

Building the competitive advantages through Online Dispute Resolution: The Situation in Vietnam!

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Online Dispute Resolution (ODR) is applied in many developed countries but is not yet popular in Vietnam. With the vigorous world-wide development of e-commerce in the 21st century, Vietnamese businesses need to build their own strengths in this fierce competition. Will applying ODR build the competitive advantage for business? By analyzing the status of leading e-commerce companies, and their technology, cultural and legal aspects in Vietnam, this paper shows that ODR is not merely a method for dispute resolution. If it is combined with other elements of the business, it will create an effective tool to increase the competitive advantage for companies. The paper also outlines some recommendations for building ODR as a competitive tool for Vietnamese businesses such as: building the trust of customers; attracting customers through contributions to environmental protection; and reducing operating costs.

Keywords: ODR; E-commercial, competitive advantages; trust; environment protection

1. Introduction

Jack Welch¹ stated that: “if you do not have a competitive advantage, do not compete.”² This statement demonstrates the importance of having a competitive advantage in business.³ The competitive advantage is the difference that makes some entrepreneurs’ businesses more outstanding and better-operated as compared to others. The competitive advantage is essential for success and long-term survival, and it is the unique feature that competitors can’t own. There is not one definition of what makes the competitive advantage or one way to measure it.⁴ According to Michael Porter⁵, the competitive advantage (which

¹ Welch was chairman and CEO of General Electric between 1981 and 2001, he has many famous quoted which applied by many company.

² <https://www.brainyquote.com/quotes/quotes/j/jackwelch382558.html>

³ Shelby D. Hunt and Robert M. Morgan, The Comparative Advantage Theory of Competition, Shelby D. Hunt and Robert M. Morgan, Journal of Marketing, Vol. 59, No. 2 (Apr., 1995), pp. 1-15

⁴ <https://www.strategicmanagementinsight.com/topics/competitive-advantage.html>

⁵ Michael Porter is an economist, researcher, author, advisor, speaker and teacher. Throughout his career at Harvard Business School, he has brought economic theory and strategy concepts to bear on many of the most challenging problems facing corporations, economies and societies, including market competition and company strategy, economic development, the environment, and health care. <http://www.hbs.edu/faculty/Pages/profile.aspx?facId=6532>

brings higher profits) goes to businesses that can offer superior value. And the way to create superior value is to decrease cost and innovate good design, so that customers will highly appreciate and be willing to pay a higher price.⁶ Porter believes that these competitive advantages derive from the activities the business does which are: done better than competitors; done differently than competitors; that create unique benefits; or done at a lower cost than competitors.

In the 21st century, information and communication technology (ICT) is considered as an effective tool to support and create the competitive advantage.⁷ ICT is applied in various fields ranging from production to service.⁸ Business dispute resolution also makes use of information and communication technology,⁹ which create online dispute resolution.

ODR was developed out of ADR (Alternative Dispute Resolution) also known as the out-of-court resolution that is used online or with the Internet.¹⁰ ADR was created because of the time spent on lengthy court procedures, as well as the overwhelming number of cases burdening the courts. The processes of ADR (negotiation, mediation and arbitration) were successful as the main ways of settling disputes¹¹. The combination between ADR and information technology has resulted in ODR.

The application of information technology is not limited to ADR, and courts in many countries around the world have applied information technology and have set up online courts. If ODR is interpreted broadly,¹² ODR includes online courts¹³. An online court is known as a virtual court or court online, and includes the same procedures as traditional courts. However, some traditional court procedures will have to adapt to be more compatible with the online environment. These courts need more flexible online court procedures, and based on applying ICT such as pleadings and other materials can be saved in online environment.

⁶ How Information Gives You Competitive Advantage by Michael E. Porter and Victor E. Millar, http://www.gospi.fr/IMG/pdf/how_information_gives_you_competitive_advantage-porter-hbr-1985.pdf

⁷ Atefeh Sadri McCampbell, Linda Moorhead Clare, Scott Howard Gitters, (1999) "Knowledge management: the new challenge for the 21st century", Journal of Knowledge Management, Vol. 3 Issue: 3, pp.172-179, <https://doi.org/10.1108/13673279910288572>

⁸ J. Grin. A. Grunwald, Vision Assessment: Shaping Technology in 21st Century Society: Towards a Repertoire for Technology Assessment, Springer, pp 1-3.

