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From the Editor

The diversity of consumers must be taken into consideration in customer service

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[From the Editor]

The diversity of customers must be taken into consideration in customer service

The oddities of customer service constantly give rise to new urban legends. Consumers' nerves are tested on a daily basis in situations where calls to a company's customer service number go unanswered or customer service contact information can't be found on a company's website no matter how hard one looks.

The recent volcanic ash crisis forced many organisations to instruct their employees to use video-conferencing instead of travelling to meetings. While there had been a lot of talk about sustainable development and reducing the number of business trips made, real change in corporate practices didn't happen until extraordinary circumstances forced them upon companies.

What should happen in companies to drive them to make serious efforts to develop effective electronic customer service? In my opinion, this calls for companies to assign top priority to developing electronic customer service.

The EU digital agenda, with its emphasis on user focus and preventing exclusion, may provide perspectives to bring about progress in this regard. In developing the user focus of a service, it is important that companies innovate and create different kinds of customer service models rather than sticking to one basic solution aimed at all consumers. In other words, consumers must be given alternatives.

The year 2010 is the European Year for Combating Poverty and Social Exclusion. In line with this theme, the Finnish Federation of Settlements has launched the "Mun juttu" project (Finnish for "My thing") to promote participation and a sense of belonging among young people. A number of technology companies are also participating in the project. With this corporate support, youth centres have been equipped with modern media workshops for graphic design, making music and creating websites. The sponsoring companies have understood that the information society is not only a privilege for active and already skilled citizens.

The model of supported decision-making offers another approach to the prevention of exclusion. This means that when citizens themselves do not have the capacity to make decisions or the opportunity to learn decision-making, decisions are made for them. This can apply equally to minor everyday matters as well as major life decisions.

Canada has adopted a statutory supported decision-making model. Citizens of adult age can sign an agreement with a supporting person to specify the matters in which the decision-making partner can provide assistance. The agreement also specifies the matters on which the citizen in question wants to decide without assistance. The need for assistance may relate to e.g. managing financial matters or issues related to health and housing. The citizen is entitled to assistance in those matters that he or she deems necessary.

Good stories are always nice to hear, but we could do without the urban legends stemming from poor customer service.

Anja Peltonen
Director

Key terms of customer loyalty programmes must be specified in advertising

Advertising planners always carefully consider the target group of their campaign. Equally important, however, is giving due consideration to the primary message conveyed in advertising and whether it complies with the Consumer Protection Act. If a campaign is targeted at all consumers and the primary message is to convey an impression of savings derived from enrolling in customer loyalty programmes, the key terms of the loyalty programme must be included in the advert.

The basic rules governing marketing state that a consumer exposed to an advert should immediately be able to determine what is being sold, by whom and at what price. The primary message of the advert is also significant. Under both the previous and the amended provisions of the Consumer Protection Act, matters such as various supplementary benefits may not constitute the primary message of an advert.

A discount in itself can be the primary message conveyed in an advert. If eligibility for the discount is dependent on membership in a loyalty programme, what is actually being marketed is the impression of savings to be gained from the loyalty programme. The target group is thereby constituted by those consumers who do not presently have the loyalty card in question. An advert targeted at such consumers should specify the key terms of enrolling in the customer loyalty programme being marketed. This includes information on any fees charged for joining the programme in the first place, and whether receiving the benefits of the programme is dependent on agreeing to have one's personal information processed by the company.

The choice of media also matters. An advert in mainstream media reaches all consumers. An advert in a magazine or newsletter sent to current members of a customer loyalty programme, on the other hand, only targets customers who have already joined the programme in question. As such, the basic terms of the loyalty programme do not need to be repeated to them.

District heating is an essential service

The Consumer Agency has issued a comment to Finnish Energy Industries concerning amendments to district heating contract terms. Contrary to the view held by Finnish Energy Industries, district heating is considered an essential service much in the same way as, for instance, the supply of electricity.

Consumers today are offered a variety of heating solutions for detached houses. Consumers often invite competing bids and occasionally change providers. Based on this fact, Finnish Energy Industries held the view that district heating is not an essential service.

According to the Consumer Agency, however, the ability to make a choice between several alternatives does not negate the fact that district heating is comparable to the supply of electricity and is thereby considered an essential service.

When a consumer chooses to use district heating, they spend money on equipment and installation fees. As this requires a considerable investment by the consumer, switching from one form of heating to another is generally not financially prudent, at least not in the short term. Joining fees are generally not refundable. Electrical heating and district heating are the only forms of heating where the consumer buys heat energy from an external provider. Furthermore, as a result of amendments to the Land Use and Building Act, a property in a zoned area may be obligated to join the district heating network.

Heating power must be adjusted if necessary

When concluding a district heating agreement the heating power is specified as a contractual rate of water flow. The Consumer Agency commented on a provision in the contract terms that stipulated that adjustments to heating power could only be implemented when there is sufficient justification for doing so.

