

Are consumers rational in their dispute resolution? An analysis of collective action for consumer detriments

**Abstract**

This paper presents the results of a longitudinal survey study (N=11,984) that examines how collective (group) action lawsuit, in particular opt-in or opt-out, affects decision-making by individuals if they participate in consumer detriment cases. This dataset was made up of Japanese in their 20s and 30s from all prefectures. When consumers suffer consumer detriments, their appropriate actions through courts or other alternative dispute resolution system contribute to eliminate unconscionable business practices and to correct market failure. However, even if consumers have this important role, it is wonder whether these consumer victims are always rational to take actions. Behavioral economics reveals that default effect is one of behavioral bias and a review in the UK suggests that consumer collective action may have default effect through victims' decision-making by choosing "opt-in" or "opt-out" basis in a country.

The results here show existing default effect because rates to participate in hypothetical consumer cases in opt-out scheme are statistically higher than in opt-in scheme. Logit analysis with other factors also supports this conclusion. This suggests that policy makers should take into account of individual behavioral bias and opt-out scheme is better for consumer collective actions to obtain enough participation rates.

**JEL classification:** K41, K12, D18

**Keyword:** consumer detriments, collective action, decision, default effect, status quo

## 1. Introduction

One of the important insights from behavioral economics is default effect (or status quo bias). Policy analyses have been done by academics in the area of organ donation decision, car insurance plan choice, car option purchase, consent to email marketing, and saving outcomes. For instance, Johnson and Goldstein (2003) shows that “opt-in countries have much higher rates of apparent agreement with (organ) donation, and a statistically significant higher rate of donations.”

Another important area to explore this default effect is a legal action case in the court. When consumers suffer consumer detriments, their appropriate actions through courts or other alternative dispute resolution system contribute to eliminate unconscionable business practices and to correct market failure. How to resolve consumers' detriments is an important issue on the market economy to function it properly. However, it is wonder whether these consumer victims are always rational when they make a decision to take actions. In fact, a study by Mulheron (2008) for submission to the Civil Justice Council of England and Wales suggests that consumer collective actions may have default effect based on opt-in or opt-out system (Figure 1).

## 2. Method

In order to explore individual decision-making to participate in a lawsuit for collective action which do not exist yet in Japan, it is effective to perform economic experiments. The Economic and Social Research Institute of Japan conducted scenario-based experiments to young people as a part of the online survey in wave 1 in December 2010 and in wave 2 in March and May 2011. The second wave was split into March and May because the survey could not be conducted in March but in May for earthquake victims in northern part of Japan.

All participants were aged between 20 to 39 years old. For the first wave, the number of participants was 20,000 (50.70% male) and, for the second wave, the number of participants was 17,158 (51.04% male). The number of participants that completed surveys in two waves was 11,984 (52.80% male, 47.20% female; 27.10 % from their 20s, 71.90% from their 30s). The ratio of male/female was closely representative of the national distribution for Japanese citizens in this age group in March 2010 (51.1% male and 48.89% female). Residential area distribution was also representative and so was employment status. I used data from participants that completed surveys in two waves (N=11,984).

The first case scenario designs to differentiate default effect and entities as a representative plaintiff. It describes that a supermarket store advertised to sell a slice of eel made in Japan for 2,000 yen and many consumers bought them though it was in fact ones made in a foreign country only for 1,000 yen. Because of this false advertisement with massive victims, a qualified plaintiff filed a case to the court. Based on selected groups of the survey respondents, scenario shows that the plaintiff is an individual (you) or a representative group (a victims' group, a consumer organization, or a governmental body). Then, in the case of a representative group action, participation scheme, opt-in or opt-out, was assigns into each group. Thus, each participant has to decide if he or she participates in this lawsuit within a few weeks in this framework.

## 3. Results

The results of participation rate in each group shows in Figure 2. Among group A, only 12.8% of them decided to take a lawsuit by themselves. Participation rates from group B to group G are 44.9%, 83.8%, 51.1%, 84.9%, 62.3%, and 84.3% respectively. In order to check statistical difference, I tested 2-sample test for equality of proportions between any two groups. The result shows in Table 1. Participation rates in opt-out scheme are statistically higher than opt-in scheme in all cases. Then, participation rates in individual lawsuit are statistically lower than others. However, difference of entities as plaintiffs do not affect into participation rates

statistically significant. For example, the participation rate in the scheme of an opt-out collective action by a consumer organization (84.9%) is not statistically significant from ones in the scheme of an opt-out collective action by a government body (84.3%).