⁹ Catherine McGuinness et al, 2010, Alternative dispute resolution: mediation and conciliation <http://www.lawreform.ie/fileupload/reports/r98adr.pdf>

¹⁰ Susan Blake, Julie Brown & Stuart Sime, 2012, *A Practical Approach to Alternative Dispute Resolution*, 2nd ed, Oxford: Oxford University Press, at para 5.07.

¹¹ [Mohamed S. Abdel Wahab](#) and et al, 2012, Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution, Eleven International

¹² If ODR is interpreted broadly as being the use of online environments to facilitate communications and dispute resolution then it could be argued that ODR has seeped into the Court process through the use of electronic filing and electronic court management systems. See Nicolas W. Vermeys and Karim Benyekhlef, ODR and the Courts, https://www.mediate.com/pdf/vermeys_benyekhlef.pdf

¹³ See JTC Resource Bulletin, Online Dispute Resolution and the Courts,

There has been much research into the advantages of ODR,¹⁴ however the research on the relationship between ODR and the competitive advantages for businesses is very limited. In this article, we will analyze how using ODR in the enterprise will bring competitive benefits to the business based on Porter's competitive model. We will show how ODR is not just the dispute resolution tool but also is a competitive tool for business, and then assess the applicability and development of ODR in Viet Nam. Finally we will give recommendations to help businesses use ODR, thus increasing their competitive advantage.

2. ODR and the principles of competitive advantages

What is the relationship between ODR and the competitive advantage? An important concept that highlights the role of information technology in competition is the "value chain".¹⁵ According to Porter, the competitive advantage of a business is based on principles including enterprise value chain, the distinction, technology and cost.¹⁶ While ODR is a way to tackle disputes adopting ICT, how does ODR affect the competitive advantage of the business?

- ODR and value chain:

Each business is a collection of activities which consist of designing, producing, selling, distributing and supporting their products. These activities can be expressed in a value chain.¹⁷ How value chain activities are carried out determines costs and affects profits.¹⁸ Porter splits the value chain of business into two parts: Primary value activities and support value activities, each company will base on their situation to gain the competitive advantage. The value chain which can be modeled¹⁹ as follows:

Table 1: Michael Porter competitive advantage model

¹⁴ see Ethan Katsch & Janet Rifkin, ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICT IN CYBERSPACE (2001); Steve Abernethy, The Square Trade Experience in Online and Offline Disputes, PROCEEDINGS OF THE 2003 UNITED NATIONS FORUM ON ODR 2003, available at <http://www.mediate.com/Integrating/docs/Abernethy.pdf> (last visited May 25, 2015).

¹⁵ For more information on the value chain concept, see Michael E. Porter, Competitive Advantage (New York: Free Press, 1985).

¹⁶ Porter, M. E. The Competitive Advantage: Creating and Sustaining Superior Performance. NY: Free Press, 1985. (Republished with a new introduction, 1998.)

¹⁷ Harvard Business School's Michael E. Porter was the first to introduce the concept of a value chain.

¹⁸ <https://www.ifm.eng.cam.ac.uk/research/dstools/value-chain/>

¹⁹ The value chain is an original Porter concept although he built on the idea of the business system from strategy consultants McKinsey and its main purpose is to help you to find, create or develop competitive advantages.



Source: Michael Porter (1985), *Competitive Advantage, Creating and Sustaining Superior Performance*

Pursuant to the value chain by Porter (as seen above), ODR can be considered in the field of marketing & sales and service, technology. We will discuss how it will be affected by technology later. The stage of Marketing & Sales involve activities like advertising, promotions, sales-force organization, selecting distribution channels, and pricing. It also includes managing the customer's relationship to the final product, ensuring it is targeted to the correct consumer groups²⁰. Emphasizing the company's willingness to solve online disputes can show the customers that the company is willing to take responsibility for its products, in case the product is not consistent with its advertising. This is an important element to promote customers choosing to purchase goods because in the e-commerce environment, trust is the key factor to the buying decisions of customers²¹. In addition, ODR is also known as a way of increasing imagined value of the products and service, as long as the business can take advantage of it and use it as an advertising tool for its own products.

