

**Consumer Claims, on-line Dispute Resolution and Innovation in the Public Administration:
A Case Study of the Consumidor.gov Platform in Brazil During 2014-2019**

**Demandas do Consumidor, Resolução de Conflitos *on-line* e Inovação na Administração Pública:
Um Estudo de Caso da Plataforma *Consumidor.gov* no Brasil no Período de 2014-2019**

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Abstract

Objective: this paper examines the Brazilian government digital platform named *Consumidor.gov* that was created in 2014 as an online mechanism of alternative dispute resolution between consumers and companies. **Methodology:** first, it covers a short theoretical reference and it presents the methodology of the research, which benefited from public data provided by the Brazilian Consumer Agency and the Brazilian National Council of Justice. Then, it evaluates the first 5 years of the existence of the platform – from July 2014 to July 2019 – and finishes with a preliminary evaluation of the positive impacts for consumers. The main arguments for this conclusion are twofold: (i) an increasing level of consumer satisfaction towards the use of the platform; and (ii) a moderate decrease of judicial actions related to consumer issues. **Results:** as a result, the platform seems to enhance consumer protection with speedy solution to disputes and it saves public resources due to fewer complaints sent to the Judiciary branch. **Contributions:** as final remarks, the document aims to contribute to the literature that indicates the scarcity of studies on the complementarity of Online Dispute Resolution (ODR) and civil courts in generating effects on well-being, as it presents data that can support correlational research in this regard. As a practical contribution, this paper also indicates some recommendations for improving the mechanism and possibly increasing the effectiveness of public policy in protecting consumers. **Key-words:** Online Dispute Resolution (ODR); *Consumidor.gov* platform; consumer protection; access to justice; innovation in Public Administration.

Resumo

Objetivo: este trabalho examina a plataforma governamental brasileira denominada *Consumidor.gov*, criada em 2014 como um mecanismo *online* de resolução alternativa de disputas entre consumidores e empresas. **Metodologia:** em um primeiro momento, discorre-se sobre a ancoragem teórica do tema, bem como apresenta-se a metodologia da pesquisa, baseada em dados públicos fornecidos pela Secretaria Nacional do Consumidor (Senacon) pelo Conselho Nacional de Justiça (CNJ). Em seguida, avaliam-se os primeiros 5 anos de existência da plataforma – de julho de 2014 a julho de 2019 – para concluir no

sentido de um impacto preliminar positivo para os consumidores. Os dois principais argumentos para essa conclusão são: (i) a existência de um nível crescente de satisfação do consumidor em relação ao uso da plataforma; e (ii) a verificação de uma diminuição moderada de ações judiciais relacionadas a questões de consumo. **Resultados:** o estudo sugere que a plataforma aprimora a proteção do consumidor com uma solução rápida e economiza recursos públicos devido ao menor número de demandas judiciais. **Contribuições:** o documento pretende contribuir com a literatura que indica a escassez de estudos sobre a complementaridade de ODR e tribunais civis na geração de efeitos sobre o bem-estar, na medida em que apresenta dados que podem subsidiar pesquisas correlacionais nesse sentido. Como contribuição prática, este trabalho indica igualmente algumas recomendações no intuito de aprimorar o mecanismo e possivelmente aumentar a eficácia da política pública na tutela dos consumidores. **Palavras-chave:** Resolução de Disputa *On-line*; plataforma *Consumidor.gov*; proteção do consumidor; acesso à justiça; inovação na Administração Pública.

1. Introduction

The *Consumidor.gov* platform was created in 2014 by the Brazilian Consumer Agency as an online mechanism of alternative dispute resolution between consumers and companies. The idea is quite simple: an online platform that connects consumers and companies with the purpose of solving consumer disputes in a fast manner without interference from third parties.

Companies adhere to the system on a voluntary basis and commit themselves to certain obligations, such as providing a formal, public and quick reply to all complaints made through the platform. On its turn, consumers need to login the system and make public his or her complaint. Only consumers' personal information remains undisclosed to the public.

The amount of the accumulated data – from the launch of the platform in July 2014 to its 5-years anniversary in July 2019 – is impressive. A few indicators give a flavour of the data gathered: a total of 1.7 million complaints, in addition to 1.2 million of consumers and 494 companies connected to the platform. Considering the year of 2018, 6.5 days was the average time for a consumer to receive a formal reply from a given complaint, and 81% is the current level of consumer satisfaction. The numbers also enable an analysis of the incentives that drive both companies and consumers towards an effective participation in the platform (Schmidt-Kessen, Nogueira, & Cantero Gamito, 2020). They also suggest that the platform has contributed to a decrease in the number of consumer judicial actions presented before the Brazilian Courts.

