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Enforcement and Effectiveness of Consumer Law: The Netherlands

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1 Introduction and Outline

It is a fact universally acknowledged that consumer rights, even if they exist, are often not invoked by consumers. The enforcement of consumer law is unsatisfactory in many cases, and therefore fails to achieve the effective protection of consumers that the legislator who introduced the rights had envisaged. Existing empirical studies on consumer dispute resolution sustain that picture, albeit in various places and at various times.¹

Is that conclusion still accurate for consumer law in the 21st century? The reports presented at the Montevideo conference of the *Académie de droit internationale comparé* in 2016 will seek to answer that question for a number of selected countries. This report focuses on the Netherlands and is structured as follows. Since the enforcement of consumer rights requires, before anything else, that consumers are aware of their rights, the first part of the report will look into the awareness that consumers have of their rights (para. 2). It will also consider the awareness of traders of consumer rights, seeing that consumers often—rightly or wrongly—rely on the information that they obtain from the trader with regard to their rights. Para. 3 then briefly describes which organisations are involved in the enforcement of consumer rights in cases where consumers and traders cannot resolve a dispute between themselves. These two parts provide an introduction to the heart of the report: the presentation of empirical data on consumer dispute resolution in the Netherlands. To determine whether the combination of legal rights and the institutional framework for enforcement provide *effective* means for consumer protection, an enquiry into the number of consumer complaints and consumer disputes, and the number of resolved cases, can provide some material for assessment (para. 4). Further relevant data concern the types of consumer disputes (para. 5) and, in relation to the practical side of dispute resolution, the average duration of proceedings and the availability of legal aid (para. 6). Finally, the report explores

* I thank Lynn Erkens for her extremely helpful research assistance in the preparation of this paper. The usual disclaimer applies.

¹ See e.g. Machteld de Hoon and Vanessa Mak, 'Consumer Empowerment Strategies – A Rights-Oriented Approach versus a Needs-Oriented Approach' (2011) 19 *Zeitschrift für Europäisches Privatrecht* 518.

available data on how satisfied consumers and traders are with dispute resolution in the Netherlands (para. 7). The report wraps up with a brief conclusion (para. 8).

It should be noted that the report, although it mostly follows the order of questions of the general survey, has integrated the questions on alternative dispute resolution (ADR) in a manner that puts them on par with other, public forms of dispute resolution. The reason for choosing to integrate the questions in this manner is that ADR is one of the primary forms of consumer dispute resolution in the Netherlands, if not the primary form, in particular through its system of consumer complaint commissions (*geschillencommissies*). It therefore seems more accurate to present the statistics on ADR in the same section as those on dispute resolution through the courts and complaints brought to other, public organisations.²

2 Consumer Rights and Consumer Education in the Netherlands

The Netherlands—population of approx. 17 million people³—has a relatively well-developed framework for the enforcement of consumer rights. Enforcement nonetheless first requires that consumers are aware of the rights they have against a trader. Only a few studies have been conducted to establish whether consumers are aware of their rights. The overall picture that emerges from those studies is that consumers generally are not aware of the rights they have—and neither are traders.

A 2008 study carried out under the aegis of the Dutch Ministry of Economic Affairs reveals that consumers often lack specific knowledge of their rights. Of the group of respondents taking part in the study, 59% (wrongly) thought that consumers lose the right to repair or replacement of goods after the expiry of a guarantee period. 33% even believed that consumers lose all rights after the expiry of the guarantee.⁴ Interestingly, 48% of the respondents indicated that they, in their own perception, did not have sufficient knowledge of their rights as consumers. The study estimates that this number reflects 26% of the total population of the Netherlands (of course at the time that the study was conducted, i.e. in 2008).⁵

A more recent study carried out on behalf of the European Commission suggests that these numbers are fairly similar today. When confronted with the question ‘[i]magine that an electronic product you bought new 18 months ago breaks down without any fault on your part. You didn’t buy or benefit from any extended commercial guarantee. Do you have the

² For an overview of the relevant organisations in the Netherlands, see para. 3.

³ On 17 May 2016 the number was estimated at 17,010,320 people. See <<https://www.cbs.nl/nl-nl/visualisaties/bevolkingsteller>>.

⁴ L Nikkels, W Wittenberg, S Mulder and M van Diepen, *Kennen consumenten hun rechten en plichten? Onderzoek naar het kennisniveau van consumenten*, Report TNS-NIPO for the Dutch Ministry of Economic Affairs 2008, 21. The full text of the study is available at <<https://www.tweedekamer.nl/kamerstukken/detail?id=2009D27770>>.

⁵ Ibid.

right to have it repaired for free?', many consumers did not know that the correct answer was 'yes'.⁶ Of all respondents in the study, representing all EU member states, 41% correctly said that they have the right to free repair or replacement of the item. For the Netherlands, that number was only 29%, with 36% indicating that they did not think that they had such a right, 34% saying 'it depends on the product', and 1% saying 'I don't know'.⁷ Interestingly, an earlier study carried out in 2013 got much higher numbers of correct responses on an almost similar question.⁸ An average of 56% of respondents for all member states answered the question correctly, with the Dutch respondents being very close to that average at 55%.⁹ A possible explanation of the different outcomes might be that the 2013 study only gave as options for potential answers 'yes', 'no' or 'I don't know', and other than the 2015 study did not give the option 'it depends on the product'. Consumers might be in doubt as to whether they have similar rights for electronic products or other types of goods, or the additional 'it depends' option might have created room for doubt where consumers would otherwise have been more sure of their answer. These are of course speculations. What can be gleaned from the reports is that the awareness that consumers have of their rights is in most cases very low.

On the side of the consumer's counterparty, the trader, the numbers are not much better. In this case too, for the Netherlands mostly older data are available. A study published in 2000 indicated that the majority of traders is not sufficiently aware of their duties towards consumers. For example, only 22% of the respondents in that study knew that consumers can still have a right to repair or replacement after the expiry of a guarantee.¹⁰ The fact that many traders are not fully, or incorrectly informed about consumer rights can of course have direct repercussions for consumers who seek to obtain a remedy. If the seller says that repair is no longer possible free of charge because the contractual guarantee has

⁶ Eurobarometer 397, 'Consumer Attitudes towards Cross-Border Trade and Consumer Protection' (September 2015), pp 11-12. The report is available for download at <http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/survey_consumers_retailers/index_en.htm>.

⁷ Ibid., p 12.

⁸ The only difference was the product: in that case a fridge. See Eurobarometer 358, 'Consumer Attitudes towards Cross-Border Trade and Consumer Protection' (June 2013), pp 59-60. The report can also be downloaded at <http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/survey_consumers_retailers/index_en.htm>.

⁹ Ibid.