The ODR value chain is not only in marketing but also in service activity. According to Porter's model, service consists of activities used to enhance or maintain goods as part of the sale price.²² Examples include installation, repairmen, training, accessory supply and product adjustment. ODR would be considered as an additional service for products,

²⁰ Katherine Arline, 2015, What is a Value Chain Analysis? <http://www.businessnewsdaily.com/5678-value-chain-analysis.html>

²¹ Živilė Baubonienė and Gintarė Gulevičiūtė, 2015, E-COMMERCE FACTORS INFLUENCING CONSUMERS' ONLINE SHOPPING DECISION, *SOCIALINĖS TECHNOLOGIJOS SOCIAL TECHNOLOGIES*, p 74-81 <https://www3.mruni.eu/ojs/social-technologies/article/download/4295/4067>

²² Vincent van Vliet, 2013, Porter's Value Chain Analysis, <https://www.toolshero.com/management/value-chain-analysis-porter/>

providing customers with tools to resolve their potential problems resulting from their purchase.

- **ODR and technology**

Technological change is one of the principal drivers of competition. It plays a major role in industry structural change, as well as in creating new industries.²³ The products are now integrated technology such as taxi service, food delivery service; one just needs a phone with internet connection that he can reach the whole world²⁴. For enterprises, the application of technology brings many competitive advantages in either cost or differentiation.²⁵ Applying ODR means that businesses have taken ICT into dispute resolution to minimize the time as well as costs incurred in resolving disputes, and it will help parties resolve conflicts arising anywhere in the world.²⁶ Depending on the development and use of technology in each business, ODR system technology can be used as a mere connecting tool to the customer, or a more autonomous and effective use of technical tools.²⁷ Whatever form it is, ODR also brings benefits to the business, therefore, and the businesses should make sure that customers know about that. In additions, utilizing on-line resolution reduces the carbon emissions when the consumer does not have to use a vehicle to get to a physical dispute resolution setting²⁸. This is an aspect that many analysts do not consider; if a business shows its customers how they can contribute to environmental protection, they will support and use ODR, especially is green customers.²⁹

- **ODR and differentiation:**

Differentiation creates a gap with competitors of products and services.³⁰ As noted earlier, the role of a company and its product in the buyer's value chain is the key determinant of differentiation.³¹ So how can ODR create differentiation of the product or service³². In e-commerce, companies now have built-in customer support through 24/7 online support³³. However, they have not really made this support into a tool to differentiate

²³ Michael E. Porter, (1985) "TECHNOLOGY AND COMPETITIVE ADVANTAGE", Journal of Business Strategy, Vol. 5 Issue: 3, pp.60-78, <https://doi.org/10.1108/eb039075>

²⁴ <https://wearesocial.com/special-reports/digital-in-2017-global-overview>

²⁵ <https://hbr.org/1985/07/how-information-gives-you-competitive-advantage>

²⁶ FG Evans, B Wettman, L Shadoff, R Birdwell (2006), Enhancing Worldwide Understanding Through ODR: Designing Effective Protocols for Online Communications, U. Tol. L. Rev., - HeinOnline

²⁷ Luis Antunes, H. Sofia Pinto, Progress in artificial intelligence: 15th Portuguese Conference on Artificial Intelligence, EPIA 2011, Lisbon, Portugal, October 10 - 13, 2011 ; proceedings, pp 46

²⁸ Noam Ebner and Colleen Getz, 2012, ODR: The Next Green Giant

²⁹ In general, green consumers have the education and intellectual orientation to appreciate value; they will understand evidence that is presented in support of environmental claims.

³⁰ Michael E. Porter, 1980, COMPETITIVE STRATEGY Techniques for Analyzing Industries and Competitors, THE FREE PRESS, <http://www.vnseameo.org/ndbmai/CS.pdf>

³¹ <https://hbr.org/1985/07/how-information-gives-you-competitive-advantage>

³² Philip Brown, Differentiation and it's role in Competitive Advantage, <http://culttt.com/2013/05/22/differentiation-and-its-role-in-competitive-advantage/>

³³ We can notice this service when we visit e-commerce websites.

their company from other companies. eBay's use of Square Trade software³⁴ to provide automatic dispute resolution is new to Vietnam. Therefore, to discuss the opportunity of applying ODR when the that consumers are purchasing their products, , means the enterprise has made shown a difference in its product³⁵ and this can help create the competitive advantage for the business.