Although there is considerable academic and professional interest in various forms of Alternative Dispute Resolution – ADR, there are still few studies on Online Dispute Resolution – ODR (Ojiako, Chipulu, Marshall, & Williams, 2017; Schmidt-Kessen et al., 2020). This paper examines the *Consumidor.gov* as a case study of public policy intended to enhance consumer protection in Brazil. It acknowledges that a creative idea, combined with an effective implementation, may produce tangible results to society. The *Consumidor.gov* platform also constitutes an example of a public-private partnership mechanism since it simply connects consumers and companies through an alternative dispute resolution mechanism, albeit managed by a government agency.

The paper first presents the methodology of the research, then it makes an assessment of the platform, and concludes with a few policy recommendations.

2. Theoretical Reference

The Alternative Dispute Resolution (ADR) emerged as an extrajudicial form to solve legal disputes and it is used around the world as a public policy to solve consumer disputes (Jeretina, 2018; Schmidt-Kessen et al., 2020). The ADR does not exclude the access of the citizens from the judicial system. It rather presents itself as an additional option to solve legal disputes and it tends to be faster and less burdensome to society (Fernandes, Rule, Ono, & Cardoso, 2018; Jeretina, 2018). Disputes need to be solved quickly since long proceedings often lead to greater dispute amounts (Kriesberg, 2011; Oseni & Omoola, 2017).

The Online Dispute Resolution (ODR) is a specific type of ADR which applies to the digital world and appeared during the end of 1990s (Ebner & Zeleznikow, 2016; Fernandes et al., 2018). It is defined as a process that uses technologies related to information and communication to solve disputes (UNCITRAL, 2017). An ODR can be implemented in different ways depending on its management features,

but it always requires a system named ODR platform to create, send, receive, stock, exchange and process communications, with a guarantee of data security (UNCITRAL, 2017).

According to UNCITRAL (2017), the development of ODR is divided in three stages. At a first stage, the manager enables, through a digital platform, a possibility of negotiation between concerned parties (claimant and respondent). If this first stage is insufficient to solve the dispute, it triggers a second moment and the manager appoints a third party to serve as a neutral intermediary to the negotiation process aiming to reach an agreement. A third stage is necessary when no friendly agreement is reached and the third party will simply inform both claimant and respondent about the nature of this third stage and measures to adopt including an mandatory arbitration as suggested by Schmidt-Kessen et al. (2020).

Ebner and Zeleznikow (2016) argue that governance of ODR platforms are complex issue since it includes the management of processes, the identification of involved actors, the context in which it is part (related to certain adjudication body, type of conflict, etc.) and technology to be used. Nonetheless, the authors also argue that a governance setup is important to the development of an ODR (Ebner and Zeleznikow, 2016).

In 2013, the European Union enacted a legislation that regulates both ADR and ODR platforms. Certain countries from Latin America and Asia also have initiatives related to ODR (Schmidt-Kessen et al., 2020) including some similar to the *Consumidor.gov* platform in Brazil. For many years, the judicial system was the only legal instrument to solver disputes, which increased the culture of litigation in Brazil (Fernandes et al., 2018) and the backlog of judicial proceedings with impact on efficiency and effectiveness in the public duty to offer a fair trial in a reasonable timeline to citizens (Fernandes et al., 2018; Schmidt-Kessen et al., 2020). In this context, alternative dispute resolutions in the field of consumer claims is considered an innovation in the access of justice as it offers a greater protection to consumer rights through the possibility of a speedy and efficient dispute resolution (Schiavetta, 2005; Fernandes et al., 2018).

Fernandes et al. (2018) argue that the Brazilian legislation has developed to facilitate the implementation of ODR platforms in the country, but highlight a number of obstacles that should be addressed: (i) the litigation culture that is still present in Brazil; (ii) the need to train professionals to serve as mediators in ODR proceedings; (iii) the lack of mechanisms to assure compliance of the agreement made by parties; and (iv) challenges related to technology aspects including the transactional costs to learn its proper use, the standardization of processes and capable platforms to support the interactions between concerned parties.