¹⁰ JPJ de Jong and D Snel, *Kennen consumenten en leveranciers hun rechten en plichten? Inventariserend onderzoek naar basisbescherming, ordening en transparantie*, 'EIM-Report' 2000. The report used to be available on the website of the Dutch Ministry of Economic Affairs and references to it appear in various parliamentary documents. The full report is however no longer available online and the numbers quoted here are obtained from MBM Loos, 'Individuele Handhaving van het Consumentenrecht', Preadvies voor de Vereniging voor Burgerlijk Recht 2009, 22-23. A modified version of Loos' paper has appeared in English as MBM Loos, 'Individual private enforcement of consumer rights in civil courts in Europe', Centre for the Study of European Contract Law Working Paper Series No 2010/01, available at <<http://ssrn.com/abstract=1535819>>.

expired, many consumers will believe the trader to be correct. Those who do wish to argue differently have to be very well-informed themselves and sufficiently vocal and confident to make their claim.¹¹

The Dutch government and consumer organisations continuously look for ways to improve the awareness of consumers about their rights. The key strategy in that respect is to provide consumers with low-cost and easily accessible information portals, in particular through the internet. Websites such as ConsuWijzer (operated by the Authority for Consumers and Markets (ACM)),¹² the website from the consumer organisation *Consumentenbond*,¹³ the government operated *Juridisch Loket*,¹⁴ the website of the Dutch organisation of the judiciary,¹⁵ and the EU website *Is it fair?*¹⁶ Since not all consumers have access to the internet, or regularly check relevant consumer websites, the online information is complemented by tv commercials, brochures, and information provided by telephone.¹⁷ Presumably, the increasing ‘digitalisation’ of society will mean that more consumers will over time have internet access and an awareness of where to find information.

3 Organisations involved in the Enforcement of Consumer Law

The enforcement of consumer rights in the Netherlands can take place through one of two routes: individual enforcement and collective enforcement. Whilst collective enforcement through a supervisory authority is often the most effective route for tackling bad practices of a trader, a significant number of individual consumers in the Netherlands make use of dispute resolution through ADR to obtain relief in individual cases. In both instances, i.e. individual or collective enforcement, various organisations are involved in the enforcement of consumer rights.

Individual enforcement concerns cases in which a consumer takes individual action to give effect to consumer rights against a trader, or in which the consumer seeks to defend himself against an action brought against him by the trader.¹⁸ In the Netherlands, individual consumer actions can be pursued in a number of ways. First, a consumer can directly contact the trader to discuss a solution for a problem with the goods or services rendered by that trader. This route of ‘self-help’ is the option most often chosen by consumers.¹⁹ In many

¹¹ See also Loos 2010 (n 10) 4.

¹² <<https://www.consuwijzer.nl>>.

¹³ <<http://www.consumentenbond.nl>>.

¹⁴ <<https://www.juridischloket.nl>>.

¹⁵ <<https://www.rechtspraak.nl/Hoe-werkt-het-recht/Paginas/default.aspx>>.

¹⁶ <www.isitfair.eu>. Another EU website, the eYouGuide, can still be accessed but it has ceased to be updated. See <http://ec.europa.eu/archives/information_society/eyouguid/index_en.htm#>.

¹⁷ Loos 2010 (n 10) 5. It might well be that more consumers have access to the internet than at the time of Loos’ report.

¹⁸ Cf Loos (n 10) 2.

¹⁹ Cf Nikkels cs (n 4) 13-14. See also BCJ van Velthoven and CM Klein Haarhuis, *Geschilbeslechtingdelta 2009* (WODC Report, Boom 2010) 121. The full text of the report is available

cases the two parties will be able to negotiate an acceptable solution.²⁰ Second, a consumer can file a complaint with a representative organisation, such as the Authority for Consumers and Markets (ACM).²¹ Third, either of the parties—consumer or trader—may bring a legal action before the court. In the majority of the consumer cases taken to court, the judge competent to hear the case will be the *kantonrechter*, a judge in the court of first instance to whom cases are allocated with a claim of a low monetary value (below 25,000 EUR) or of a certain character (since 1 July 2011 the competence of the *kantonrechter* extends to consumer sales contracts and consumer credit agreements up to 40,000 EUR).²²

Fourth, a consumer or a trader can pursue a claim through alternative dispute resolution, which in the Netherlands will often be in the form of an action through a consumer complaint commission (*geschillencommissie*).²³ The largest organisation for consumer complaint commissions, the *Geschillencommissie*, encompasses over 50 commissions.²⁴ Consumer complaint commissions provide speedy and relatively cheap access to dispute resolution and the Dutch government actively encourages the use of such commissions.²⁵ The ruling of the commission will mostly take the form of a so-called ‘binding advice’ or ‘binding third-party’ ruling, meaning that the parties are bound to the outcome of the proceedings and will only in very limited circumstances be able to challenge it in court.²⁶ Consumer complaint bodies are financed in part by government funds, but primarily by payments from traders.²⁷

For financial services, a designated consumer complaint commission exists: the *Klachteninstituut Financiële Dienstverlening* (Kifid).²⁸ The Kifid offers four steps towards dispute resolution. The first three have been in place since its inception in 2007 and are: (i) mediation through an Ombudsman service; (ii) a consumer complaint commission that deals with cases in which mediation by the Ombudsman is unsuccessful; and (iii) an appeal commission where consumers and traders can challenge decisions from the consumer complaint commission. Since July 2015 the Kifid also has a webpage for online dispute

at <www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/onderzoeken-en-rapportages/toegang-tot-het-recht/ob283-volledige-tekst_tcm44-261681.pdf>.

²⁰ See further below, para 7.

²¹ <<https://www.acm.nl/nl/contact/tips-en-meldingen/uw-tip-of-melding-doorgeven-aan-acm/>>.

²² See the Dutch procedural code, *Wetboek van Burgerlijke Rechtsvordering*, art 93.

²³ <<https://www.degeschillencommissie.nl/consumenten/>>. For a comprehensive description of consumer ADR in the Netherlands, see F Weber and C Hodges, ‘The Netherlands’ in: C Hodges, I Benöhr and Naomi Creutzfeldt-Banda (eds), *Consumer ADR in Europe* (Hart 2012) 129 ff.

²⁴ <<https://www.degeschillencommissie.nl/over-ons/over-de-organisatie/>>.

²⁵ See MBM Loos 2009 (n 10) 25, fn 3, with references there cited.

²⁶ Weber and Hodges (n 23) 134, 160.

²⁷ See Weber and Hodges (n 23) 138 for a more detailed description of the financing structure of the complaints commissions.

²⁸ <<https://www.kifid.nl/>>.

resolution called *Mijn Kifid* ('My Kifid').²⁹ The decisions of Kifid's consumer complaint commissions mostly take the form of 'binding advice', but exceptions are possible (e.g. where a trader has not indicated prior to the dispute that he wishes Kifid's decision to be binding).³⁰ Contrary to most other consumer complaint commissions, Kifid is not financed by the (in this case: financial) industry. The organisation is an independent public body, which is financed, regulated and monitored by the Dutch Ministry of Finance.³¹

ADR in the Netherlands can further, depending on the agreement between the parties in individual cases, take the form of arbitration, mediation or other forms of binding third-party rulings. Data on procedures in individual cases outside the *Geschillencommissie* or the Kifid are however hard to come by and such procedures will therefore not be discussed further in this paper.