- **ODR and cost leadership**

Cost is important to a firm, it has impact on making a decision in company management as well as determining business strategy³⁶. Cost advantage is one of the two competitive advantages that a firm can have³⁷. A lot of companies have used low cost strategies to compete.³⁸ To make it, a firm must invest in Research & Development (R&D) to find new materials with cheaper prices,³⁹ as well as reduce cost in the production process. But while planning for costs, a company's manager often forgets to put dispute settlement costs into the budget. Dispute settlement costs are often regarded as abnormal, and are not included in a company's operating cost. But when there is a dispute, litigation creates great costs. If a company applies ODR at first, a firm can plan for that. For example, costs for setting up dispute resolution software and for using dispute resolution service at arbitration can be calculated and included in the price. As a result, looking at all the cases that may occur in business operations, ODR will help reduce costs if a dispute occurs.

- **ODR and trust:**

Although in Porter's competitive advantage model does not mention a customer's beliefs, the firm's core values towards sustainable development are the beliefs of its customers. Many authors point out building trust is key to building the competitive advantage.⁴⁰ If customers believe in a product and the company, they are willing to buy its product.⁴¹ There is a Whitepaper (2015) on the new European Union (EU) legislation on this topic, embracing the change and opportunities that the use of ADR and ODR. The new EU

³⁴ <http://pages.ebay.com/services/buyandsell/disputeres.html>

³⁵ Valarie A. Zeithaml, Consumer Perceptions of Price, Quality, and Value: A Means-End Model and Synthesis of Evidence, *Journal of Marketing*, July 1988, <https://hec.unil.ch/docs/files/123/997/zeithaml88-1.pdf>

³⁶ Gheorghe Lepădatu, THE IMPORTANCE OF THE COST INFORMATION IN MAKING DECISIONS, <ftp://ftp.repec.org/opt/ReDIF/RePEc/rau/journal/SP11/REBE-SP11-A5.pdf> accessed on 20/09/2017

³⁷ A company is able to create value for the buyer by either lowering the buyer cost or raising the buyer performance.

³⁸ Catherine Lovering, Competitive Pricing Strategy, <http://smallbusiness.chron.com/competitive-pricing-strategy-59220.html>

³⁹ CNBC, Why do companies invest in R&D? <https://www.cnbc.com/2014/08/14/why-do-companies-invest-in-rd.html> accessed on 20/09/2017

⁴⁰ See <https://www.forbes.com/sites/jeffboss/2016/04/15/the-one-key-to-competitive-advantage-that-everyone-can-affect/#6a45396f31c7>; The trust can serve as the source of competitive advantage (Barney and Hansen also said The trust can serve as the source of competitive advantage(Barney, J. B. and M. H. Hansen, 1994. Trustworthiness as a source of competitive advantage. *Strategic Management Journal* 15: pp. 175-190)

⁴¹ Patrick Spenner and Karen Freeman, 2012, To keep your customers, keep it simple, <https://hbr.org/2012/05/to-keep-your-customers-keep-it-simple>

Legislation⁴² provides a competitive advantage to European companies and market to compete successfully on a global scale⁴³

Belief factor has an important role to e-commerce.⁴⁴ Colin Rule's statement: As stated by Colin Rule, "Transactions require trust, and the Internet is woefully lacking in trust."⁴⁵ "Trust has deep roots in the context of dispute resolution, and stretching the concept to include technological aspects has strained its meaning to some extent".⁴⁶ The more customers' faith they build up, the more competitive advantage businesses gain. By analyzing ODR, in light of Porter's mentioned competitive rules, it is clear that the ODR does build customers' trust.

3. The realities of ODR development in Viet Nam

All organizations are interested in creating competitive advantages. The above analysis points out the connection between the factors affecting businesses' competitive advantages and ODR. But can ODR create competitive advantages if organizations apply it to Vietnam? To find out the answer, we need to look at the potential of applying ODR in Viet Nam. Presently, Vietnam has some advantages for developing ODR:

- *ICT Infrastructure meets the basic requirement of ODR*: the first condition to develop ODR is ICT infrastructure, particularly the internet. Over the past few years, ICT infrastructure in Vietnam such as computers, telecommunications network equipment, telecommunication and internet services have been increasingly invested in and developed. Network providers are preparing the infrastructure to deploy IPv6 in need of serving 4G LTE service. This greatly contributes to the rapid development of services and applications on the Internet, especially for online transactions. According to EBI 2015, almost all businesses use computers and laptops; the percentage of enterprises that use digital signatures and digital signature certification services is much higher than in previous years,

⁴² DIRECTIVE 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes (Directive on consumer ADR) requires Member States to ensure that all disputes between consumers and traders established in the Union, and which arise from the sale of goods or provisions of services can be submitted to an ADR entity = settled out-of-court, and REGULATION (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes (Regulation on consumer ODR) has charged the Commission with setting up the European ODR platform (a web portal), through which consumers can opt for an out-of-court resolution of disputes online in the cross-border issues.

