needed in developing a consumer protection system, such as sharing information about consumer laws and product safety in other economies,
 - But considering that each economy is unique in terms of size, political system, and culture, creating a single, unified consumer

protection system that applies for all economies will not be very effective.

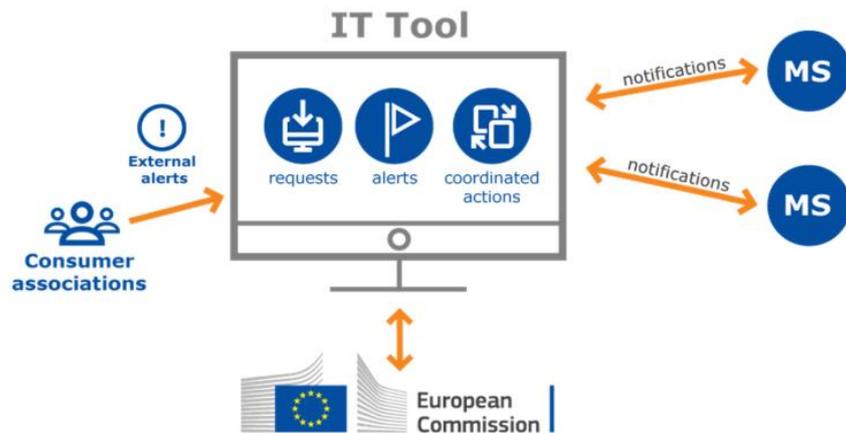
B. Session 2: Review of the Enforcement of Consumer Protection Regulations Concerning Digital Trade

Ms Yoo-Rim Pyun - Deputy Director, Korea Fair Trade Committee

- With the growth of online commerce in the past 10 years, new forms of sales such as Online to Offline(O2O) services, Instagram, and influencer marketing have emerged, and as a result, we're now faced with new challenges to consumer protection.
 - o These new challenges include low accessibility to information on the goods and terms of sale, low consumers' trust due to abuses in consumers' review, and easier access by minors.
- Recent enforcement actions in South Korea include:
 - o 1) Imposed fines and suspensions to 'watch random box' sellers who provided false information, including exaggerating numbers of brands they secured and intentionally selecting inexpensive goods, to lure customers.
 - o 2) Imposed 1 billion won of fines to video game companies for providing false information about the randomized in-game items they sold, such as setting up the odds of certain items too low(0.0005%).
 - o 3) Issued corrective orders to music website enterprises who unilaterally notified about the price increase to their existing customers who were using automatic payments without explicit explanation and approval of the price increase.
 - o 4) Issued corrective orders to delivery app companies that lured customers by labeling and promoting the paid restaurants as "Recommended Restaurants" and lodging app companies that offered deceptive services such as manipulating negative customer reviews and promoting the paid accommodations as "Recommended Accommodations."
 - o 5) Issued corrective orders and administrative fees to idol goods shops who did not inform that the contract of the minor without the consent of the legal representative can be cancelled.
- The Korea Fair Trade Commission is keeping a close eye on potential consumer damage caused by increased amount of international trades, emergence of global IT giants, and rapidly changing technology.

Mr Mattia Tempini – Public Officer of European Commission

- In EU, consumer law is enforced by the Member States, and we're currently expanding and modernizing cooperation mechanisms to keep in line with digital trade.
- European Commission(EC) acts as a mediator for a wide range of issues at EU level, and each member states of the EU acts as law enforcement authorities that have investigative and enforcement rights such as deleting contents, providing temporary measures, blocking websites, and imposing penalties.
- EU level law enforcement utilizes new IT tool on case investigation and resolution procedure.
 - o 1) Notable activities include corrective actions against Amazon/Google/Apple for their in-app purchases marketing, 5 major car rental companies, Facebook for its terms, and Airbnb for its presentation of prices.
 - o 2) Sweeps were conducted to check compliances with, or to detect infringements of, EU laws.
- Law enforcement mechanisms can be seen in image below:



- Meanwhile, ECC-Net helps boost consumer confidence across the digital trade sphere by educating about consumers' rights and advising consumers.
- With tighter cooperation and enhanced set of minimal powers it aims, EU law enforcement offers an ability to react faster and to find EU-wide compliance solutions via utilizing network, as well as an opportunity to tackle major international digital market

players by a coordinated approach and to have better market surveillance.