The contract terms should be amended to make this particular provision more specific. Consumer advisors have received reports from consumers in whose case the contractual rate of water flow was clearly set too high by the heating company. This results in the consumer having to pay an unnecessarily high fixed charge for the service. In clear cases this has constituted “sufficient justification” for amending the agreement. The Consumer Agency further noted that such adjustments must be implemented without undue delay.

Construction costs may not be deducted from refunded joining fees

Heating companies have largely moved from transferable and refundable joining fees to joining fees that are only transferable. If the joining fee charged for district heating is refundable, the related contract terms generally state that construction costs are deducted from the joining fee when a customer cancels the service.

In the electricity market it has become an established practice that when joining fees are refunded, the provider may only deduct the costs of disassembly, not the construction costs.

Finnish Energy Industries justified the amendment on the basis of their view that district heating is not an essential service. According to the Consumer Agency, however, the amendment is not acceptable as district heating is an essential service. As such, contract terms that differ from the contract terms applied to the supply of electricity are not justified. The provision may have an effect on consumers when cancelling old district heating agreements.

The Consumer Agency's comment specified numerous other changes to district heating contract terms. Like the contract terms applied to the supply of electricity, district heating contract terms should include a provision stating that the customer can claim receivables based on e.g. invoicing mistakes for a maximum period of ten years.

The upper limit for guarantees put up by the consumer as well as advance payments should also be reinstated in the contract terms. The limit applied to the consumer's failure to make payment, on the other hand, should be increased from EUR 340 to EUR 400 due to inflation.

In its final contract terms, Finnish Energy Industries took into consideration the two views held by the Consumer Agency, namely that the limit applied to the consumer's failure to make payment should be increased and that construction costs may not be deducted from refunded joining fees.

KUV/10151/41/2009

Clearer pricing for parcel deliveries

Matkahuolto was reprimanded over ambiguities in its prices for delivering parcels. Prices may not be broken down into various surcharges if the charges in question apply to all consumers.

The price list for parcel services on Matkahuolto's website was confusing. In addition to the basic charges given, various surcharges also applied to parcel services. Consumers complained of having to pay prices that were higher than anticipated due to unexpected surcharges.

The rule of thumb for indicating the price of a product or service is that prices should be indicated inclusive of all charges. In certain cases, such as that of parcel delivery services, this is not always possible due to the fact that prices may depend on choices made by the customer. Another basic rule is that prices should be inclusive of all pricing components that apply to all consumers. Once that requirement is met, the price list can specify optional service charges separately.

In the case of Matkahuolto's pricing, one such optional service charge was the cash-on-delivery fee charged for bus parcels. The price list for bus parcels also included a separate fee of EUR 1.20 for an address card. This charge applied to all customers. The price list for small parcels included separate fees for document envelopes and freight bags. While those two fees were optional, customers were also always charged a fee of EUR 0.80 for consignment materials. This component should have been included in the basic price provided.

The obligation to indicate prices also applies to Matkahuolto's storage services. The Consumer is notified of the arrival of a parcel by text message. Matkahuolto offers free storage of parcels for a period of four working days. Subsequent to that period, an additional storage fee is applied. This storage fee must also be specified in the notification sent to the consumer on delivery of a parcel.

This principle is in line with the provisions contained in the Price Indication Decree: if, in conjunction with selling a particular commodity, some consumers are charged separate fees related to purchasing the commodity in question, such fees must be clearly specified in the price list.

KUV/7197/41/2007

Mobile scams must be battled on a broad front

The Consumer Agency has issued a statement to the Finnish Communications Regulatory Authority, proposing the question whether the Regulation on Numbering in a Public Telephone Network could be used to reduce the number of problems consumers have with mobile content services.

There are all kinds of entrepreneurs on the market for mobile content services. On one hand, you have reliable operators that comply with industry guidelines and legislation. On the other hand, you have companies, often operating from overseas, intent on simply collecting a quick profit through purposely misleading marketing. The most typical service giving rise to problems at present is that of SMS trivia games based on standing subscriptions.

The Consumer Agency recently issued a statement to the Finnish Communications Regulatory Authority concerning the draft Regulation on Numbering in a Public Telephone Network, asking FICORA to assess whether the Regulation could be used to set requirements on the use of numbers and thereby help combat the wide ranging problems experienced with consumers in the context of mobile content services.

The Consumer Agency pointed out in its statement that, under the Communications Market Act, FICORA could require that a given number be used to offer a particular service and implement conditions that are necessary to protect the interests of the users of a service.

Authorities throughout Europe have made considerable efforts to combat problems associated with mobile services. In Finland, the Consumer Agency has - in addition to its regular supervisory duties - tried to influence the problems in the industry on a broad front. The Consumer Agency's proposals for e.g. improving self-regulation in the industry have only brought about short-term improvement in the situation.