In Brazil, the platform *Consumidor.gov* was created by the Brazilian government in 2014. It constitutes a public service that enables the online communication between clients and companies with the purpose of solving consumer claim disputes. After five years of this legislation, the *Consumidor.gov* became the official digital platform of the Brazilian Federal Public Administration to solve consumer disputes. This was possible by the enactment of the Presidential Decree n. 10.197, on 2 January 2020.

The public service provided by the *Consumidor.gov* platform is based on three premises. First, transparency and social control as key elements for effectiveness of consumer rights. Second, the information provided by consumers are strategical to the design and implementation of public policies for consumer protection. And third, the access of information enables greater consumer choices and thus improves consumer relations (Senacon, 2020).

The companies benefit from the service provided by the Government in many ways. First, they have access to a free system that enables to receive complaints that often were not solved by internal means of assistance. The system also avoids that these claims became legal disputes before judicial or administrative courts. Considering that the *Consumidor.gov* platform ranks companies based on their performance, they also have the opportunity to compete as the most efficient participant in alternative dispute resolutions and therefore attract more consumers. Last, companies may also benefit from the data generated by the *Consumidor.gov* platform which allow to further improvement of products, services and consumer assistance (Senacon, 2020).

On their turn, citizens also benefit from the digital platform as it is a public instrument, easily accessible from anywhere through Internet, and may seek for a fast resolution of consumer issues (Senacon, 2020). Furthermore, consumers may also access data and information about companies, which foster competition among businesses and increase their power to take informed decisions (Senacon, 2020).

Porto et al. (2017) argue that the platform's objective is to promote dialogue between consumers and companies. This creates an environment capable of solving consumers' claims without the need of a judicial litigation, which may result in positive impacts for consumers and companies – at least in terms of incentives to avoid judicial litigation.

3. Research Methodology

According to the Organization for Economic Cooperation and Development (OECD), regulatory policy is about achieving government's objectives through the use of regulations, laws, and other instruments to deliver better economic and social outcomes and thus enhance the life of citizens and businesses. In this context, OECD recommends an effort to integrate Regulatory Impact Assessments into the policy process in order to seek for constant improvements in terms of effectiveness and efficiency in achieving its goals (OECD, 2012).

With this general policy background, the research contributes with an assessment of a specific governmental initiative intended to foster the protection of consumers in Brazil: the online platform named *Consumidor.gov*, which invites companies and consumers to voluntarily seek for a non-judicial solution for a given dispute (Cappelletti, 1993).

Considering that the platform was created in July 2014, the research frames the analysis in the period of its five first years: from July 2014 to July 2019.

The research relies therefore in public data disclosed by both the Brazilian Consumer Agency ("Senacon" for its acronym in Portuguese) and the Brazilian National Council of Justice ("CNJ" for its acronym in Portuguese). The Consumer Agency offers data from the platform itself (e.g. number of complaints, economic sector of complaints, in addition to the quantity of companies and consumers registered in the platform). The National Council of Justice offers data related to the judicial actions in Brazil including the number of new legal demands presented before the Judiciary branch.

The analysis of the combination of these data – from the Consumer Agency and National Council of Justice – has not been subject to any public research in Brazil. This is therefore the main contribution that this paper aims to provide to the public debate concerning the effectiveness of the platform *Consumidor.gov*, including its success and possible room for improvements.

The data from the Consumer Agency is accessible through the website www.consumidor.gov.br. It includes the annual reports of the platform *Consumidor.gov* for the years 2016, 2017 and 2018. The website also provides information from 2014, 2015 and 2019, which completes the database for the purposes of this research.

The data from the National Council of Justice is also accessible online through www.cnj.jus.br. The CNJ is a public institution that aims to improve the work of the Brazilian legal system, especially regarding the control and management improvement of judicial proceedings. The data was mainly collected from their publication "*Justiça em Números*", an annual report that consolidates several information related to judicial proceedings including new actions, segmentation by economic sectors and average timing of judicial review. This field has received greater attention from academia and policy makers considering its impact on other public policies (Economides, Haug, & McIntyre, 2013).

The analysis of data in the field of legal practice enables a more accurate diagnosis of problems related to the management of the system of justice, and thus its constant improvement. This exercise is often referred to as jurimetrics, which may be defined as the application of quantitative methods, in addition to probability and statistics techniques, to the field of law (Loevinger, 2004; Preasence, Balmer, & Sandefur, 2016; Dana & Nadler, 2019).

