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[Editorial]

Fines for market disturbance in the government's programme?

Advertising campaigns are being launched at full speed. Consumers come across advertisements in newspapers, on the television and radio and even on Facebook next to news from their friends. The twists and turns of a campaign are straightened out a little during planning, and the main message transmitted to the consumer is eventually quite at odds with the truth. What can be done?

Informed consumers are shocked and report the campaign to the consumer ombudsman, the Finnish Consumer Agency. Competitors snort when they realise that a company that has trampled over the regulations has gained an unearned competitive advantage. The Finnish Consumer Agency too found campaigns that clearly broke existing, well-established practices. Monitoring and control is thus necessary.

The Consumer Ombudsman can impose a marketing ban, but if the company contests this, then the campaign can at least continue to run to its end in peace before the case can be taken before the Market Court. A temporary ban can quickly interrupt a campaign, but the case has to be taken to the Market Court within three days. It is sensible to go to the Market Court in cases where an initial decision is wanted on the interpretation of legislation. On the other hand it is senseless to use the Court's resources for maintaining discipline in the market.

The approaches at the disposal of the Agency at the moment are really aimed at operations that are focussed on the future: so that the company will not continue to act in that way. Because the process is slow and has many stages, violation of the law can continue for a long time and cause harm both to consumers and so those competitors that observe the legislation.

In Sweden and Norway there is a market failure fine which the consumer agencies can impose on a company which acts against the law to gain an illegal advantage over its competitors. The adoption of this kind of fine in Finland too would improve overall protection for consumers significantly, as at the moment the tools available to the Agency, such as taking a case to the Market Court, take up time and resources.

Compared to the other supervisory authorities that have been set up over the past few years, the Consumer Ombudsman's tools are blatantly old fashioned. The question is whether effective control is not the best guarantee of the functioning of the markets? A level playing field in the markets benefits both the buyer and the seller. The revision of the powers available to the Consumer Ombudsman is supported at least by the National Audit Office, the Parliamentary State Auditors and in the National Research Institute of Legal Policy's evaluation report. According to the latest edition of the Consumer Magazine (Kuluttaja-lehti) is regarded positively among the political parties too.

Anja Peltonen
Director

Marketing offence in relation to telephone entertainment services to the Court of Appeal

The Court of Appeal will hear a case regarding the marketing of telephone entertainment services. The case is a question of a marketing offence.

All over Finland, there was wide ranging marketing of telephone entertainment services in the early 2000s. Advertisements aimed at consumers could be seen in newspapers and on MTV3's text channel chat pages. The service advertised was a paid service, but neither the fact that it was charged for, nor the prices of the service, were shown in the advertisements, nor were they given at the beginning of the recorded message on the telephone. The telephone numbers used to offer the service were ordinary mobile phone numbers. In addition, according to its own rules, the MTV3 chat channel was only intended for contacts between private individuals.

The Consumer Ombudsman considered that this activity had the characteristics of a marketing offence. Initially the prosecutor did not proceed with the case, but the Consumer Ombudsman complained about the decision to the Prosecutor-General. The Prosecutor-General considered the people behind the activity as being guilty of serious crimes and were the main actors in the marketing offence also.

Only a few sentences for marketing offences

According to the Criminal Code, a person is guilty of a marketing offence if he or she "in business uses a false or misleading expression concerning his or her own business or the business of another". When revising the Consumer Protection Act it was believed that particularly reprehensible methods could be effectively treated as marketing offences or crimes. In practice however, that has not been the case because starting a prosecution is generally a matter for a public prosecutor and the public prosecutors have very rarely considered that the prosecution threshold has been crossed in these cases. Obviously from the perspective of the Criminal Code these kinds of offences have little impact.

The milder form of marketing offence, last referred to in the Act as a consumer protection offence, was completely repealed at the end of 2010 as the regulation was seen to be used very little. In addition, the small levels of fines imposed on those found guilty were considered to be clearly less effective than a ban under the threat of a fine, as a way of combating inappropriate activities.