Collective enforcement of consumer rights can occur through designated organisations or through collective actions in court. Organisations in the Netherlands to which the government has assigned monitoring and enforcement duties in relation to consumer rights are the Authority for Consumers and Markets (ACM) and, for retail financial services, the Authority for Financial Markets (AFM).³²

Collective actions in court can be instigated in two ways. First, Article 3:305a of the Dutch Civil Code enables collective proceedings in court. It provides that a foundation or association with full legal capacity, that has as its object the protection of specific interests, may bring a legal action on behalf of others with similar interests. In practice sometimes claims of individual consumers are picked up by a stakeholder or consumer organisation who initiates proceedings on behalf of a larger group of consumers. Importantly, however, the action cannot result in compensatory damages but only in the publication of the judicial decision. On the basis of that decision, individuals whose interests are affected can bring a damages claim to court.³³ Second, another route for collective enforcement of consumer rights is on the basis of the Dutch *Wet collectieve afwikkeling massaschade (WCAM)*. On the basis of this Act—transposed in Articles 7:907-910 DCC and Articles 1013-1018 of the

²⁹ Kifid, *Jaarverslag 2015*, pp 14 and 21. The annual report is available online at <<http://jaarverslag.kifid.nl/kifidjaarverslag2015>>.

³⁰ This is laid down in the regulations of the Kifid; see *Reglement Ombudsman en Geschillencommissie financiële dienstverlening*, artt 44.3 and 14. The regulations are available online at <https://www.kifid.nl/fileupload/reglementen/20140110_Reglement_Ombusman_en_Geschillenco_mmissie_Financiele_Dienstverlening.pdf>.

³¹ See <<https://www.kifid.nl/kifid/organisatie>>.

³² The ACM exists since 1 April 2013 and merges three pre-existing organisations: the Consumer Authority, the Competition Authority (*NMA*), and the supervisor for telecom markets, OPTA.

³³ A bill on collective redress was submitted to the Dutch parliament at the end of 2016 that, if it is adopted, will make it possible for parties to claim damages through a collective redress procedure. See *Kamerstukken II 2016-2017, 34 608*, Wetsvoorstel collectieve afwikkeling van massaschade in een collectieve actie.

Dutch Civil Procedure Code—parties who reach a settlement out of court can ask for its affirmation by the Amsterdam Court of Appeal.

In practice, however, the collective enforcement of consumer rights mostly occurs through the monitoring and enforcement of the Authority for Consumers and Markets (ACM). The ACM for example monitors the rules on unfair commercial practices and in case of breach can sanction the trader with a fine to a maximum of € 900,000—until recently the maximum was € 450,000³⁴—or by imposing an injunction forcing the trader to discontinue his practices, breach of which can also result in a fine.³⁵ The ACM can also obtain a court order for an injunction through a special private law procedure before the Court of Appeal in The Hague.³⁶

4 Statistics on Consumer Complaints and Consumer Disputes (incl. ADR)

How effective is consumer protection in the Netherlands? The following sections of this report will present an overview of empirical data on the enforcement of consumer rights, starting with the number of complaints and disputes registered in the Netherlands in the past three years (2013-2015). Statistics show that, even if consumers are not the most litigious group in society, a fair number of consumer complaints and consumer disputes reaches the organisations involved in the enforcement of consumer rights each year. While the text below presents the statistics for the past three years, the Tables A, B and C in the Annex to this report present a more comprehensive overview of the complaints and disputes dealt with by the consumer complaint commissions, the Kifid and the courts in the past ten years.

The term ‘consumer complaints’ requires some clarification. It can refer to all complaints brought by consumers to traders, to ADR bodies, or to supervisory authorities such as the ACM or the AFM. It does not normally refer to claims brought in court, the difference being that legal actions in court always result in a judgment even if the case is regarded as inadmissible for further hearing, whereas complaints do not necessarily lead to a procedure but may be dismissed on administrative grounds before they reach the commission. The administrative department of consumer complaint commissions—the most common type of ADR in the Netherlands—make a preliminary assessment of the admissibility of incoming complaints so as to decide which ones fulfil the requirements for being taken up by a commission. They verify, for example, that the complaint concerns a dispute between a consumer and a trader, and that the trader is affiliated with the relevant

³⁴ The new rules entered into force on 1 July 2016. See *Kamerstukken I 2015-2016, 34 190* and *Besluit inwerkingtreding, Stb 2016, 22*.

³⁵ *Wet handhaving consumentenbescherming (Whc), Stb 2006, 591, Artt 2.9 and 2.15.*

³⁶ Art 3:305d Dutch Civil Code.

consumer complaint commission.³⁷ Not all statistical reports distinguish between complaints received and complaints that lead to a procedure. The overview presented here will therefore adopt a broad scope, including all complaints received by ADR bodies and supervisory authorities (para. 4.1). Complaints made by consumers directly to traders in individual cases will not be included, due to a lack of available data on direct actions. The overview of consumer disputes will focus on proceedings in court only (para. 4.2). Finally, the number of collective proceedings is briefly discussed (para. 4.3).

4.1 Consumer Complaints

4.1.1 Consumer Complaint Commissions (*Geschillencommissie*)

The *Geschillencommissie* encompasses over 50 consumer complaint commissions for themes as diverse as energy, telecom, travel, pet animals, bicycles and bridal wear.³⁸ The commissions combined received 4,627 complaints in 2015.³⁹ That number is almost equal to the number of complaints submitted in 2014, which amounted to 4,759⁴⁰ and in 2013, which amounted to 5,023.⁴¹ Interestingly, the number of overall complaints in the period 2013-2015 is significantly lower than it was in earlier years, e.g. in 2006-2008 when the average number of complaints was well over 11,000.⁴² The decline in complaints brought to the consumer complaint commissions operating under the umbrella of the *Geschillencommissie* has been attributed to several factors: the creation of a separate body for financial disputes—Kifid—in 2007, the introduction of a digital complaint system that early on informed consumers of the (un)likely chance of success of their complaint,⁴³ and the economic recession in the years since the financial crisis.⁴⁴ The reports over 2013-2015 however indicate that there seems to have been an increase in complaints again in recent years.⁴⁵

Of the total number of complaints pending in 2015—including 1204 carried over from the previous year—1,188 of 5,831 complaints were dismissed for not passing the criteria for

³⁷ The *Geschillencommissie* also requires the submission of a questionnaire and the payment of a complaint fee; see <<https://www.degeschillencommissie.nl/consumenten/klachtenprocedure/>>. See for the Kifid: <<https://www.kifid.nl/consumenten/hoe-wordt-uw-klacht-behandeld>>. The assessment stage in the Kifid procedure also involves a decision as to whether a complaint is forwarded to the Ombudsman for mediation or whether it is sent to the consumer complaint commission for a decision on the basis of 'binding advice'.