After having presented the sources of data and the proposed analytical exercise, the next chapter will examine the numbers and its correlation with the success, failure and possible improvements of the platform *Consumidor.gov* in Brazil.

4. Results

This chapter will assess the *Consumidor.gov* platform including the analysis of official public data, the possible correlations between trends and areas in which the public policy could be improved in order to achieve greater effectiveness for consumer protection.

4.1. Increasing Trend of Number of Companies and Consumer Complaints in the Platform

The available data offers a clear picture of an increasing trend of companies in the *Consumidor.gov* platform. The figure shows the total number of companies in the platform, thus including the prior years:

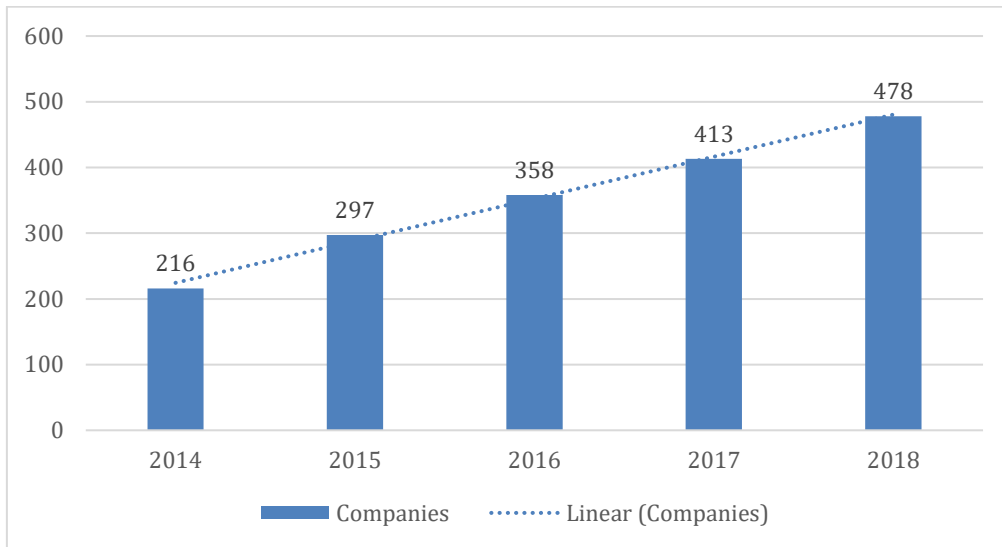


Figure 1. Number of Companies in the Platform (total numbers of companies after each year)
Source: Authors with data from *Consumidor.gov* platform (2014-2018)

The same increase and trend are noticed in the number of consumer complaints by year, thus excluding the prior years in the annual figures:

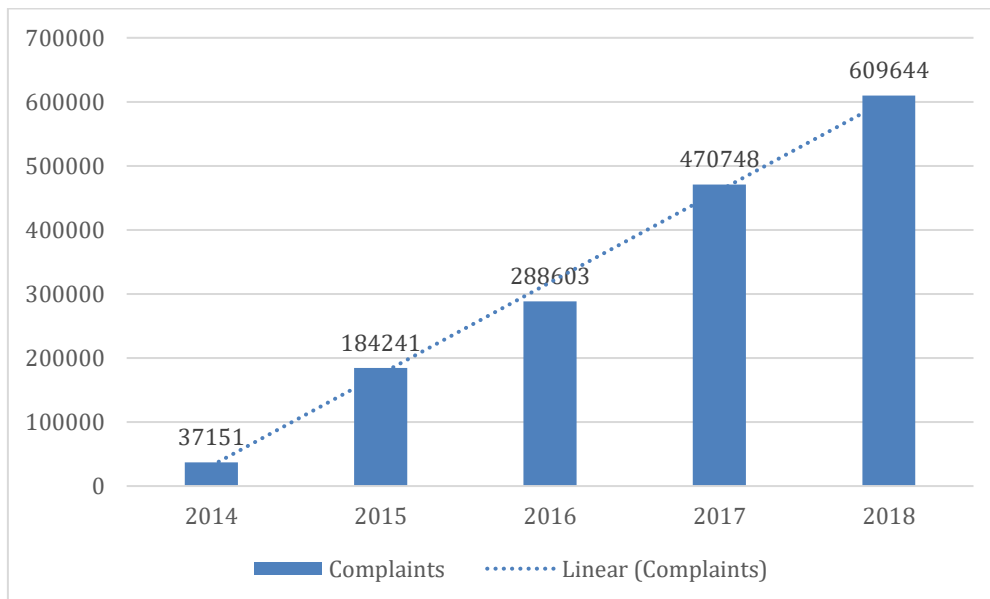


Figure 2. Number of Consumer Complaints (total numbers of complaints by year)
Source: Authors with data from *Consumidor.gov* platform (2014-2018)