⁴³ White paper new EU legislation 2015, https://www.youstice.com/images/yousticeimg/media/PDF/Whitepaper_May.pdf,

⁴⁴ Wasfi Al rawabdeh et al, The Importance of Trust and Security Issues in E-Commerce Adoption in the Arab World, <https://eis.hu.edu.jo/deanshipfiles/pub108994039.pdf>

⁴⁵ Colin Rule, 2002, Online dispute resolution for business: For E-commerce B2B, consumer, employment, insurance, and other commercial conflicts, Jossey-Bass

⁴⁶ Ebner, Noam and Zeleznikow, John (2015) "Fairness, Trust and Security in Online Dispute Resolution," Hamline University's School of Law's Journal of Public Law and Policy: Vol. 36: Iss. 2, Article 6. Pp 154

Available at: <http://digitalcommons.hamline.edu/jplp/vol36/iss2/6>

reaching 63% (up nearly 20% compared to 2014)⁴⁷, and the percentage of website which have support online is 97%, however the most popular tool to support customer is by phone with 90%, while online support just is 60%.

- *Developing Internet and E-commerce in Vietnam is the reason for increasing the need for using ODR*: The internet has become an indispensable part of the daily life of the majority of people in Vietnam. E-Commerce has become increasingly popular in Vietnam. The sheer increase in number of on-line socio-economic activities, one can predict that more disputes can happen, therefore the need for using ODR will increase.

- *The benefit and impact of ODR is the motivation of ODR's development in Viet Nam*: The flexibility, explicitness, information control, international nature and cost-saving in solving the conflicts in ODR will raise the interest in the parties to develop ODR. These qualities will attract the parties and the organization which have the ability in researching and applying ODR in commercial matters in Vietnam. Enterprises will be able to use ODR as a tool in competing in the market. With ODR, raising the trust for the enterprises is an important element to attract customers to participate in the e-commerce. It will also attract the consumers when the business is willing to be explicit about the transaction information, considering their interests and helping to solve the consumers' problems. Another aspect of ODR's impact on Vietnam is that it can reduce or avoid stressful issues in negotiating some tough problems like court jurisdiction, applicable law, actual location when resolving disputes in court. None of these will be issues when resolving disputes online.⁴⁸ Utilizing ADR with, a free, simple, transparent and fair ODR system will give some hope for justice when disputes occurred.⁴⁹

- *Vietnam's court system could be less burdened with the appearance of ODR*: The court system in Vietnam is always overloaded⁵⁰ and contains many complicated procedures, thus ODR appears as an alternative. The impact of ODR will become more and more effective for cross-border e-commerce transactions, eliminating issues such as time, cost, authority, language – the problems which are considered as disadvantages when applying the method of dispute settlement by court.

- *ODR contributes to the development of Vietnam's economy*: On the purely economic side, the internet creates the potential for Vietnam to thrive, quickly integrate into the world

⁴⁷ Vietnam E-commerce report 2015, <http://www.vecita.gov.vn/tinbai/1194/Bao-cao-Thuong-mai-dien-tu-Viet-Nam-nam-2015>

⁴⁸ Cheri M. Ganeles (2002), Cybermediation: a New Twist on an Old Concept, 12 ALB. L.J. Sci. & TECH. 715, 738.

⁴⁹ Ronald A Brand, 2012, Party Autonomy and Access to Justice in the UNCITRAL Online Dispute Resolution Project, 10:1 Loy U Chicago LR 11 at 13.

⁵⁰ Thảo Mộc, 2016, Tòa án quá tải vì án tín dụng, Báo điện tử Đại biểu nhân dân, <http://daibieunhandan.vn/default.aspx?tabid=81&NewsId=372070> accessed 28/5/2017.

economy when the commercial development is inseparable from the internet and e-commerce.⁵¹ ODR encourages trust in e-commerce, which will increase e-commerce activities, and the digital economy will expand. The growth of the digital economy will have a direct impact on the development of the economy in general. From that perspective, ODR is an important aspect that can help promote the development of the Vietnam's economy and there is no reason which government should not support ODR.