Focus on operators

Telecommunications operators constitute junctions between different companies in the industry. They earn revenue from both their own services to facilitate mobile content services and from invoicing services. As such, operators should bear a responsibility for what types of companies they conclude agreements with. While operators have made promises of improvement in negotiations with the Consumer Agency, in practice the operators' customer service departments often simply forward complaints to the relevant service providers.

Operators continue to appeal to a provision in their customer agreements stating that the holder of a subscription is responsible for all services purchased by using the subscription. In the view of the Consumer Agency, however, telecom operators should not be granted the right to automatically pass all service charges on to the consumer regardless of the nature of the service provider's activity.

A mobile phone can be used to purchase a variety of useful services from responsible providers. Allowing scam companies to continue to operate erodes both the position of responsible service providers and consumer confidence in the information society.

As the mobile phone is increasingly becoming a means of payment similar to a credit card, the Consumer Agency is calling for a change in legislation to have telecom operators assume responsibility for inappropriate actions by their contractual partners, much in the same way as credit card companies are required to do.

KUV/1077/48/2010

Postal legislation reform must not compromise the availability of essential services

A Ministry of Transport and Communications working group is currently working on postal legislation reform. From the consumer's perspective the key issue is ensuring that service provision in post offices continues.

The final report of the working group proposes that the users of a universal service must be able to visit an office that is located within a reasonable distance from their permanent place of residence. The location of a post office would no longer be linked to the municipality in which it is located. Customers could also use the services of an office that does not have a fixed location as long as the provision of such an alternative would not compromise the availability of the universal service.

In the view of the Consumer Agency, it is of fundamental importance that the essential services that are part of a universal service are available to everyone. While new technology makes it possible to develop more and more electronic services, services at post offices continue to be needed in the future. Consumers must be able to send and receive letters and parcels at post offices. Customers representing older generations must be able to receive personal assistance from the post office if they find using online services difficult or do not have access to them.

The Consumer Agency considers the mobile post office concept to have the potential to be an effective solution for bringing services closer to consumers, particularly in remote areas. If this method of service provision is to be used, the services must be available at sufficient frequency and for a sufficient period at a time on each visit. Service availability must be monitored after the new legislation enters into force.

Exceptions to frequency of collection and delivery

Items of correspondence covered by the universal service principle must generally be collected and delivered no less frequently than on five working days per week. Under the existing legislation, however, the postal services provider can make exceptions to this required frequency in poorly accessible areas in the archipelago or in wilderness areas, if such households are not located along roads that are trafficable year-round.

An amendment to this aspect of the legislation is now being proposed. The five-day collection and delivery could be derogated from in the case of single households whose location would require the provider of the universal service to divert from the regular route for a distance of at least one kilometre each way, with no other households along the diversion to the route. The proposal suggests that collection and delivery of items of correspondence for these exceptional households would be done at least once per week.

The Consumer Agency's response to this proposal is that the criteria concerning exceptional households should be reassessed due to the fact that basic postal services are governed by the universal service requirement. If the amendment were to be passed as proposed, the number of households not covered by five-day collection and delivery would increase from 300 to approximately 3000. According to the Consumer Agency, the distance for one kilometre is too short to allow for derogation from the universal service requirement in a country as sparsely populated as Finland.

Compared to collection and delivery five days per week, service provision once per week is excessively infrequent. Such a change would compromise consumer rights with regards to e.g. paying bills or repaying debt. Consumers who are only provided postal services once per week would have a significantly shorter period of time between receiving an invoice or debt collection letter and the due date for payment than those consumers whose correspondence is collected and delivered five days per week.

Under the proposal, the universal service provider must notify the recipient of a parcel or correspondence from the authorities no later than on the third day from receiving the correspondence at the postal facility. The proposal does not, however, touch upon questions of quality with regards to exceptional collection and delivery, such as the delivery frequency of regular letters.

The Consumer Agency proposed that the amendment be reassessed to reduce the number of households falling under the exceptional rule and increase the frequency of collection and delivery for the households that do remain covered by the rule. In addition, legislators should determine whether a quality system is required for exceptional collection and delivery, and if so, what types of requirements should the system comprise.

Special needs must be taken into consideration on a case-by-case basis

Under the proposal, recipients of items of correspondence who have reduced mobility or are at least 80 years of age should be given special treatment in a manner to be specified in more detail in the Regulation issued by FICORA. The Consumer Agency is in favour of this proposal, but considers the present definition of personal special needs to be rather limited. The Regulation should allow for a broader and more case-specific framework for taking special needs into consideration.