Mr Lucas Del Villar Montt - National Director, National Consumer Protection Agency of Chile(SERNAC)

- Chilean consumers have the right to be informed about information (regarding terms and conditions, identification of the provider, and price and characteristics of goods, etc.), the right of refusal(within 10 days), the right to form consent through written documentation, the right to block unwanted promotions or ads with DO NOT DISTURB* service, and the right to be guaranteed the quality assurance.
 - DO NOT DISTURB : A tool to block companies that send unwanted promotions or ads by phone calls, SMS, e-mail (up to 5 companies)
- Examinations to e-Commerce in Chile
 - Advertisement made by influencers can be confusing to consumers if it is not clear that they are making a paid ad or social media actions; SERNAC has taken action against those advertisements that are not in compliance with the law, making it a must for them to indicate the publication is a paid ad.
 - SERNAC has filed a class action against United Airlines and Despegar.com for problems caused with the robotized promotion system based on algorithms they have used.
- Chile strives to secure the consumer trust on online purchases and to provide accurate and transparent information of prices, and predicts the robotized promotion ads based on algorithms will emerge as a challenge in the digital trade.

C. Session 3: New Trends in Digital Consumer Protection

Mr Dae Jung Kim - Director General of Korea Consumer Agency

- With the volume of overseas direct online purchases by Korean consumers is rapidly increasing every year, the volume of consumer complaints regarding cross-border online transactions has also been increased, from 8,952 cases in 2015 to 22,169 cases in 2018.

- Korea Consumer Agency(KCA) is performing various activities to resolve disputes between Korean consumers and overseas traders, including demanding an explanation to businesses and providing language assistance, and is seeking for global cooperation with foreign consumer agencies to facilitate cross-border dispute resolution through the MOUs with overseas consumer agencies.
 - o One of the best practices is when a Korean consumer booked a hotel in Thailand on Expedia website but was unable to find the hotel when he arrived, KCA cooperated with OCPB(Office of the Consumer Protection Board of Thailand) and CASE(The Consumers Association of Singapore) to help the customer to receive a refund.
 - o KCA also strives to prevent potential consumer damage by detecting suspicious scam sites in the process of handling cross-border consumer complaints and registering those websites on Consumer Portal.
- KCA handles disputes between Korean traders and overseas consumers as well, under the same procedure as the domestic one; the number of redress cases handled with the cooperation of MOU agencies are 51 cases in 2018 and 32 cases in 2019, as of July.
- - o One of the best practices is when a Japanese consumer paid 3,300 yen for an annual subscription to a Korean online game provider but was blocked access to the game after a few months, KCA recommended the provider to unblock the access and the provider complied with KCA's recommendation.
- KCA has developed ODR system to improve the efficiency and usability of its existing ADR system.
 - o KCA utilizes ODR system to handle disputes between domestic consumers and traders, as well as existing traditional offline channels such as interviews and phone calls.
 - o KCA tries to expand its ODR system to cover cross-border disputes, and expects consumer agencies within APEC economies to try to develop a common ODR platform.

Mr Julius Odian- Vice President of Business Development in Falabella.com*

* One of large retailers in South America, and a member of e-Commerce Committee of the Santiago Chamber of Commerce

- E-commerce Committee of the Santiago Chamber of Commerce is dedicated to its mission of promoting the sustainable development of e-commerce in Chile since its foundation in 2011, with 281 participating members.
 - o Major activities include educational events, industry research, trainings and workshops, and CyberMonday* Events.
 - *CyberMonday : A retail event in Chile, similar to Black Friday in the United States
- Gaps in regulation create potential of unprotected consumers, while overregulation results in stymied growth of a new industry; self-regulation of business can fill those gaps in the consumer protection laws.
 - o “Code of Good Practices”
Strong public-private relationship between E-commerce Committee and SERNAC resulted in the development of the Code of Good Practices for e-commerce, which includes topics on advertising, contracts, data protection, and protection of minors.
 - o Businesses are provided with incentives to comply with the Code of Good Practices as it is a mandatory requirement for the membership of the E-commerce Committee and participation in Cyber Events, and undergo regular audits in order to check compliance with the Code of Good Practices.
- Self-regulation of business provides improved consumer protection compared with the current legal requirements, improved sensitivity to consumer protection by the e-commerce industry and better understanding of operational challenges by SERNAC; however, both consumer protection laws and the Code of Good Practices in Chile do not apply to companies operating outside of Chile and will need improvements in the future.