- *The legal system for e-commerce in Vietnam is the initial basis for promoting the development of ODR:* In the period of 2004 - 2016, the legal framework relating to e-commerce had basically been finalized with 14 laws and 18 sub-law documents, aimed at clarifying e-commerce activities, regulating the rights and obligations of the subjects involved in e-commerce activities and enhancing the management role of the agencies from central to local.⁵² Although Vietnam has no direct regulations on ODR, the current legal documents have formed the basis for developing this method in the future for the following reasons:

First, Vietnamese law allows the legal value of electronic data messages as equivalent to the text and specific provisions on electronic signatures to confirm the person signing the data message and his consent to the content of the signed data message. This is an important factor to build the ODR mechanism when the submission of documents and evidence of this method is all through the electronic means.

Second, Decree No. 52/2013/ND-CP on E-commerce aimed at managing e-commerce activities, and has provisions on dispute settlement. The decree specifies the responsibilities of the parties in e-commerce transactions and lists possible means of resolving disputes arising from this activity.

Third, the Consumer Protection Act of 2014 provides for the regulation of dispute settlement for all consumers, including consumers who purchase goods or services online with very clear rules and even procedures for resolving disputes between consumers and organizations and individuals trading in goods and services through four processes for disputes involving less than 100 million VND: negotiation, conciliation, arbitration and court.

Fourth, the Civil Procedure Code in 2015 introduced a number of new regulations relating to electronic data and the application of information technology to the process of

⁵¹ Binh Nguyen, Đông Nam Á - “chiến trường” thương mại điện tử, <http://www.thesaigontimes.vn/163472/Dong-Nam-A---chien-truong-thuong-mai-dien-tu.html>

⁵² Vietnam E-commerce report 2015, <http://www.vecita.gov.vn/tinbai/1194/Bao-cao-Thuong-mai-dien-tu-Viet-Nam-nam-2015>

dispute settlement in courts, such as Articles 94 and 95 of the Civil Procedure Code in 2015. The addition of "electronic data" is evidence that it can be collected. In addition, procedures such as filing a petition, issuing, serving and notifying can be made electronically with the aim of building electronic courts.

Finally, the basis of developing ODR is in the ability of Vietnamese businesses: E-commerce progresses strongly with various forms such as online shopping websites, websites providing e-commerce services including e-commerce trade platforms, online promotion websites, online auction websites and other applications, with accompanying legal regulations. However, Vietnamese firms themselves do not usually comply with these laws, the most striking is the content of e-commerce contracts which result in a high incident of disputes. At Vietnamese E-commerce Report in 2015, contents in e-commerce contracts occupied 60% reasons for the dispute, for example, delivering stocks or making payments which are not in accordance with the terms of the contracts. Moreover, Vietnamese businesses have many limitations in management and data processing, and they do not usually show much interest in cultivating the use of electronic data. They utilize amateurs in their information technology and communication staff, and consequently, they are often unsafe for data security. As a result, failures to correctly input data about models, quantity and price lead to potential on-line disputes. This it provides the opportunity for applying ODR.

However, there still have some difficulties in developing ODR in Vietnam:

Vietnamese culture is obstacle for ODR: In Vietnam, people are often hesitant to take part in disputes⁵¹, are generally careless about responsibility of firms⁵³, hence, if the customer is unsatisfied with stocks, the customer will often ignore it and not complain⁵⁴. Additionally, the customer does not want to be part of direct participation in any dispute resolution, because they do not trust it.⁵⁵

The not-ready-willing of Vietnamese enterprises reduces the need to adopt ODR. The speed of e-commerce is on the rise in Vietnam, but not many of firms really are eligible to apply ODR. Conditions here are not only the lack of technical infrastructure but also the lack of technical staff support for activities in ODR. The businesses tend to not dare to put themselves at risk, which includes resolving disputes with customers openly and

⁵³ Bui Xuan Phai (2010), Vietnamese Psychology in complying with laws in global integrate: <https://thongtinphapluatdansu.edu.vn/2010/09/21/tm-l-ng%C6%B0%E1%BB%9Di-vi%E1%BB%87t-v-van-ho-php-l-v%E1%BB%9Bi-vi%E1%BB%87c-th%E1%BB%B1c-hi%E1%BB%87n-php-lu%E1%BA%ADt-trong-ti%E1%BA%BFn-trigr/> accessed in 28/05/2017