The work on legislative reform also produced an interim report on the future of the delivery of newspapers and magazines. The Consumer Agency finds the conclusions presented in the report to represent the right direction in the matter. Preparatory work on new legislation should, however, take a broader view of how the amendments would affect the position of consumers as subscribers of newspapers and magazines.

The Consumer Agency issued its statement to the Ministry of Transport and Communications on 3 May 2010

KUV/2513/48/2010

Changes on the way for contract terms in the electricity market

The terms of sale and terms of network services in the electricity market have been updated, partly in response to various legislative changes. The Consumer Agency issued a comment to Finnish Energy Industries concerning the amended terms.

According to a new provision in the terms of sale of electricity, an agreement lapses if the consumer has not put up the stipulated guarantee. This type of provision concerning lapse of agreement is exceptional in the context of contractual relationships and the Electricity Market Act includes no provisions regarding such contractual terms. Nevertheless, the Consumer Agency does not consider the provision to be unfair from the consumer's perspective. An alternative solution would be to have the consumer wait for the supply of electricity to begin until the guarantee has been put up.

Long-term invoicing inaccuracies must be rectified

The newly amended contract terms for both district heating and electricity provision feature an extension to the compensation period for incorrectly invoiced amounts and incorrectly measured usage from two to three years. Depending on the situation, the party receiving compensation may be either the service provider or the consumer.

This amendment was approved as the three-year period corresponds with the limitation on consumer debt stipulated by the Limitation Act. In cases where the service provider makes the mistake, this extension is favourable to the consumer. The same three-year period has already been implemented in e.g. the contract terms governing water supply.

While the Consumer Agency agreed with the extension of the above time period from two to three years, it did not approve a change to the period of time consumers can receive compensation for a long-term invoicing or measurement inaccuracy caused by the electricity provider. That time period was changed from ten years to six years. Finnish Energy Industries justified the change by the adoption of the aforementioned three-year limitation period and the fact that the Accounting Act obligates service providers to retain invoicing information for a period of six years.

The consumer may, however, have retained invoices for the full ten-year period applied thus far, and thereby be able to provide evidence of an error having been made.

The Consumer Agency also proposed a further amendment to the contract terms to stipulate that fixed-term agreements may not be automatically linked to one another. An agreement may not be extended by a new fixed-term period at the conclusion of a contract period without the consumer's express approval.

Voltage spikes may occur for a number of reasons

The network service terms for electricity include a provision that states that the network service is defective if the quality of the electricity supplied fails to correspond to Finnish standards. The terms indicate SFS-EN 50160 as the applicable standard. Finnish Electricity Industries proposed an amendment in this regard stating "According to the standard, normal installation procedures on the network and at lightning overvoltages are considered to be part of the nature of the network service and, as such, shall not be deemed defects in the network service."

The Consumer Agency did not approve of this amendment. The standard in question is complicated and the consumer is not able to use it as a basis for assessing the cause of a voltage spike. A single example does not convey an adequate overall understanding to the consumer on the requirements of the standard. It can potentially convey the impression that all voltage spikes are considered permissible under the standard.

Age restrictions in advertising for services deemed legal

Moonlight swimming was marketed to consumers over 18 years of age and discounts on service fees for banking services were offered to customers under the age of 27. The Consumer Agency reviewed the cases and found that the adverts were not discriminatory and thereby not in breach of the Consumer Protection Act.

Vuosaaren Urheilutalo Oy organised moonlight swimming sessions outside the regular opening hours of the indoor swimming pool, from 20:30 to 22:30 hours. The events were marketed on the company's website and in advertisements posted on a notice board at the indoor swimming pool. Tapiola Bank offered discounts on service fees for banking services to those under 27 years of age. The list of service fees was published, among other places, on the bank's website.

Focus on whether offers are in breach with good marketing practices and whether contract terms are unfair

Age discrimination in marketing can be assessed both on the basis of the fairness of contract terms as well as conforming to good marketing practices.

Under the Consumer Protection Act, a business may not implement provisions in their terms of contract that are considered unfair from the consumer's viewpoint taking the price of the commodity and other aspects into consideration. Contract terms may not favour certain consumer groups at the expense of others without adequate justification.

Marketing may not be in breach of good practices or inappropriate from the consumer's perspective. Marketing is considered to be in breach of good practices if it is clearly in conflict with generally accepted social values and if it involves, for instance, age-related discrimination of consumers.

Appropriate justification provided by the businesses

The point of departure in evaluating the legality of age restrictions is that such restrictions are not categorically prohibited in offering or advertising services. Treating different consumer groups unequally may be acceptable, for instance, on social or economic grounds.

The company that offered moonlight swimming justified their implementation of an age restriction by safety considerations: the objective was to prevent injuries to underage customers. Tapiola Bank justified its limiting of discounts to younger consumers by economic factors. According to the bank, customers under 27 years of age often have low or no income, in which case service fees may prevent them from becoming customers of the bank. By implementing age-based discounts, the bank intended to improve the availability of its services to those customer groups that might not be able to use them if it were not for discounted fees. The company also noted that granting discounts on that basis is an established and accepted practice in business.