Lastly, I tested logit model for this different collective action scheme with other important factors, which may affect consumers' decision-making to take a legal action. The model included the interaction term between opt-in/opt-out and a type of organizations as legal representatives (copt\*org). As shown in Table 2, Reluctance to use courts as a mechanism to solve troubles (X2Q90.3) increased participation rates. Then, financial burden for lawsuit (X2Q90.5), experience to use legal advice (X2Q92) and self-confidence as a consumer (X2Q94) decreased participation rates. Both of opt-out scheme (copt) and representative entities (a government body=2) increased participation rates, but the interaction term decreased them. Therefore, even after controlling other factors such as financial burden for lawsuit, the result proves that opt-out scheme (copt) is statistically higher than opt-in scheme.

#### **4. Conclusion**

The results show existing default effect in legal actions because participation rates in opt-out scheme are statistically higher than opt-in scheme. Logit analysis with other factors also supports this result. This suggests that policy makers should take into account of individual behavioral bias in the case of designing collective legal actions.

Collective legal actions are recognized as measures to improve consumer resolution and redress. However, this paper shows that choice of legal framework frames actual participation rates. European Commissioner for consumer affair mentioned that schemes which consumer does not use are meaningless. According to a survey in Japan, consumers also support this opinion because around half of youth considers that traditional lawsuit process limits individual action and therefore adding opt-out scheme does not restrict right to take legal actions additionally. Therefore, I could conclude that opt-out scheme is better for consumer collective action to obtain enough participation rates.

This paper only examines effect of default effect and entities as a representative on individual decision-making to participate in a lawsuit. Using other hypothetical cases, we should examine other consumer bias.

#### **Reference:**

Johnson, E. J. and D. G. Goldstein (2003), "Do Defaults Save Life?" *Science*, Vol. 302, 1338-1339.

Justitiedepartementet (2008), *Utvärdering av lagen om grupprättegång*, Ds 2008:74.

Mulheron, R. (2008), "Reform of collective redress in England and Wales: A perspective of need", A Research Paper for submission to the Civil Justice Council of England and Wales.

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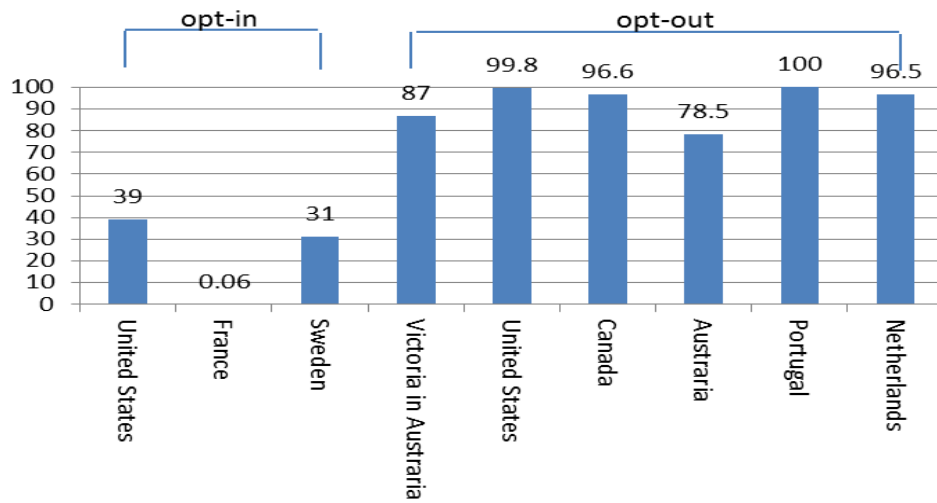


Figure 1: Participation rates of collective action by countries or scheme

(Source) Swedish figure calculated based on Bilaga 2 in Justitiedepartementet (2008) and others from Figure 2 in Mulheron (2008)