⁵⁴ Le Danh Dinh (2009), the interview "Getting over conflict fearful" , <http://www.thesaigontimes.vn/Home/doanhngheip/phapluat/23743/> , Saigon Economics Express, accessed in 28/05/1014

⁵⁵ Colin Rule, 2002, *Online Dispute Resolution for Business*, pp. 43, Jossey-Bass

transparently. Although, there are many companies in Vietnam who now have online complaint system based on supporting online system or receiving email complaints, such as Thegioididong company, Tran Anh company, Lazada, but those ODR systems just is a connecting tool to help company receive the complaint, and is not the autonomous dispute resolution system such as Square Trade.

Language barriers when applying ODR for international transactions. The number of e-commerce sites providing completed and updated information in Vietnamese and English are in the minority in Vietnam, which creates a lot of difficulties for the partner not speaking Vietnamese. By contrast, many websites in the world are only in English and their native languages, which will impede Vietnamese consumers' use of the ODR they provide.

Knowledge and skills in ICT is a barrier. The fact that not many Vietnam customers who use online shopping know much about ICT, will be a difficulty if they want to use the ODR. In addition, basic infrastructure, such as power supply stability and roads enable mail transfer, as well as stable quality of mobile internet infrastructure in Vietnam has been uneven.

Lack of legal direct adjustment is a major barrier for ODR development. Businesses might want to apply ODR, consumers might know ODR, but the lack of legal provisions make the parties feel apprehensive when it is available, or the people who try to resolve disputes will also feel confused when using it. The problem posed for ODR as what information should be kept secret when applying ODR? If someone violates ODR providers service agreement, does the court have jurisdiction or not? If there are Online court procedures, then how do they apply? Is enforcement of court judgments online, like online arbitration? There are examples when applying Article II.2 of the form of the arbitration agreement in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Decisions for online arbitration: "The term" agreement in writing "shall include an arbitral clause in a contract or an arbitration agreement the parties signed or recorded in correspondence." It could be inferred that the arbitration agreement made online is a binding agreement however there needs to be a guide defining this, especially if the judge is not flexible in the interpretation of this provision. There is a need for the promulgation of legal documents to regulate the ODR. Vietnam needs guidance to offer direction.

4. Some of the proposals subject to develop ODR in Vietnam to be competitive advantage

Businesses need to identify the role of ODR in their business activities, as well as locating the position of ODR in their own value. They need to always regard ODR as part

of the products and services they provide, not a separate department, in order to develop it in case there is the dispute. ODR should be part of product marketing strategies to promote the image building process for the business. They should take advantage of what ODR brings to promote their businesses. Promoting ODR is related to the environment. By displaying on a carbon footprint website, it showed ODR minimized the use of energy. A business could show one of the benefits of ODR is that it impacts consumers' current green vision⁵⁶.

In addition, when applying ODR to its business operations, the business can start from small value dispute cases to build trust for their partners and customers. Businesses must equip themselves with adequate knowledge of legal and technological infrastructure. By building a simple ODR system with human support and advancing towards automation, developing a team of technicians, using a second language besides the Vietnamese language, businesses can create an enterprise ODR system.

Based on the favorable analysis of ODR that Vietnam currently has, ODR can be applied immediately, when prerequisites for ICT in Vietnam are basically met. The benefit that ODR will bring will be the motivation for accepting ODR. However, when introducing a new tool such as ODR into business applications and dispute resolution, there are definitely barriers to be encountered, but they are not impossible to overcome. When analyzing the difficulties for applying ODR in Vietnam, the hidden obstacles behind the barriers are the "beliefs" of e-commerce stakeholders and their lack of trust in dispute resolution. Therefore, to apply ODR to Vietnam, the parties firstly need to build their trust in e-commerce transactions and in resolving disputes. Building trust is not easy and will certainly take a long time. In order to do that, it is necessary to have solutions and efforts to actively synchronize the parties involved in e-commerce in general and ODR in particular.

⁵⁶ Noam Ebner và Colleen Getz, 2012, ODR: The Next Green Giant
http://unfccc.int/kyoto_protocol/mechanisms/emissions_trading/items/2731.php