By restricting the use of services to consumers of a certain age, the businesses in question did not limit other customers' opportunities to use other services provided by them. The use of age restrictions on service fees and swimming pool admission charges was also deemed to not constitute unfair contract terms.

Legislation applied in the case: Consumer Protection Act, Chapter 2, Sections 1 and 2 §, and Chapter 3, Section 1

KUV/9756/41/2009

KUV/6965/41/2009

Striptease-related advertising for burlesque nightclub found illegal

An advertisement may have an erotic element as long as it does not demean either gender. The advertiser must ensure that the advert is relevant to the product or service being marketed.

The Consumer Agency received reports from consumers concerning the advertising for Burleski Club, a nightclub operated by the SK Ravintolat group. The nightclub was marketed by two images that were used both separately and together. Both images were accompanied by the text "You thought you have seen everything?" and "For those who want more", as well as information on the club's opening date of 19 February 2010.

The first image features a man seen from behind, wearing only underwear. The man is holding a cowboy hat in one hand, while his other hand is grasping the waistband of his underwear, apparently with an intention to take them off. The image is cropped to portray the man from the knees up to his shoulders, with his head and lower legs not shown. The man is facing a sofa, on which a group of women in party dresses are seated, laughing while watching the man put on a show. The second image features a group of men standing behind a bar, looking up at a woman standing at a counter. The woman is shown from behind and the image is cropped to only show her legs. She is wearing high heels and fishnet stockings. The group of men is laughing, with one of the men in the middle of the image smoking a cigar.

The nightclub was advertised in February 2010 in at least the Helsingin Sanomat and Iltasanomat newspapers as well as online.

Assessing the legality of the advertisement

Under the Consumer Protection Act, marketing may not be contrary to good practice or unfair to consumers.

According to existing Market Court case law, nudity or revealing clothing in itself is not considered to be contrary to good practice. Using a woman or man to draw attention to an advertisement and the use of sexuality in advertising is not categorically prohibited, as long as the character is not portrayed in a demeaning manner.

An advert that features sexual innuendo or pornographic body positions that demean one gender are considered contrary to good practice and thereby illegal. An advert is in breach of the Consumer Protection Act if a female or male character is portrayed simply as a sex object and the portrayal does not have a clear relevance to the product or service being advertised.

The use of the female and male physique to draw attention to the adverts did not, in itself, constitute a breach of the law. The problem was that the adverts created the impression of striptease. Taking off one's clothes is not, however, an essential aspect of the burlesque. The adverts conveyed a one-dimensional and misleading impression of what the burlesque arts are about and objectified both the men and the woman. The Consumer Agency deemed the advertising to be contrary to good practice and called on the company to make changes.

The company responded by removing the striptease-related images from its advertisements and promised to refrain from marketing the burlesque with striptease connotations.

Legislation applied in the case: Consumer Protection Act, Chapter 2, Sections 1 and 2 §

KUV/1240/41/2010

Study: Failure to exercise the right of return costly to consumers

A study conducted in Britain indicates that British consumers lose an estimated GBP 4,950 during their lives as a result of not exercising their statutory right to return defective products.

The study revealed that nearly one half of consumers have in their homes at least one defective product that they wish they had returned or exchanged. Almost a third of the respondents stated that they had at least five such products in their homes.

According to the study, the most frequently cited reason for not returning goods and thereby failing to exercise one's consumer rights was fear. The respondents stated that returning a defective product caused nervousness, embarrassment or fear. Geographically speaking, respondents in London were the most nervous regarding the returning of products.

The British are the number one country in Europe in terms of making purchases online. Despite this, the study indicates that more than two out of three consumers end up not returning a product despite the statutory seven day cooling off period. Nearly eight out of ten respondents were unaware of the fact that consumer rights differ depending on whether a product is bought from a traditional retailer or online.

The study, conducted in March 2010, was part of the national Know Your Rights campaign in Britain. The objective of the study was to promote consumers exercising their rights by informing them, in particular, of the right to return purchased goods. A total of 3,000 responses were received.

In Finland, the Consumer Protection Act stipulates that the right of withdrawal from a sales transaction only applies to distance selling and door-to-door selling. Nevertheless, many retailers voluntarily grant their customers the right to exchange and/or return purchased items. Retailers can set the conditions for exchange and return themselves. If a product is defective, the consumer has the right of withdrawal. Before this right can be exercised, however, the seller must generally be given the opportunity to repair the product or exchange it for a non-defective one. In some cases the defect may be compensated for by granting a discount on the sales price.