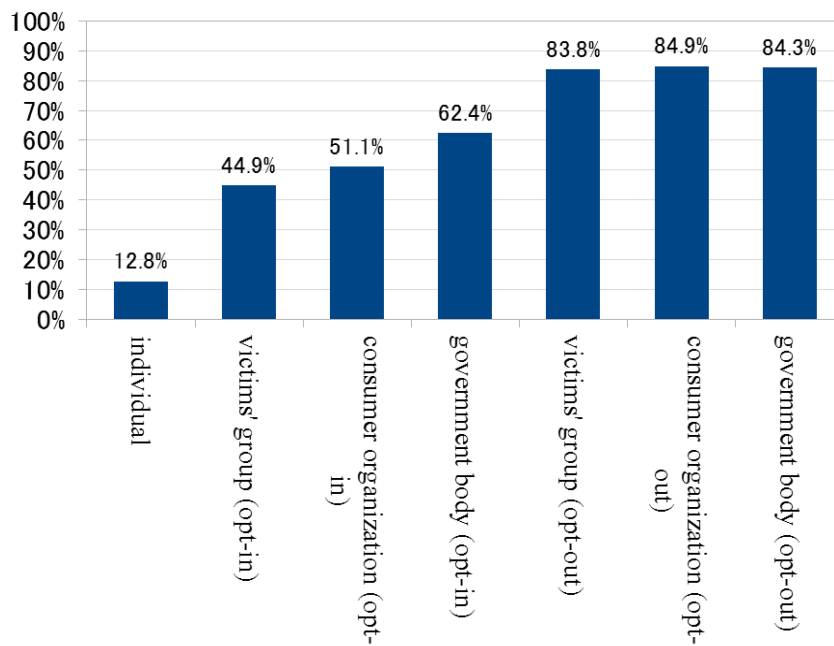


Figure 2: Effective participation rates of collective action by schemes

Table1: The results of 2-sample test for equality of proportions

Scenario A	Scenario B	chi2	p-value
victims' group (opt-in)	victims' group (opt-out)	567.5584	<0.01
consumer org (opt-in)	consumer org (opt-out)	449.0766	<0.01
government body (opt-in)	government body (opt-out)	207.4224	<0.01
victims' group (opt-out)	consumer org (opt-out)	0.7687	0.3806
government body (opt-out)	consumer org (opt-out)	0.1821	0.6696
government body (opt-out)	victims' group (opt-out)	0.1953	0.6586
government body (opt-out)	individual	1736.154	<0.01

Table 2: The result of logit analysis

Coefficients:

	Estimate	Std.Error	Z value	Pr(> z )	
(Intercept)	-2.785344	0.363459	-7.663	1.81E-14	***
copt(opt-out=1)	2.26296	0.126142	17.94	<2e-16	***
org	0.69854	0.084503	8.266	<2e-16	***
gender	0.074933	0.046864	1.599	0.109832	
age5	-0.022687	0.024064	-0.943	0.345799	
X2Q89.3	0.066023	0.034429	1.918	0.055154	
X2Q90.1	0.017857	0.039007	0.458	0.647101	
X2Q90.2	-0.017095	0.037716	-0.453	0.650358	
X2Q90.3	0.099401	0.029133	3.412	0.000645	***
X2Q90.4	0.045054	0.032901	1.369	0.170886	
X2Q90.5	-0.148573	0.059823	-2.484	0.013009	*
X2Q90.6	0.008365	0.064909	0.129	0.897454	
X2Q90.7	-0.036521	0.053079	-0.688	0.491422	
X2Q91	0.025404	0.054523	0.466	0.64127	
X2Q92	-0.100639	0.050877	-1.978	0.047918	*
X2Q94	-0.054293	0.022684	-2.393	0.016689	*
X2Q95	-0.049519	0.065129	-0.76	0.447067	
X2Q96	0.060712	0.036448	1.666	0.095766	
copt:org	-0.341511	0.058857	-5.802	6.54E-09	***

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Null deviance: 12781 on 10258 degree of freedom  
 Residual deviance: 11388 on 10240 degree of freedom  
 AIC: 11426