The numbers reflect an effort from the Brazilian government to promote the use of the platform. In 2018, more than 600.000 consumer complaints were registered in the platform. This number will be important to crosscheck with the number of new consumer legal actions presented before the Judiciary branch.

4.2. Stable High Level of User Satisfaction in the Platform

The increasing trend in the number of companies and consumer complaints is followed by a stable but relatively good trend in the level of user satisfaction:

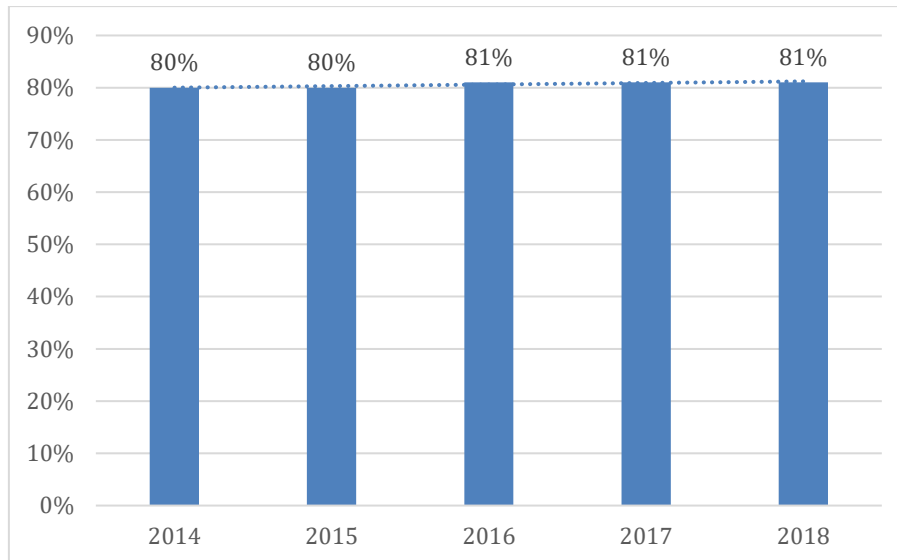


Figure 3. Rating of Consumer Satisfaction
 Source: Authors with data from *Consumidor.gov* platform (2014-2018)

This is measured by a rating survey applied after each complaint is fully processed by the platform including description of complaint, reply from company and delay for consumer to evaluate if the complaint was addressed in a satisfactory manner. This could be from a simple justification of the company to the adjustment of the product or service in order to comply with consumer rights.

4.3. Moderate Decrease of Judicial Actions Related to Consumer Issues

The Brazilian National Council of Justice (CNJ) keeps track since 2003 of the numbers in the Brazilian Justice including backlog of judicial actions and quantity of judges and civil servants in the Judiciary branch.

The reports from CNJ enable an analysis of trends in Judiciary branch, which may be explained by various factors. An important challenge of this research is to correlate part of these statistics to the performance of the *Consumidor.gov* platform. For this purpose, the research will begin with a broader overview of the judicial trends in Brazil, then it will focus on specific areas and types of judicial actions which are more directly related to consumer issues in order to attempt to demonstrate the appropriate correlation. The figure below reflects on official data collected by the Brazilian National Council of Justice (CNJ):