³⁸ A full overview of the commissions can be found online at <<https://www.degeschillencommissie.nl/over-ons/commissies>>.

³⁹ *Geschillencommissie, Jaarverslag Consumenten 2015*, p 19. The full report, as well as the reports of 2013 and 2014, is available at <<https://www.degeschillencommissie.nl/over-ons/publicaties>>.

⁴⁰ *Geschillencommissie, Jaarverslag Consumenten 2014*, p 14.

⁴¹ *Geschillencommissie, Jaarverslag Consumenten 2013*, p 14.

⁴² MBM Loos 2009 (n 10) 27-28.

⁴³ *Ibid.*

⁴⁴ This factor is mentioned in the annual reports of the *Geschillencommissie* for 2013, 2014 and 2015. See pages cited in the footnotes above.

⁴⁵ *Ibid.*

admissibility.⁴⁶ That number represents 21% of the total complaints pending and is an increase in comparison to 2014, when 18% of the then pending complaints were dismissed.⁴⁷ In 2013, 998 out of 6,292 (16%) of pending complaints were dismissed.⁴⁸

The statistics on the outcomes of cases were as follows. In 2015 1,187 complaints ended in a settlement between the parties, rather than a decision by the consumer complaint commission. A further 135 complaints were settled with the assistance of a mediation expert. The consumer complaint commissions made a final or interim ruling, in the form of a 'binding advice', in 2,108 cases.⁴⁹ By comparison, in 2014 1,386 complaints were settled by the parties, 149 complaints were settled with the assistance of a mediation expert, and 2,268 cases received rulings from the consumer complaint commissions.⁵⁰ For 2013 the numbers were: 1,657 settlements reached by the parties, 178 settlements reached with the assistance of a mediation expert, and 2,162 final or interim rulings of the consumer complaint commissions.⁵¹

4.1.2 Financial Services ADR (Kifid)

The *Klachteninstituut Financiële Dienstverlening* (Kifid) is a consumer complaint commission responsible for complaints relating to retail financial services. The organisation also encompasses a financial Ombudsman service.⁵² Furthermore, since 1 July 2015 it operates a webpage for online dispute resolution.

The number of complaints submitted to Kifid has been relatively stable in the last three report years, although a slight decrease can be observed. The commission received 6,549 complaints in 2015, 7,095 complaints in 2014, and 7,318 complaints in 2013.⁵³ The number of complaints saw a steep increase in 2012—from 6,451 to 7,095 complaints, or an increase of 10%—but has stabilised since then. The initial increase might be attributed to a growing awareness amongst consumers of the existence of Kifid, due to increasing media coverage of the commission's work.⁵⁴ The current decrease might indicate that providers of financial services have become more attuned to the interests of consumers and have improved their products and/or their internal complaints handling procedures.⁵⁵

⁴⁶ Geschillencommissie, *Jaarverslag Consumenten 2015*, p 19.

⁴⁷ In 2014 1,087 out of 6069 (18%) complaints were dismissed at this stage. See Geschillencommissie, *Jaarverslag Consumenten 2014*, p 14.

⁴⁸ Geschillencommissie, *Jaarverslag Consumenten 2013*, p 14.

⁴⁹ Geschillencommissie, *Jaarverslag Consumenten 2015*, p 19.

⁵⁰ Geschillencommissie, *Jaarverslag Consumenten 2014*, p 14.

⁵¹ Geschillencommissie, *Jaarverslag Consumenten 2013*, p 14.

⁵² See above, p 5.

⁵³ Kifid, *Jaarverslag 2015*, p 14; Kifid, *Jaarverslag 2014*, p 14; *Jaarverslag 2013*, p 14. All annual reports of Kifid can be downloaded from its website at <<https://www.kifid.nl/kifid/publicaties/jaarverslagen>>.

⁵⁴ Kifid, *Jaarverslag 2012*, p 34.

⁵⁵ See Kifid, *Jaarverslag 2015*, pp 7 ff.

Of the total of number of complaints received by Kifid the majority is dealt with by the Ombudsman. Until recently, the Ombudsman had the possibility to offer mediation to the parties or to make a decision in cases where parties did not reach a solution after mediation. Seeing that parties had a possibility to continue their procedure with the Kifid's complaints commission, the institute effectively worked with two substantive stages of dispute resolution—the Ombudsman and the complaints commission. The delays that resulted from this double treatment of cases gave rise to a restructuring of the Kifid's complaints handling procedures. As of 1 October 2014, the procedural structure of Kifid stipulates that Ombudsman only mediates between parties and no longer decides cases. The cases in which the parties wish to receive a third-party decision are submitted to Kifid's consumer complaint commission. The restructuring of the procedure was introduced in anticipation of the EU Directive on ADR.⁵⁶ Its aim is to shorten the time of procedures and to enhance the quality of the Ombudsman service, who will from now on focus solely on mediation between parties.⁵⁷

The 'new structure' means that complaints are reported in a new format as of 2014. In 2015 the complaints received under the new structure amounted to 6,205 and those received by the Ombudsman to only 10.⁵⁸ 278 complaints were sent on to the complaints commission and 56 to the appeals' commission.⁵⁹ By comparison, in 2014 the numbers were 1,601 complaints under the new structure and 4,755 complaints received by the Ombudsman. The report for 2014 also lists that 657 complaints in which the Ombudsman could not reach a solution with the parties were sent to the consumer complaint commission, and a further 83 reached Kifid's appeal commission.⁶⁰ In 2013 6,365 complaints were dealt with by the Ombudsman, 887 were sent on to the consumer complaint commission and 66 were submitted to the appeals' commission.⁶¹

The number of resolved cases for the financial Ombudsman was reported as 689 for 2015, 3,511 for 2014, and 4,233 for 2013.⁶² Kifid's consumer complaint commission gave a decision in 503 cases in 2015, 761 cases in 2014, and 612 cases in 2013.⁶³ The appeal commission resolved 45 cases in 2015, 54 cases in 2014, and 72 cases in 2013.⁶⁴ It is interesting to see that the number of inadmissible cases is high in all of the reported years,

⁵⁶ Directive 2013/11/EU on alternative dispute resolution for consumer disputes [2013] OJ L165/63. The Netherlands implemented the directive on time and the implemented legislation entered into force on 9 July 2015. See *Implementatiewet buitengerechtelijke geschillenbeslechting consumenten*, Stb. 2015, 160.

⁵⁷ Kifid, *Jaarverslag 2014*, pp 20-21.

⁵⁸ Kifid, *Jaarverslag 2015*, p 16.

⁵⁹ *Ibid.*

⁶⁰ Kifid, *Jaarverslag 2014*, p 15.

⁶¹ Kifid, *Jaarverslag 2013*, p 15.