Mr Nicholas Heys - Chief of Enforcement Coordination&Knowledge, ACCC

- The ACCC is an independent statutory authority with its mandate to regulate and enforce policies on competition and consumer law; to be in line with its mandate, the ACCC uses a range of tools to encourage compliance and prevent breaches of the law.
 - o Achieving effective compliance is the aim and object of any consumer law or competition authority, and the objective of the ACCC is to enhance the consumer welfare through the promotion

of competition and fair trading and provide for consumer protection.

- “Compliance Program” The ACCC uses compliance programs in all enforcement action.
 - If a person may have breached the Australia Consumer Law, the person may offer an undertaking to the regulator, which may include an admission and agreement to not engage in the conduct in the future, compliance programs, consumer redress, and corrective notices; undertakings are court-enforceable, which means a regulator may take Court action if breached.
 - Legal action may result in court remedies which include making declarations that a company has contravened the Act, imposing pecuniary penalties, and implementing an education and training program.
- Establishing a compliance program system is meaningful for both businesses and a regulator.
 - For businesses, compliance programs can reduce the risk of breaching the competition and consumer law and create a culture of compliance within the organization.
 - For a regulator, compliance programs can ensure market players to function correctly and to adhere to relevant laws, and that misconduct by employees is quickly identified by the company and reported to the regulators.
- The roles that consumer authority can take in order to manage an effective culture of compliance, are as follows:
 - 1) Reporting mechanisms: Allow a business to report any non-compliance to the regulator.
 - 2) Monitoring: Regularly review consumer complaints and market compliance.
 - 3) Effective management of self-reporting by companies: Provide cooperation policy and enforcement principles including penalty discounts for cooperation with the regulator.
 - 4) Enforcement actions for non-compliance and penalty decisions by the courts.

D. Session 4: Discuss the Possibility of Establishing an APEC Framework for Consumer Protection

Moderator: Hosuk Lee-Makiyama(ECIPE)

Panel Participants: All speakers from Session 1, 2, and 3; Nicholas Scubert, DESG Chair; Jean Pierre Couchot, Deputy Director of SERNAC

1. Workshop discussion: “Main Topics of Discussion”

- “Discussions on the need for standard in consumer”
There is a need for a minimum standard that every business, including global companies, should follow. (Discussions on the need for standard in consumer protection)
- “Discussions on territorial principle and governing law”
Governing law requires further discussion in the future, but as it is not effective in practical cases, cross-border cooperation such as international consumer protection network could be an alternative solution. (Discussions on territorial principle and governing law)
- “Discussions on the roles of APEC and cooperation among international organizations”
2002 APEC Voluntary Guidelines for Consumers might be a starting point for what roles APEC can and shall play, and strengthening the multilateral organization network such as OECD, UN UNCTAD is important. (Discussions on the roles of APEC and cooperation between international organizations)
- “Discussions on future plans”
Economies should cooperate with other economies to develop APEC framework for consumer protection by sharing understanding, information, and developments. (Discussions on future plans)

2. Workshop discussion: “Final conclusion”

“Improving the Effectiveness of Consumer Protection in Digital Trades”

- Enhancing mutual cooperation in practice is required to improve the effectiveness of consumer protection in cross-border trades; this will include designating point of contact in each economy who will handle the complaints for cross-border transactions between business and consumers regarding the sale of goods or services

concluded in either face-to-face or online, and sharing the results and feedback with other economies.

“Global IT Companies”

- As a single online-based good or service, such as digital contents and AI, can be associated to multiple economies and businesses, there is a need for a minimum international standard or rule that helps mitigating the difficulty a single economy or organization faces when dealing with issues regarding online-based goods and services.

“ODR Platform”

- Aside from compulsory law enforcement, there is a need for an online-based autonomous dispute resolution platform(ODR) to address consumer complaints in cross-border trades in an effective manner. (ODR Platform) Aside from compulsory law enforcement, there is a need for an online-based autonomous dispute resolution platform(ODR) to address consumer complaints in cross-border trades in an effective manner.