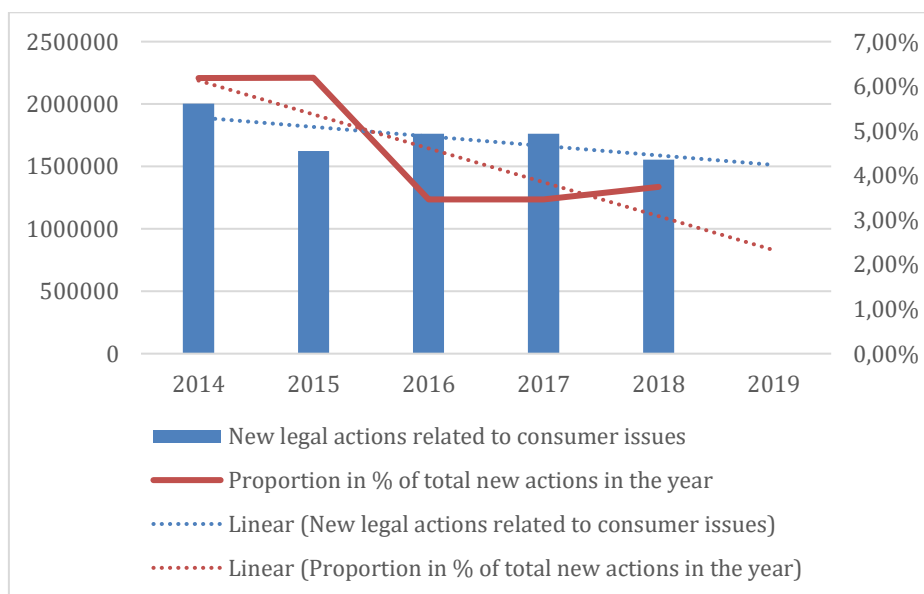


Figure 4. New Consumer Actions at State Courts
 Source: Authors with data from CNJ Annual Reports (2014-2018)

The dotted line indicates a small but visible decreasing trend in the number of consumer actions. This statement considers both the total number of consumer actions as well as the proportion that these actions represented in the total number of legal actions in Brazil. It is based on numbers related to new actions related to consumer issues at Brazilian State Courts, as they are competent for this matter.

Another set of numbers also points to the same direction as indicated in the figure below which also reflects on official data collected by the Brazilian National Council of Justice (CNJ):

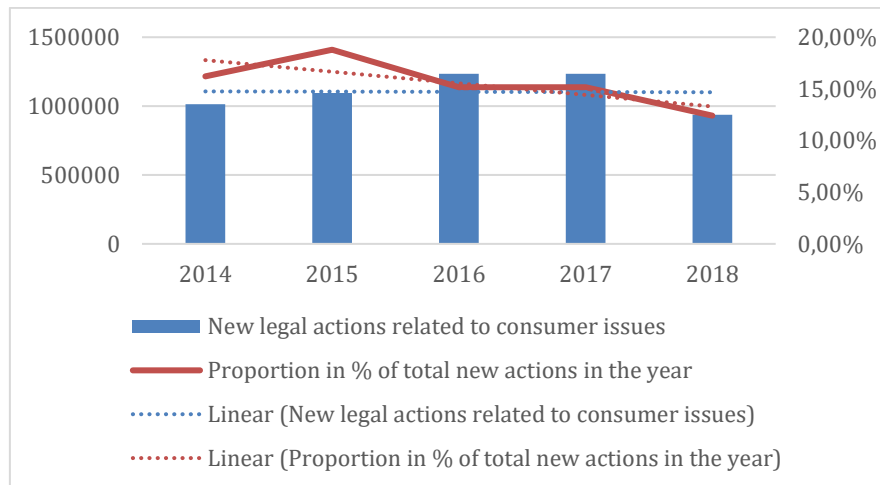


Figure 5. New Consumer Actions at Special Justice (demands below 40 minimum wages)
Source: Authors with data from CNJ Annual Reports (2014-2018)

The figure is based on new actions presented to the Brazilian Special Justice (*Juizado Especial*), which is competent for legal demands below 40 minimum wages – approximately R\$ 40.000 (or US\$ 10.000). It considers only consumer related actions, so it seems an appropriate reference of indicator since consumer requests are often limited to lower amounts. Once more, the dotted line indicates a small but visible decreasing trend in the number of consumer actions.

It is difficult to demonstrate the direct correlation of this decreasing trend and the work of the *Consumidor.gov* platform, but one may argue in favour of at least a partial credit to the platform's success in the last years.