⁶² See the reports at pp 16, 15, and 15 respectively.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

totalling 2,430 in 2015, 2,599 in 2014, and 2,472 in 2013.⁶⁵ Kifid recognizes this problem and estimates that approx. one-third of the complaints submitted to it is inadmissible, in many cases (approx. 15% in 2013)⁶⁶ because the consumer has omitted to contact the other party before submitting a complaint to Kifid. The Kifid procedure is only available once consumers have gone through the internal complaint procedure of their financial service provider.⁶⁷ Kifid tries to decrease the number of inadmissible complaints by actively seeking to inform consumers about the procedure.

4.1.3 Complaints submitted to the ACM and AFM

The supervisory authorities involved in monitoring the compliance with consumer rights in the Netherlands, the ACM and the AFM, keep track of notifications received from consumers with regard to traders' compliance. Complaints can be a ground for investigative action by the supervisory body, but can also simply be used to monitor the behaviour of traders in the market.

The ACM receives a large number of notifications on an annual basis. Without distinguishing between complaints and questions, the ACM received the following numbers of notifications from consumers in the past three years: 58,369 in 2015,⁶⁸ 64,103 in 2014,⁶⁹ and 71,932 in 2013.⁷⁰

The AFM does not publish statistics on the number of notifications that it receives in its annual reports. It does, however, regularly publish a press release with an overview of the number of notifications received from consumers. Like the ACM, it regards the notification system as an important aspect of consumer empowerment, and as a way for itself to better monitor the market. The AFM was contacted 11,717 times by consumers in 2015, and 12,349 times in 2014.⁷¹ These numbers include complaints, questions and other notifications.

4.1.4 Other Complaints

Consumers can also submit complaints to the consumer organisation *Consumentenbond*, who is qualified to instigate collective actions on behalf of consumers in accordance with art.

⁶⁵ Ibid.

⁶⁶ Kifid, *Jaarverslag 2013*, p 14.

⁶⁷ Kifid, *Jaarverslag 2015*, p 15.

⁶⁸ ACM, *Jaarverslag 2015*, pp 121-122. The ACM's annual reports can be downloaded from the organisation's website at <<https://jaarverslag.acm.nl/downloads-pdf>>.

⁶⁹ ACM, *Jaarverslag 2014*, p 98. The report is also available in English; see ACM, *Annual Report 2014*, p 127.

⁷⁰ ACM, *Jaarverslag 2013*, p 120. This report is also available in English; see ACM, *Annual Report 2013*, p 117.

⁷¹ See AFM, 'Meer meldingen van consumenten bij AFM over binaire opties en beleggen buiten toezicht', 5 January 2016, at <<https://www.afm.nl/nl-nl/consumenten/nieuws/2016/jan/meldingen-consumenten>>. The statistics for 2014 were also published in AFM, 'Meldingen van consumenten voor financieel toezicht belangrijk voor eerlijke markt', 22 January 2015, at <<https://www.afm.nl/nl-nl/professionals/nieuws/2015/jan/meldingen-consumenten>>.

3:305a of the Dutch Civil Code.⁷² The organisations' annual report does not list the number of complaints received from consumers. A report of the number of complaints is however included in the monthly report 'Klachtenkompas', which lists 4,121 complaints for March 2016, 3,616 for April 2016, 3,541 complaints for May, and (so far) 394 complaints for June 2016.⁷³

4.2 Consumer Disputes

Whereas data on the number of consumer complaints are well-reported, the number of consumer disputes that is taken to court is much harder to determine from the available documents and reports. A very rough indication can be obtained from the statistics published annually by the judiciary. It should be noted, however, that those reports only provide aggregated data for cases dealt with by the *kantonrechter* (judge at first instance) and the civil section of the district courts. The numbers refer, therefore, to larger categories than just consumer cases.

Many consumer cases that are taken to court will fall within the competence of the *kantonrechter*, since they either concern a value below 25,000 EUR or relate to a claim based on a consumer sales contract or a consumer credit agreement below 40,000 EUR.⁷⁴ The reported data on cases submitted to, and decided by the *kantonrechter* however only record family cases, criminal cases and so-called 'Muldercases'⁷⁵ as a separate category and place all other cases under the general heading 'commercial cases', which also includes employment and tenancy cases, 'in absentia proceedings' (*verstekzaken*) and summary proceedings. That general category, in which consumer cases are included, encompassed 465,350 newly submitted cases in 2015. 466,980 cases in that category were resolved in 2015.⁷⁶ The numbers for 2014 were 484,900 and 488,990. Those for 2013 were 501,160 and 506,060.⁷⁷

As an aside, the decrease in the number of cases is explained by a temporary stop on detention cases involving unpaid traffic fines and uninsured driving, a decrease in commercial disputes and a decrease in asylum cases.⁷⁸ The decrease in asylum cases might

⁷² See p 6 above.

⁷³ The numbers are displayed in the top right hand corner of the website <<http://www.klachtenkompas.nl>>. Since they are updated regularly and only display the numbers for current and the previous month, it is not possible to obtain older data through this website.

⁷⁴ See above, p 5.

⁷⁵ Cases concerning minor traffic offences. Such cases are dealt with through administrative law in accordance with the 1989 *Wet administratiefrechtelijke handhaving verkeersvoorschriften (Wet Mulder)*, Stb 1990, 435.

⁷⁶ Raad voor de Rechtspraak (Council for the Judiciary), *Jaarverslag Rechtspraak 2015*, pp 22 and 26. The full annual report is available for download at <www.jaarverslagrechtspraak.nl/files/rechtspraak2015/Jaarverslag_2015_web.pdf>.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, p 17.

seem surprising, but it can be explained by the fact that many of the refugees that entered the Netherlands in 2015 came from Syria or other countries that are regarded as unsafe. Their asylum applications were granted by the immigration services and therefore did not reach the courts. It is expected that an increase of cases will be seen in 2016.⁷⁹

The civil law department of the district court also has competence to deal with consumer cases, e.g. those of a value over 25,000 EUR, but it is unclear here too how many cases exactly came before the court in a given year. The reported data for these cases distinguish between family cases, proceedings before the president of the district court, and commercial cases. Consumer cases are reported under the third, general category. The total numbers in this category were 83,990 newly submitted cases in 2015, and 85,290 resolved cases. For 2014 the numbers were 90,100 and 91,760, and for 2013 97,490 new cases and 99,200 resolved cases.⁸⁰

4.3 Collective Redress

The routes towards collective redress in consumer cases have been set out above (para. 3). An analysis of reported judgments reveals that between 2006 and now—June 2016—a total of 55 procedures has been litigated in the Dutch courts on the basis of Article 3:305a DCC.⁸¹ Not all of these procedures concern consumer law. Claims brought before the courts range from collective employment disputes, to disputes about the introduction of English in the curriculum of Dutch school children at the cost—or so it is felt by some—of education in Dutch, to collective claims against the government with regard to privacy concerns in relation to the decentralized storage of personal data (fingerprints) connected to passports.⁸² Of the 55 collective procedures, 27 can be regarded as consumer cases.⁸³ The number of consumer collective actions on the basis of Article 3:305a DCC currently stands at 4. In 2015 the number was also 4.⁸⁴ Notably, the majority of collective actions concern claims related to retail investment services, in particular combined credit/investment products (so-called *aandelenlease*) which were sold to consumers on a large scale in the late 1990s.⁸⁵

⁷⁹ Ibid.