“Continuous Discussion on Consumer Protection in APEC”

- Korea’s Ministry of Foreign Affairs has agreed upon the need to maintain and expand workshops and discussion on consumer protection in APEC, and decided to consider further discussion on this subject at the next APEC meeting in Malaysia in 2020.

Observations and Analysis

The workshop was attended by a total of 43 people (7 speakers, 31 audience members and 5 **coordinating staff members**) from **17 economies: Australia; Chile; China; Hong Kong, China;;** Japan; Korea; New Zealand; the Philippines; Russia; Singapore; Chinese Taipei; Thailand; Peru; Papua New Guinea; the United States and Viet Nam. They represented economy governments, private companies, educational/research institutions and international organizations. Almost a third (27.9%) of the attendees was women.

Indicators <i>(Edit or Insert rows as needed)</i>	# planned	# actual	Details or notes
# workshops / events	1	1	Held at SOM3, 22 August 2019
# economies attended	N/A	17	Chile, Chinese Taipei, United States, New Zealand, , Australia, Vietnam, Thailand, Malaysia, Japan, Philippines, Peru, PNG, Russia, Thailand, Hong Kong, Japan, Korea
# participants (M/F)	N/A	8/38	30 males and 8 females attended
# speakers engaged (M/F)	2/6	2/7	5 males and 2 females attended
# other organizations engaged	5	6	EU, ECIPE, KCA, FTC, ACCC, SENARC
# surveys	N/A	22	Post-workshop participant feedback survey

Participants/ Speakers Summary Table (compulsory for events):

Economy <i>(Insert rows as needed)</i>	# male	# female	Total
Participants	25	6	31
Speakers	5	2	7

Appendix 1: workshop program

Program

- **Title: Promoting Consumer Protection in Digital Trade: Challenges and Opportunities**
- **Time: August 22, 2019 from 9:30 to 17:00**
- **Venue: Puerto Varas, Chile, in the margin ECSG 2**

08:30-09:00	Registration
09:00-09:30	Opening Remarks - Mr Ho-yul Lee, Deputy Director General of International Economic Affairs
09:30-10:45	Session 1

	<p>Review of the international rules for consumer protection in digital trade (Discussion in major organizations)</p> <p>Speaker 1: Stacy Feuer, Assistant Director of Consumer Protection(FTC) “Discussion in major organizations such as OECD, UN, ASEAN”</p> <p>Speaker 2: Mattia Tempini(EC) “Discussion in WTO e-commerce negotiations”</p> <p>Speaker 3: Hosuk Lee Makiyama (ECIPE) - Q&A</p>
10:45-11:00	Coffee/Tea Break
11:00-12:15	<p>Session 2</p> <p>Review of the enforcement of consumer protection regulations concerning digital trade</p> <p>Speaker 1: Yoorim Pyun, Deputy Director, Korea Fair Trade Committee “Enforcement by competition authority in Korea”</p> <p>Speaker 2: Mattia Tempini(EC) “WTO e-commerce negotiations”</p> <p>Speaker 3: Lucas Del Villar Montt (National Director, SERNAC) - Q&A</p>
12:20-14:00	Lunch
14:00-15:15	<p>Session 3</p> <p>New trends in digital consumer protection: Self-regulation and best practices</p> <p>Speaker 1: Kim Dae Jung(Director General, Korea Consumer Agency) “Enforcement by competition authority or consumer protection agency in Korea”</p> <p>Speaker 2: Ricardo Alonso, (CEO, Latam Falabella.com)</p> <p>Speaker 3: Nicholas Hays(Chief of Enforcement Coordination & Knowledge, ACCC) “ACCC digital consumer protection through compliance programs”</p>
15:15-15:30	Coffee/Tea Break
15:30-16:45	<p>Session 4</p> <p>Discuss the possibility of establishing an APEC framework for consumer protection</p> <p>Moderator: Hosuk Lee Makiyama (ECIPE) All speakers from Session 1, 2 and 3 Hoyul Lee (Deputy Director General, MOFA) Nicholas Shubert (DESG Chair) Jean Pierre Couchot(Deputy Director, SENARC) “Discuss the possibility of establishing an APEC framework for consumer protection” “Suggest the possible design of the framework” “Challenges and risks”</p>
16:45-17:00	Conclusion

Appendix 2: presentation materials: see attachment