4.4. Concentration of Complaints in Southeast of Brazil

The geographic diversity of complaints is information that is directly provided by the *Consumidor.gov* platform and it offers some insights for possible improvements. Below is the status for the period of 2014-2019:

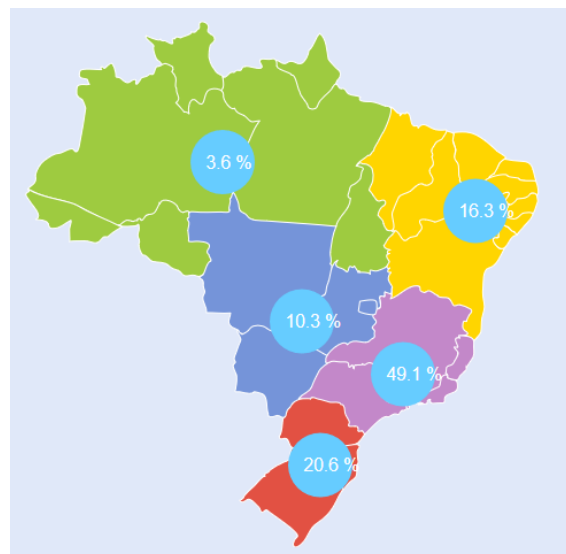


Figure 6. Proportional of complaints by regions in 2014-2019
Source: Consumidor.gov platform (2014-2019)

The figure indicates a certain unbalance, albeit not significant, in terms of geographic diversity. Considering the official numbers of the Brazilian population, 42% of the populations is located in the Southeast - States of São Paulo, Minas Gerais, Rio de Janeiro and Espírito Santo – (IBGE, 2020), the *Consumidor.gov* seems to have a greater access to consumers from this region than from other regions. This is also true for other two regions that have a certain unbalance in relation to its own population size: the South region corresponds for 14% of the population and 20,6% of the consumer complaints, whereas the Center-West corresponds for 7.5% of the population and 10.3% of the consumer complaints.

Given this context, a greater effort could be given to consumers located in the North and Northeast of Brazil since they count for approximately 8.5% and 28% of the population (IBGE, 2020), although only 3.6% and 16.3% of the consumer complaints. Governments should indeed adopt policies to enhance the access to online services as they enable consumers to have an additional channel to address complaints and solve disputes (Jeretina, 2018).

4.5. Profile of Companies

The profile of companies is also available when one examines the economic sector of complaints. The figure below indicates which markets are most subject to consumer complaints through the *Consumidor.gov* platform:

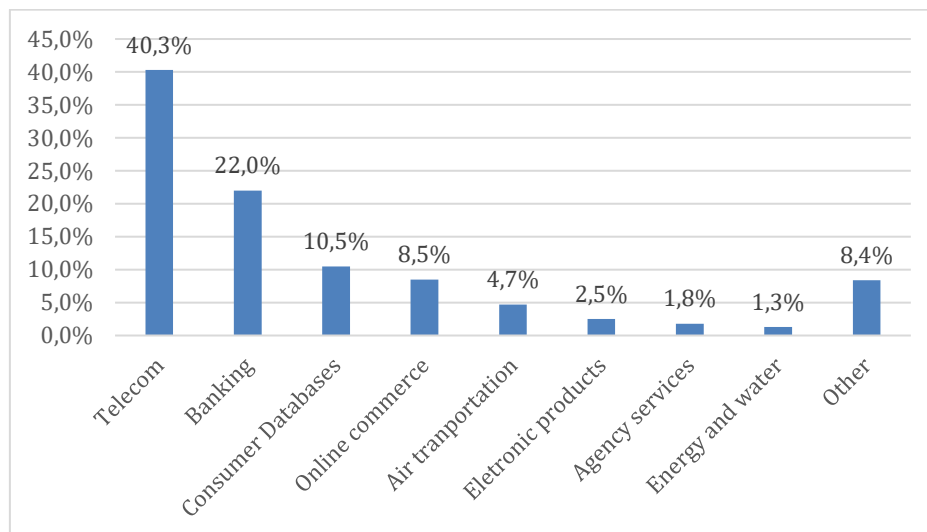


Figure 7. Complaints by economic sector in 2018
Source: Authors with data from *Consumidor.gov* platform (2018)

Telecom and banking (including financial issues such as credit cards) count for more than 60% of total complaints. If added air transportation, energy and water, one may note that regulated markets correspond for nearly 70% of total complaints. These sectors usually have a sector regulator that acts for both regulatory and consumer issues. Besides, these are often concentrated markets – with either one player in case of a natural monopoly (e.g. energy and water concessions) or a small number of players due to significant costs of entry or infrastructure (e.g. telecom and air transportation).