⁸⁰ Ibid, pp 22 and 26.

⁸¹ The analysis used the database of reported judgments on <www.rechtspraak.nl>. The search for judgments where a claim was based on art. 3:305a Dutch Civil Code came up with 80 results, of which 55 referred to individual procedures. Cases in which judgments were given by several courts—e.g. the court of first instance, the Court of Appeal, and the Supreme Court—have been counted as 1 procedure.

⁸² See District Court Rotterdam 24 November 2010, ECLI:NL:RBROT:2010:BP2355 (English language education); Dutch Supreme Court 22 May 2015, ECLI:NL:HR:2015:1296 (passports).

⁸³ Although in some instances the class of claimants is not limited to consumers, but e.g. represents shareholders or investors in general.

⁸⁴ Data analysis on file with author (in Dutch).

⁸⁵ See I Tzankova and D Hensler, 'Collective Settlements in the Netherlands: Some Empirical Observations' in: C Hodges and A Stadler (eds), *Resolving Mass Disputes: ADR and Settlement of Mass Claims* (Edward Elgar 2013) 91; also V Mak, 'The "Average Consumer" of EU Law in Domestic

The number of reported cases concerning claims brought under the *Wet collectieve afwikkeling massaschade* (WCAM) in the time period 2006 until now is well over 300.⁸⁶ Only 7 of those concern cases in which the Amsterdam Court of Appeal affirms a settlement reached by the parties in accordance with Article 7:907 DCC. These cases are the settlement between bankrupt bank DSB and its clients; the settlement between DES victims, pharmaceutical companies and the insurance companies of the victims;⁸⁷ the settlement between Converium and its shareholders; the settlement between Vedioir and its shareholders; the settlement between Shell and investors who suffered harm as a result of potentially incorrect information with regard to Shell's oil and gas reserves; the settlement of life insurance company Vie d'Or and its clients; and the settlement between Dexia and retail investors who suffered financial losses related to complex credit/investment products.⁸⁸ The majority of the other cases deal with the question whether a claimant has successfully made use of the opt-out possibility laid down in Article 7:908 DCC. Of the 7 reported settlements, the groups of claimants in the DES case, in the DSB case and in Dexia can be regarded as consumers. The classes of claimants in the other cases concern business shareholders, or sometimes a mix of business and retail shareholders. As noted above,⁸⁹ the primary route for the collective enforcement of consumer rights is not through private law, but rather through enforcement by the supervisory authorities, ACM and AFM, under administrative law.

4.4 Interim Analysis

The statistics on consumer complaints reveal that consumer complaints are submitted to ADR in approx. 4,000-5,000 consumer complaint commission case per year, and approx. 7,000 Kifid cases per year. Whilst a significant number of complaints is inadmissible—between 16-21% of the *Geschillencommissie* cases, and one-third of the Kifid cases—that still

and European Litigation' in: D Leczykiewicz and S Weatherill (eds), *The Involvement of EU Law in Private Law Relationships* (Hart Publishing 2013) 333-56.

⁸⁶ The main database of reported cases, available at <www.rechtspraak.nl>, does not index cases concerning WCAM systematically and it is therefore difficult to find an exact number. A full text search for the period 2006-2016 with the search term 'WCAM' gives approx. 311 reported cases. A more specific search for 'WCAM' in the headings of the cases gives 54 results, but does not include four of the settlement cases of the Amsterdam Court of Appeal (it misses out Vedioir, Shell, Vie d'Or and Dexia).

⁸⁷ DES was a sedative prescribed to pregnant women to prevent miscarriages. Instead it caused a specific cancer in the daughters of women who had used the drug during pregnancy. See Ewoud Hondius, 'A Dutch DES Case: Pharmaceutical Producers Jointly and Severally Liable' [1994] *Consumer Law Journal* 40.

⁸⁸ Court of Appeal Amsterdam 4 November 2014, ECLI:NL:GHAMS:2014:4560 (DSB compensation settlement); Court of Appeal Amsterdam 24 June 2014, ECLI:NL:GHAMS:2014:2371 (DES settlement); Court of Appeal Amsterdam 17 January 2012, ECLI:NL:GHAMS:2012:BV1026 (Converium); Court of Appeal Amsterdam 15 July 2009, ECLI:NL:GHAMS:2009:BJ2691 (Vedioir); Court of Appeal Amsterdam 29 May 2009, ECLI:NL:GHAMS:2009:BI5744 (Shell); Court of Appeal 29 April 2009, ECLI:NL:GHAMS:2009:BI2717 (Vie d'Or); Court of Appeal Amsterdam 25 January 2007, ECLI:NL:GHAMS:2007:AZ7033 (Dexia).

⁸⁹ See p 7.

leaves a few thousand consumer complaints per year. In relation to consumer disputes brought before the courts, unfortunately, exact data are much harder to get hold of. Presumably they constitute a fair number of the overall category of ‘commercial cases’ reported for the lower courts.

Whether consumer rights are effectively enforced in the Netherlands cannot be gleaned only from these data. For that assessment, one would need to know how the numbers compare to the overall number of consumer problems in the Netherlands, on which data are hard to obtain. Another important question is how satisfied consumers are with the outcomes of cases. That question will be discussed in this report, together with an assessment of the duration of proceedings, but not before a brief overview has been given of the most common types of consumer complaints and consumer disputes in the Netherlands.

5 Types of Consumer Complaints and Consumer Disputes

The main types of consumer complaints reported for each of the organisations discussed in paras. 3 and 4 are the following.

The *Geschillencommissie* reports high numbers of cases on energy, matters related to the consumer’s house and living (e.g. installation of kitchens), travel, telecom, vehicles and electronic communication.⁹⁰

Kifid, the consumer complaint commission for retail financial services disputes, reports statistics for five separate categories: investment cases, banking cases, life insurance, mortgage credit and property insurance. The number of cases in each of these categories used to be more or less similar—between 800-1,100—apart from the category of investment cases, which with approx. 200 cases stands out as lower.⁹¹ In 2015 the numbers are slightly different, with almost twice as many cases on property insurance reported in comparison to each of the other categories (and even six times higher in comparison to investment cases).⁹² It is not immediately clear how this difference can be explained, and perhaps an analysis over a longer time-period will see an evening out between the categories again.

