



# CEST

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## From conflict to agreement in the digital age

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In a highly connected world, holding more active phone lines than inhabitants, where each individual has access to more information than the richest person could ever have 20 years ago, and with the highest level of education that mankind has ever reached, some challenges still remain the same: the negotiation process and the conflict resolution.

Negotiations are still mainly done through personal contacts – sometimes remotely – by telephone or videoconference.

In Brazil, when a conflict takes place, there is a cultural attitude of taking it to the court. Most disputes are transferred to a judiciary system, which is absolutely overloaded. This is the result of a society that is reluctant to deal with personal conflicts

and it seeks the Court (a paternalistic approach) to exempt the parties from the effort of reaching an agreement. On the other hand, it results from an unequal society in which the resource holders are able to delay decisions, while the others, due to cost constraints and lack of knowledge, have no access to low-cost conflict resolution alternative, or to any other mean that meets their needs.

Technology can be part of a structural answer to the negotiation and conflict resolution and a universal access to Justice. Three main pillars underpin this structure: the change of society, the existing legal framework, and the availability of technologies. All three are interrelated, interdependent affecting the systems and the emerging behaviors.

### Society has changed

More and more, the society expects that commercial related disputes should be resolved quicker and better, respecting the rights of all parties involved, mainly the minority ones. The right to complain and resolve disputes, even in social networks, is considered sure and

available.

In person or verbal contact has changed. The young people (and even more the younger generations) have abandoned the phone and the necessity of moving around to make initial or eventual contacts. Regardless of whether this is an answer to the evolution of the cities and the social behaviors or the results of technology, change has taken place.

The trust in the role of big institutions (companies or government) in the lives and relationships of the people has dropped, even deeper for the younger generations. They do not expect to have their lives connected to a big company, nor do they believe that governmental institutions or forms of government can eventually become the well-being engine in their lives.

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### The legal framework exists

The trend to search for solutions out of the State's control is universal. The State has belittled in face of the challenges to resolve conflicts in the digital world. The parties of global commercial relations are borderless and being suffocated by disparate regulations, which do not catch up with society's evolution, have resorted to mediation and arbitration procedures, as an equitable way of resolving conflicts.

The larger markets, like Europe and Americas, have responded by fomenting and formalizing mediation and arbitration procedures, which have always been present but restrict to the universe of the



large deals and disputes.

In this sense, Brazil has advanced significantly by approving a set of laws and regulations that support and encourage the search for negotiated dispute resolution solutions.

### Technology is available

The digital world has provided new forms of communication that have conquered all social strata. While the telephone took several decades to become of common use and the e-mail took a few years, the Internet communication options is adopted by billions of people in a far shorter time frame.

The growth of Internet access, text message communication systems and the use of open and proprietary apps encourage and demonstrate that the resolution of conflicts through digital ways is inevitable. The bold moves from big players and the recognition of reality, including all the efforts for an e-Government, defines the speed of the adoption of these digital mechanisms to resolve conflicts.

In a world where commercial relations are volunteer choices and the access to technology is universal, there is no more space for a single and compulsory path to resolve conflicts, imposed through rules, regulations, and legislations that do not meet the society's demands.

### Benefits are promising

The benefits that can be provided by digital solutions to support the resolution of conflicts are exponentially superior to the traditional alternatives:

- Higher flexibility, lower costs, and bigger adequacy to meet the specific needs of each kind of commercial relation, including for low value transactions;
- Better effectiveness in relation to geographical distances;
- Easy participation for involved parties physically located in distinct geographies;
- Confidential procedure limited to involved parties;
- Access to Justice for low income parties in low-cost commercial relations;
- Part of these benefits results from profound changes that are also catalyzed by the same structural factors:
- Better power balance between the parties through the ease of access to electronic means;
- Removal of biases, since resolution can occur without the physical interaction of the parties;

- Better balance and less emotional distress of the parties directly involved, resulting from non-presence communication.

### A solution for all the disputes?

The conflicts resolution using digital technology still remains far from being a comprehensive, complete, pervasive solution.

This might not be ideal in the case of life-related disputes or death-risk issues, generally involving healthcare providers, hospitals, and the execution or not of treatments. It is not possible to depend on procedures without the personal action of protagonists and representatives. This will not happen until there is not a complete automation of the decision process of the dispute.

Another situation that requires evolution, from both, the State's automation and in the juridical framework available, refers to the conflicts where the private initiative questions government agencies' decisions.

After all, if we consider that all commercial relations are voluntary, it is possible that the society defines voluntarily new paths to resolve its commercial conflicts.



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This article is a result of the author's ascertainment and analysis, without compulsorily reflecting CEST's opinion.