Safety phone services marketed inappropriately

The Consumer Agency intervened in the marketing of Esperri Care Oy, a company offering safety phone services. The company's correspondence sent to customers did not provide all information relevant to decision-making.

The City of Helsinki, which had earlier procured safety phone services from Esperri Care Oy, decided to change to a different partner and terminate its agreement with Esperri.

The agreement between Esperri and the City of Helsinki expired in the first stage for some 300 customers in the City's Eastern and South-eastern service districts. Esperri sent these customers a marketing letter offering the opportunity to keep using the company's safety phone service. This was done before the City of Helsinki had notified the customers that the service provider would change.

Helsinki residents whose income is below a certain level do not have to pay for the safety phone service themselves, as the City of Helsinki pays the cost of the service in full on their behalf. Esperri sent their marketing letter to these low-income customers as well, despite the fact that they would be able to use the service provided by the City's new partner free of charge. Esperri did not mention this in its marketing.

Esperri's marketing letter also excluded information concerning the price of the service. The letter simply stated that the monthly fee for the service is EUR 25. It did not specify that this fee covers only three assistance visits per month and that the company would charge a fee of EUR 33 per each additional visit.

Of the consumers who received the marketing letter from Esperri, a total of 63 concluded an agreement with the company. The Consumer Agency's view was that these consumers might not have made that decision had the marketing materials provided adequate information on the price of the service and their possible right to receive the service for free.

The Consumer Agency notified Esperri that its marketing was in breach of the Consumer Protection Act and called on the company to make changes. Further, the company had to offer its customers the opportunity to cancel any agreement made on the basis of inadequate information. Esperri responded by stating that it would take the necessary action.

Esperri was also reprimanded by the Data Protection Ombudsman over misuse of customer data. According to the Data Protection Ombudsman, Esperri did not have the right to use its customer data in marketing its service due to the fact that the majority of the customers were not in a customer relationship with Esperri. The actual buyer of the service was the City of Helsinki.

Legislation applied in the case: Consumer Protection Act, Chapter 2, Sections 1, 3 and 7, Decree on the Indication of Price of a Consumption Good in Marketing, Sections 4 and 5.

KUV/9423/41/2009

Equal processing of discrimination cases to be stipulated by law

The Ministry of Justice is reforming legislation on non-discrimination. The objective is to make legislation more consistent and expand its scope of application in order to ensure more equal processing of discrimination cases. The Consumer Agency supports the proposal.

The Committee proposes that the scope of application of the Non-Discrimination Act be expanded to cover all private and public activity. The scope would not, however, cover private life matters. Legislation pertaining to sexual discrimination would continue to be covered by the Act on Equality between Women and Men. The legal obligation to promote non-discrimination would be expanded to concern all discrimination bases. The obligation would apply to state and municipal authorities, educational institutions and employers. The legislation would further call for steps to ensure non-discriminatory treatment of the disabled.

Monitoring compliance with the Act in working life would continue to be the responsibility of occupational safety authorities. In other contexts, monitoring compliance would be the responsibility of the Ombudsman for Non-Discrimination and the Non-Discrimination Tribunal. The Ombudsman for Non-Discrimination would replace the current Ombudsman for Minorities and the Non-Discrimination Tribunal would replace the current Discrimination Tribunal and Equality Tribunal.

In the view of the Consumer Agency, if the proposal is implemented, the lines of authority between the various authorities need to be defined more accurately than they presently are. The issue is the division of authority between the Consumer Agency and the Ombudsman for Non-Discrimination in cases where there is a suspicion that the contract terms used by a business offering a product or service favour a particular consumer group.

The roles of the authorities in implementing non-discrimination

The Ombudsman for Equality and the Ombudsman for Minorities monitor that products and services are available to all citizens. The Consumer Agency, for its part, monitors that marketing does not treat different consumer groups differently without valid justification. In 2008, the marketing provisions in the Consumer Protection Act were amended to include the so-called non-discrimination clause prohibiting discrimination based on e.g. age or gender.

The jurisdiction of the Ombudsman for Equality and the Ombudsman for Minorities does not, at present, extend to cases where the provision of products and services involves discrimination based on e.g. religion, age or gender. The Consumer Agency has intervened in discrimination cases through the marketing regulations of the Consumer Protection Act. In addition, the Agency has, within its jurisdiction, intervened in discrimination by monitoring the contract terms used by businesses. In Chapter 3 of the Consumer Protection Act, businesses are prohibited from using unfair contract terms in the provision of consumption goods. Based on those provisions, the Consumer Agency has issued reprimands over contract terms that discriminate, without justification, against certain consumer groups based on e.g. age or beliefs.

The Consumer Agency is in support of the following specific proposals:

9 §

Fair adaptation to implement non-discrimination of the disabled

The Consumer Agency's statement highlights the importance of providing essential commodities to all citizens.