The ACM indicates that its ‘top 5’ of sectors for which complaints c.q. notifications were received are: telecom, energy, electronics and domestic appliances, home decor retailing, and travel.⁹³ Those sectors largely overlap with the categories of cases dealt with by the consumer complaint commissions. The ACM also reports the ‘top 5’ of topics of complaint or notification that they received: unsatisfactory products or services and

⁹⁰ *Geschillencommissie, Jaarverslag Consumenten 2015*, table on p 20. These were also the major categories of cases in 2014 and 2013, see the annual reports for these years on pp 16-17.

⁹¹ Kifid, *Jaarverslag 2014*, p 15.

⁹² Kifid, *Jaarverslag 2015*, p 17.

⁹³ ACM, *Jaarverslag 2015*, p 123. The same categories were reported in 2014; see ACM, *Annual Report 2014*, p 127.

warranty, bills and payments, advertising, termination and cancellation of contracts, and questions about legislation, competition and privacy.⁹⁴

The AFM reports that it has received notifications on mortgage credit, insurance, and consumer credit. It also has seen some increase in notifications about pensions and about investment products (binary options) in recent years.⁹⁵

No specific data are available on the types of consumer cases that are dealt with in civil courts.

6 Practicalities of Dispute Resolution: Average Time and Legal Aid

The (satisfactory) enforcement of consumer rights also depends on practical factors, such as the duration of the proceedings and the availability of legal aid. Statistics on the duration of the procedures before complaints commissions and courts in the Netherlands will be presented below (para. 6.1). Also, the criteria for the availability of subsidised and free legal aid will be discussed (para. 6.2).

6.1 Average Duration of Proceedings

The average duration of proceedings through ADR is relatively short. The *Geschillencommissie* reports that the average time for dispute resolution is 3 months, most of which is used for giving parties the opportunity to present their points of view in the case and where necessary to obtain an expert opinion.⁹⁶ The average time between a hearing and the dispatch of the commission's ruling is on average 3 weeks.⁹⁷ These time periods have been stable over the last years. In 2014 the average time for dispute resolution was 2,9 months and the time in between hearing and ruling 0,8 month (approx. 3,5 weeks),⁹⁸ and in 2013 3 months and 0,9 months (approx. 4 weeks).⁹⁹

The Kifid also aims for a quick turnover of cases, but the proceedings take slightly longer than those of the other consumer complaint commissions. The target for the financial Ombudsman service is to resolve cases within 6 months. In 2014 the Ombudsman and his team succeeded in completing 77% of the cases within this time, which is an increase from the 52% reported for 2012.¹⁰⁰ Kifid's consumer complaint commission aims for dispute

⁹⁴ Ibid.

⁹⁵ See n 71 for references cited there.

⁹⁶ It should be noted that the *Geschillencommissie* puts the time of the start of the procedure at the moment when all formalities for a complaint have been fulfilled by the consumer. The preceding actions—filing a complaint form, paying the required fee etc—have been estimated to take an additional six weeks and are likely to be perceived by the consumer as part of the duration of the proceedings. See A Klapwijk and M ter Voert, *Evaluatie De Geschillencommissie 2009* (WODC 2009) 64-65.

⁹⁷ *Geschillencommissie, Jaarverslag Consumenten 2015*, p 8.

⁹⁸ *Geschillencommissie, Jaarverslag Consumenten 2014*, p 8.

⁹⁹ *Geschillencommissie, Jaarverslag Consumenten 2013*, p 8.

¹⁰⁰ Kifid, *Jaarverslag 2014*, p 14.

resolution within 12 months. That target was reached for 74% of the complaints in 2014, which was an increase of 20% in comparison to 2012.¹⁰¹

Court cases are often presumed to take longer than ADR procedures. For consumer cases that might indeed be true, but it depends on the type of proceeding. The annual report of the judiciary over 2015 indicates that the duration of consumer cases will often be relatively short if the case is dealt with by the *kantonrechter*. In the majority of consumer cases that come before the *kantonrechter*, the consumer does not show up in court or respond to the claim—often for late payment—submitted by the trader.¹⁰² 98% of such ‘in absentia proceedings’ is resolved within 6 weeks.¹⁰³ Commercial cases in which both parties submit standpoints are aimed to be dealt with within 6 months or within 1 year, and that target is reached for approx. 75-95% of cases.¹⁰⁴ The average duration of proceedings is higher for cases that are litigated in the civil divisions of district courts, and can be 2 years or more, although many are decided within similar time frames as the *kantonrechter* cases.¹⁰⁵ The duration of the procedure depends on many factors, such as the complexity of the case, the need to obtain expert opinions, and the cooperative attitude of the parties.¹⁰⁶

6.2 Legal Aid

Legal aid is available for consumer disputes in some circumstances. The conditions under which consumers are entitled to legal aid are laid down in the *Wet op de Rechtsbijstand* (Legal Aid Act). The primary condition for obtaining legal aid is that the consumer’s income does not exceed the amounts fixed for ‘maximum total income’ and ‘exempt assets’ as set out in the table 1 below.

¹⁰¹ Ibid.

¹⁰² 80-90% of consumer cases coming before the *kantonrechter* are in absentia proceedings. See Loos 2009 (n 10) 27, with reference to AW Jongbloed, ‘Burgerlijk procesrecht voor de individuele consument’ in: EH Hondius, GJ Rijken (eds), *Handboek Consumentenrecht* (Paris 2006) 425. [CHECK nieuwe druk 2015]

¹⁰³ Raad voor de Rechtspraak (Council for the Judiciary), *Jaarverslag Rechtspraak 2015*, p 36, table 13.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, p 37, table 15.

¹⁰⁶ Raad voor de Rechtspraak (Council for the Judiciary), *Kengetallen gerechten 2014*, p 17. The full text of the report can be downloaded at <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Jaardocumenten>>.

	<i>Single</i>	<i>Married of living together</i>	<i>Single-parent families with underage children</i>
<i>Maximum total income</i>	€26.000, = per year	€36.800, = per year	€36.800, = per year
<i>Exempt assets</i>	€21.139, = per year	€42.278, = per year	€21.139, = per year

Table 1: Income and assets limits for legal aid as of 1 January 2016.¹⁰⁷

Legal aid in the Netherlands is subsidized legal aid, and therefore not entirely free. Those who receive legal aid will usually have to cover a small amount of the costs of the proceedings out of their own means.¹⁰⁸ Advice from the *Juridisch Loket*, however, can be obtained for free and entitles the claimant to a discount on the other costs that they may be required to pay.¹⁰⁹

The Netherlands does have a means of obtaining *free* legal aid through so-called ‘*Rechtswinkels*’, advice bureaus who employ law students to assist with small claims, e.g. in relation to consumer, employment, or tenancy disputes. These are a legacy of the 1970s, when public opinion criticized the lack of free legal aid and access to courts for weaker members of society.¹¹⁰ Many cities in the Netherlands, in particular university cities, currently have their own *rechtswinkel*. The conditions for obtaining free legal aid through one of those bureaus are not available online, but an inquiry with *Rechtswinkel Tilburg* reveals that the following criteria are used: (i) free legal aid is available for citizens with a low income or who are otherwise vulnerable, or citizens who only wish to obtain advice; (ii) the maximum income for obtaining free legal aid is set at the same level as the income requirement for subsidized legal aid (see Table 1), but assets are not taken into account; (iii) vulnerable citizens include young people between 16-21 years of age, elderly people over 75, those who receive social assistance from other organisations, those with problematic debts (e.g. people who are subject to a personal bankruptcy arrangement), students up to 30 years of age, persons who do not have Dutch nationality and whose residency status is uncertain, and people who are otherwise vulnerable (e.g. because of mental disabilities).