This element seems to have an impact in the concentration of complaints since regulators may act as advocates of the consumer.gov platforms. At the same time, players in concentrated and regulated market may feel a certain pressure to integrate a governmental system of alternative dispute resolution. Last, they are subject to consumer comparison among a small number of competitors in the platform (e.g. satisfaction rating levels).

Nevertheless, a greater diversity in the spectrum of economic sectors would be welcome. Otherwise it could become a narrow system, mainly to solve consumers issues related to telecom, banking, airline companies, and other regulated products or services. A greater diversity of economic sectors would also enable a better overall use of the platform and best impact assessment in terms of public policy.

In a similar way, it seems that most complaints are related to economic sectors with a national scope (including federal regulation). However, considering that consumer issues are often at local levels, an effort in co-ordination with local partners, such as civil associations, could improve the reach of the platform to other economic sectors and categories of consumers. More precisely, this could include a target work on small and medium size companies.

5. Final Considerations

The main objective of this study was to examine an innovative government tool to protect consumer rights in Brazil. The *Consumidor.gov* platform was created in 2014 and completed 5 years in 2019. In its first years, it seems to have gathered positive indicators with a low cost for the Brazilian Public Administration. The mechanism enables companies and consumers to interact and attempt to find a friendly solution of a given consumer complaint.

From the Government's side, the Brazilian Consumer Agency runs the platform as a public policy to increase protection of consumer rights. The Judiciary branch participates indirectly supporting the initiative considering it has clear savings with a possible reduction of its backlog of judicial consumer actions.

From the society's perspective, the *Consumidor.gov* platform enables an increase in the overall level of consumer satisfaction as they often have their complaint addressed in a total or partial way. Companies also play a key role, as they need to comply with its terms in order to maintain satisfactory levels of consumer ratings. They also adhere on a voluntary basis, so the system relies on a cooperative wiliness of concerned parties to seek for a solution without the need of litigation.

The system creates several positive externalities to various interested stakeholders including Government, the Judiciary system, consumers and companies. This reinforces the use of the platform and, in the end of the day, it serves as an innovative and alternative dispute resolution mechanism. For studies related to coproduction of public services, the Brazilian experience has a special feature when compared to traditional examples of coproduction (i.e. health or education services): it puts together more than an Organization and Citizens. In fact, it enables the coexistence of public institutions (namely, Government and the Judiciary branch), consumers and companies.

Although the *Consumidor.gov* platform seems to have achieved positive indicators, this research suggests that there would be room for improvements as it is often the case for public policies. The recommendations below summarize certain possibilities in this direction for further improvements:

- i. A greater effort could be given to promote the platform for consumers located in the North and Northeast of Brazil since they count for approximately 8.5% and 28% of the population, although only 3.6% and 16.3% respectively of the consumer complaints.
- ii. A greater effort to promote diversity in the spectrum of economic sectors considering that regulated sectors (e.g. telecom and banking) count for nearly 70% of total complaints.
- iii. A specific effort in coordination with local partners, such as civil associations, could improve the reach of the platform to a wider spectrum of consumers. This could include a scope enlargement of the Presidential Decree nº 10.197 from 10 January 2020, and a target work to promote the platform to small and medium size companies.
- iv. A consumer survey could enable to collect qualitative information for a more accurate understanding of the correlation between the increase of users in the platform and the decrease of consumer judicial claims presented to Courts. It could also serve as inputs for a greater cooperation between the Consumer Agency and the State Courts competent for consumer rights enforcement.
- v. Additional research seems necessary to confirm the correlation between the increase in the use of consumer claims in the *Consumidor.gov* platform, on the one hand; and the decrease in the number of judicial claims pointed out in this paper, on the other hand.

The recommendations above intend to increase the impact of the public policy in terms of consumer protection. Besides, the research also supports the use of impact assessments as a constant instrument to monitor the development and effectiveness of public policies such as the *Consumidor.gov* platform. The *Consumidor.gov* platform is also an example of stability in terms of public policy as it has

survived and improved during the past 5 years, under the leadership of 3 different Presidents of Republic, nearly 10 Minister of Justices, and more than a dozen heads of the Consumer Agency to which the platform is connected.

In conclusion, the Brazilian experience may shed light in the application of systems related to online dispute resolution (ODR) or alternative dispute resolutions (ADR) in other jurisdictions. As shown in this paper, compared experiences indicate that the idea is difficult to implement in practice at least in an effective manner.

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