10 §

Prohibition of discrimination (particularly discrimination on multiple bases)

The Act is set to include a new concept of discrimination on multiple bases. The Consumer Agency finds it justified that adopting the new concept is based on the need to improve co-operation between

the authorities and bring supervision efforts closer together in terms of discrimination on various bases.

12 §

Acceptable justification for unequal treatment

The consultation document proposes that cases of discrimination be processed equally regardless of where the discrimination has taken place and what type of discrimination it is a question of. The Consumer Agency, however, suggests that acceptable justification for unequal treatment may depend on the basis for discrimination. For instance, a social justification that makes it acceptable for a business to offer a product or service at a discounted price for customers over the age of sixty is not acceptable as justification for contract terms that restrict a discount on a commodity to only customers representing a particular sexual orientation.

The Consumer Agency issued its statement to the Ministry of Justice on the consultation document concerning the reform of non-discrimination legislation on 12 April 2010

KUV/1222/48/2010

Rules governing marketing sweepstakes may change

According to a preliminary ruling by the Court of Justice of the European Communities a company may require consumers to enter in sweepstakes simply by purchasing a product. This is presently not permitted by the Consumer Protection Act. The Ministry of Justice is now drafting an amendment to the Consumer Protection Act provision concerning sweepstakes.

In the case heard by the Court, the complainant was a German organisation founded to combat unfair competition (Zentrale zur Bekämpfung unlauteren Wettbewerbs eV) and the defendant was a German retailer (Plus Warenhandelsgesellschaft mbH).

In 2004, Plus carried out a marketing campaign entitled “Your chance to win millions”, encouraging consumers to make purchases at Plus stores to accumulate points. Each customer that was able to accumulate 20 points was eligible to participate in a national lottery for free. According to the complainant, the company acted in an unfair and inappropriate manner by restricting sweepstakes to paying customers. The complainant demanded that the campaign be discontinued.

Directive on unfair commercial practices in conflict with national legislation

According to the Court’s decision, the Directive on unfair commercial practices does not permit national legislation that prohibits commercial practices where, except for the concrete circumstances of an individual case, a consumer’s entry in sweepstakes or prize draws is conditional on purchasing a product or service. In other words, in some cases businesses could require that consumers may only participate in sweepstakes by purchasing a product.

According to the Consumer Protection Act, marketing messages may not promise a prize or benefit based on chance where entering the draw is conditional on paying a price, buying a consumption good or making a bid to purchase something. As such, marketing sweepstakes must be open to entering without payment or purchase. The legislation generally prohibits all marketing sweepstakes that require payment or purchase.

The Court’s decision means that prohibition of marketing sweepstakes that require payment or purchase is against EU legislation. In individual cases, however, the circumstances may be such that organising sweepstakes without a free-of-charge alternative for entering is deemed unfair to consumers and, as such, not permitted.

The Ministry of Justice arranged a hearing to discuss the effects of the Court’s decision on national legislation. At the same juncture it stated that it would begin preparatory work on amendments to the Consumer Protection Act provision governing sweepstakes.

The Court’s decision also affects the Lotteries Act. In Finland, sweepstakes against payment for entry can only be arranged under the provisions of the Lotteries Act. According to the Lotteries Act, the permit to arrange sweepstakes or lotteries against payment can only be granted to non-profit organisations.

The inappropriate use of lotteries and sweepstakes in marketing will continue to be assessed, among other things, on the basis of the legal provision that lotteries and sweepstakes may not dominate marketing.

The Court of Justice of the European Communities issued its preliminary ruling on the matter in January 2010.

No reason to extend the term of protection of copyright

The Commission proposes that the term of protection of copyrighted works be extended to 90 or 70 years from the current term of 50 years. The proposal, if implemented, would not improve the consumer's position as a user of copyrighted works.

Consumers already have a difficult time finding out whether a particular work is copyrighted or in the public domain. If the Commission's proposal is implemented, the situation will be complicated further. The unauthorised use of works may increase if receiving the right to use them is perceived as difficult due to a complex system of terms of protection. This trend could lead to a situation where the use of works protected by related rights is prevented or at least diminished.

The term of protection of works protected by related rights was last extended in the 1990s, from 25 years to 50 years. In the view of the Consumer Agency, extending the term of protection to 90 years is excessive. There is also no justification for having the term of protection for related rights be longer than the term of protection for copyright, which is 70 years.

The Consumer Agency is not in favour of the Parliament's proposal to change terminology. For instance, the phrase "event which sets the term running", which has previously not been used in copyright legislation, makes it difficult to understand the contents of legal provisions that are complicated to begin with. If the Directive is to be based on full harmonisation, it will likely require that corresponding changes in terminology would be made in the Copyright Act.