7 Consumer and Trader Satisfaction with Outcomes and Timing

Consumer and trader satisfaction with the outcome and timing of individual claims has rarely been tested through empirical studies in the Netherlands. Not many studies look particularly at consumer cases and it is therefore hard to find specific details on those. Some

¹⁰⁷ The amounts are subject to annual indexation. See Article 34 *Wet op de rechtsbijstand* (Legal Aid Act).

¹⁰⁸ For a full overview of the rules on legal aid, see <www.rvr.org/nieuws/2015/december/inkomen-vermogen-en-eigen-bijdrage-2016.html>.

¹⁰⁹ See the url in the previous footnote, as well as <<https://www.juridischloket.nl/over-het-juridisch-loket/werkwijze>>.

¹¹⁰ <www.rechtswinkel.nl/over-ons>.

general data on litigants' satisfaction with court procedures or the satisfaction of ADR users with the proceedings and outcome are nevertheless available.

For court proceedings, general data are available concerning litigants' satisfaction with adjudication and the duration of the procedure. The latest available data indicate that in 2014 84% of litigants were satisfied with the quality of adjudication of courts of first instance.¹¹¹ 58% of litigants were satisfied with the duration of the procedure.¹¹² It should be noted that the choice to report numbers of satisfied litigants does not mean that the rest were dissatisfied; a significant group of respondents was neutral about the quality of adjudication.¹¹³ Nevertheless, the numbers give a strong indication that few litigants are satisfied with the duration of the procedure. The judiciary's report indicates that there has been no improvement on this point between 2011 and 2014.¹¹⁴ The data are however applicable to all litigants and do not specifically relate to consumers or to traders dealing with consumers.

In terms of satisfaction with outcomes, other relevant data are available from studies that connect the perception of 'justice being done' of the respondents of the study to the outcomes of disputes. These types of studies reveal that the perception of justice of the respondents is strongly connected to the outcome of the case. The introduction of procedural elements that might help parties better understand the proceedings or make it possible for them to have a say about their standpoint have some influence on how they perceive the justness of the procedure but the outcome is a significant factor.¹¹⁵ Similar findings have been confirmed for studies on consumers' trust in dispute resolution and the proceedings before consumer complaint commissions.¹¹⁶ That the outcome is of such significant importance for litigants is interesting, since it is often thought that—at least in theory—parties will find the outcome of a dispute more palatable if they have been informed and heard during the process.¹¹⁷

8 Conclusion

What do the data presented in this report say about the enforcement of consumer law in the Netherlands? It might well be that the report raises more questions than answers. For example, it is hard to answer the question in the abstract, without knowing how many

¹¹¹ Raad voor de Rechtspraak (Council for the Judiciary), *Kengetallen gerechten 2014*, p 14.

¹¹² *Ibid.*, p 14.

¹¹³ *Ibid.*, p 6.

¹¹⁴ *Ibid.*, p 14.

¹¹⁵ Van Velthoven and Klein Haarhuis (n 19) 176.

¹¹⁶ A Klapwijk and M ter Voert (n 96) 75. See also RJJ Eshuis, *De daad bij het woord* (WODC 2009) 92, who finds that 'winners' are more positive about final judgments whereas 'losers' tend to be more positive about settlements.

¹¹⁷ See J van der Linden, *De civiele zitting centraal: informeren, afstemmen en schikken* (Kluwer 2010) for an empirical study on perceptions of justice of professionals involved in civil litigation.

consumers did *not* bring a complaint or file a dispute, even though they were unsatisfied with the performance rendered by the trader. Further, the data would probably have more meaning if we knew how the Netherlands compares to other legal systems. The ADR system in the Netherlands is often praised for giving consumers access to a relatively cheap, quick and often effective route towards dispute resolution.¹¹⁸ Does the system live up to this reputation and provide consumers with satisfying outcomes in more cases than in legal systems that do not have such a developed ADR system?

9 Appendix – Statistics on Consumer Complaints and Consumer Disputes*

9.1 Table A: Consumer Complaint Commissions (Geschillencommissie)

	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
Complaints received	4,627	4,759	5,023	5,073	6,894	7,826	10,483	11,067	11,280	11,973
Cases resolved by complaint commission	2,108	2,268	2,162	2,470	3,896	3,046	3,117	3,417	3,504	4,786

9.2 Table B: Consumer Complaints Financial Services (*Kifid*)

	2015	2014	2013	2012	2011	2010	2009	2008
Complaints received Ombudsman	10	4,755	6,365	6,461	5,794	Data not available	7,818	6,411
Complaints received complaints commission <i>Kifid</i>	278	657	887	595	621	609	443	347
Complaints received appeal commission <i>Kifid</i>	56	82	66	39	36	19	14	6
Complaints received new structure	6,205	1,061	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
Total complaints received	6,549	7,095	7,318	7,095	6,451	6,719	7,818	6,411

¹¹⁸ Weber and Hodges (n 23).

* The tables were created by Lynn Erkens on the basis of the annual reports listed in the main text.

Resolved cases Ombudsman	689	3,511	4,233	3,963	2,926	4,355	3,720	2,422
Resolved cases complaint commission <i>Kifid</i>	503	761	612	588	605	476	264	Data not available
Resolved cases appeal commission <i>Kifid</i>	45	54	72	37	20	15	Data not available	Data not available
Resolved cases new structure	2,366	130	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
Total of resolved cases	3,603	4,456	4,917	4,588	3,551	4,846	Data not available	Data not available
Inadmissible cases Ombudsman	22	2,000	2,401	2,854	2,300	3,083	Data not available	Data not available
Inadmissible cases complaint commission <i>Kifid</i>	10	43	64	47	2	3	Data not available	Data not available
Inadmissible cases appeal commission <i>Kifid</i>	25	18	7	7	4	7	Data not available	Data not available
Inadmissible cases new structure	2,373	538	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
Total inadmissible cases	2,430	2,599	2,472	2,908	2,306	3,093	Data not available	Data not available

9.3 Table C: Consumer Disputes before the Courts

	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
Commercial cases <i>kantonrechter</i>	466,980	488,990	506,060	545,690	609,640	661,600	650,550	561,900	490,160	517,940
Commercial cases of civil court	85,290	91,760	99,200	102,450	115,750	118,420	111,740	102,010	108,780	113,580
Total per year	552,270	580,750	605,260	648,140	725,390	780,020	762,290	663,910	598,940	631,520