Technical amendment of the Copyright Act for increased clarity and ease of reading

The Ministry of Education proposes that the current Copyright Act be amended from a technical viewpoint. The basic structure of the Act was created during its preparation in the 1950's. It has subsequently undergone a number of amendments that are evident from the structure and numbering of the Act as well as the considerable number of internal references to provisions in the document.

The Consumer Agency is not in favour of renumbering the Act. As the structure and numbering of the Act have remained largely the same for sixty years, changing them might cause confusion. If, however, technical amendments are implemented, it would make sense to move provisions concerning related rights to immediately follow the provisions on copyright, i.e. from Chapter 5 to Chapter 2. Related rights are similar in content to actual copyright and they are important to the holders of rights. It also makes sense to have the restrictions on rights, or in other words the legal rights of users of materials protected by copyright and related rights, specified in the same Chapter as the provisions governing agreements and licences.

Copyright refers to the author's legal right to a literary or artistic work. Related rights are part of copyright. They help protect the rights of performing artists, recorders and publishers of works, photographers as well as radio and television companies.

Changes coming to the position of parties to an agreement

The Ministry of Education is also discussing amendments to Chapter 3 of the Copyright Act. The amendments would apply to situations where the parties to an agreement are two businesses or one business and a natural person. The natural person, i.e. the author, can assign copyrights belonging to him or her to another party, with the exception of moral rights. When assigning copyrights, the position of the holder of the rights is not, however, the same as that of a consumer. The proposed changes thereby only have an indirect effect on consumers.

In the view of the Consumer Agency, it is essential that the chain of agreements on the assignment of rights, i.e. agreements preceding the agreement between the consumer and the service provider, is effective and legal. Rights must be first correctly assigned to the party that is offering protected works for use by consumers. If this does not happen, there is the risk that the consumer is inadvertently guilty of using works illegally.

Consumers themselves also produce works that are of commercial value to content producers and other service providers. Therefore, the end user may also be an author who has copyright to the results of his work and from whom the service provider is liable to acquire the necessary rights if it wishes to use the results of the consumer's creative work in its own business activities. The average consumer may not have the knowledge required to conclude an agreement concerning the assignment of rights, which makes it crucial that clear and fair legislation concerning the transfer of rights is implemented to strengthen the position of such consumers.

The Consumer Agency issued its statement on the proposed amendment to the Directive on the term of protection of copyright and related rights (2006/116/EC) on 10 March 2010 and on the charting of the need for amendments to Chapter 3 of the Copyright Act and the technical amendment of the Copyright Act on 12 April 2010

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European Commission to increase research on consumer policy

In the planning of the current EU strategy for consumer policy it was stated that there is insufficient information available on the status of consumer markets and consumer policy in member states. One of the focal areas for the 2007-2013 period was to be development of monitoring mechanisms and research. Political decision-makers must be able to form a more in-depth understanding of consumer behaviour in order to improve the quality of regulation.

In the course of the past three years, the Commission has developed a consumer markets scoreboard based on a number of information sources and reports. This year the scoreboard will be published in two parts. The first part, completed in March, consists of information concerning the amount and problems of cross-border trade as well as differences in consumers' operating environments between member states.

The second part, to be published in October, will shed light on the markets through price comparisons, classifying consumer complaints, statistics on product safety as well as consumer mobility and satisfaction. The two latter aspects will be studied by means of an extensive survey to chart consumer experiences concerning 50 different industries.

The Commission intends to continue this market monitoring activity on an annual basis. More in-depth analyses may be conducted on different topics that are highlighted in basic monitoring. One such analysis is already pending concerning the efficiency of energy markets in different member states.

Actual consumer behaviour as the starting point

Gathering market information is based on different starting points than those previously adopted in consumer policy work. The objective is to understand how consumers make decisions in various practical situations. Real consumers do not act rationally - a fact that should be taken into consideration in regulating consumer markets. Applying behavioural economics to research on consumer behaviour began in the OECD back in 2005 and theories in this scientific field have been used as the basis for the Consumer Policy Toolkit set for publication in the summer of 2010. The EU has participated in discussions organised by the OECD Committee on Consumer Policy and has since adopted a similar approach in consumer policy matters. Look for more information on the Consumer Policy Toolkit in our June issue.

A significant part of the development work has been focused on the quality of statistical information gathered from member states. The Commission's issued a recommendation on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries in May. The Consumer Agency has participated in developing the classification system and the indicators derived from statistical data.



The task of the Finnish Consumer Agency is to safeguard and strengthen consumers' position in society. The Director General of the Consumer Agency also acts as the Consumer Ombudsman, and the Ombudsman's tasks are included in the activities of the Agency.

The Ombudsman's responsibilities are to monitor and enhance the legal position of consumers, and to ensure that marketing and contractual terms comply with the rules. Matters concerning warranties and collections from consumers are also within the Ombudsman's jurisdiction. The Ombudsman may also assist consumers in court.

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