In the case now being heard, not providing information on pricing was in itself an infringement against the provisions of the regulation regarding communicating the prices of consumer goods. Offering paid telephone services on an ordinary mobile phone number without any pricing information gave a completely false impression of the nature of the numbers, and was thus in itself likely to significantly mislead consumers. It was also misleading to place the service number without pricing information in a communications channel intended only for contacts between individuals.

Important preliminary decision

In the case heard in the Turku District Court in 2009, the four defendants were found guilty as charged. The offenders were sentenced to pay compensation to a large number of consumers. The defendants appealed against the judgement. The Turku Court of Appeal gave the Consumer Ombudsman an opportunity to give a statement about the accusation of a marketing offence.

In his statement, the Consumer Ombudsman considered that the marketing had the characteristics of a marketing offence and agreed with the prosecutor's sentencing demand and further with the District Court's decision that, by his actions, the main instigator should be regarded as guilty of a marketing offence. The case is still an important preliminary ruling because similar marketing, deliberately

misleading the consumer, is seen precisely in adult entertainment services offered on chargeable telephone lines.

Criminal Code chapter 30 section 1

Consumer policy thinking needs a new approach

Consumer thinking in today's society has spread widely into different policy sectors. That is why the National Consumer Research Centre's latest discussion paper proposes that an assessment of the impact on the consumer should be included in all preparatory work for legislation. The discussion paper on the current state of consumer policy was handed over to the Minister of Labour, Anni Sinnemäki, on Friday 25.2.2011.

Future consumer policy will have to be prepared for the impact of global markets, inequalities in consumption and changes in the production of public services. Consumption habits and customs are tied in to the development of everyday technologies, and future consumer policy will also resolve some of the problems resulting from changing everyday technology.

The review presents three different perspectives on consumer policy: the national model, the EU model and the sustainable consumer society model. These are not mutually exclusive models, rather they overlap and complement each other, and all of them are needed.

The review also raises topics which it would be important to take note of in preparing the next consumer policy programme:

Corporate social responsibility will become an important theme. Functioning self-regulation requires attitudes where a responsible approach to the rules of the game in consumer sales is seen, above all, as a competitive advantage.

Consumer policy and corporate practice can streamline the operation of the markets through models of behavioural economics. The latest research into behavioural economics has shown that assumptions about the rational consumer do not reflect reality. In OECD circles, an approach has been developed in recent years where consumers' difficulties in functioning in rapidly changing and complex markets have been recognised.

In consumer policy it is important too, to remember the position of those for whom managing their affairs is overwhelming. The consumer operating environment has changed considerably in a couple of decades (e.g. the number of contracts has increased, credit agreements have grown from 1 page to 30, from bonds and deposits we have moved to unit-linked pension insurance and equity release schemes). All of this offers consumers new opportunities, but is a lot to take note of.

Horizontal influence and cooperation are critical. In the future, the material limits to consumption will be the subject of continual assessment and public debate. Irrespective of how the challenges of sustainability are resolved, they will affect consumption and the position of the consumer in the markets.

Age has to be verified as well as the name

The Ministry of Transport and Communications is currently examining how the law on electronic identification which took effect in 2009 has worked in practice. In its statement, the Finnish Consumer Agency expressed concern about the identification of minors and that certification is not yet available to all.

Since it came into effect, the law on electronic identification has had a fundamental impact on the development of electronic identification in Finland. Partly due to the improvements in identification, the number and range of electronic services are undergoing significant growth too. Up until now, the new regulations can be regarded as having clarified the legal situation. In addition, the registration provided by electronic identification has helped create a clear system. The advent of mobile certification to the market has both increased and diversified the range of electronic identification on offer.

The Finnish Consumer Agency regards it as worrying that, according to the information the Agency has received, mobile certification developed by the major mobile operators does not necessarily include information about the age of the user during certification.

According to the general principles of Finland's contract law, a contract is void if one of its parties is a person who is legally incompetent. In order for there to be a binding contract, there is good reason when entering into a contract to check that the other party is not underage. When dealing with someone face to face, identification of the other party can be done by comparing the identity document with the person presenting it. In an electronic operating environment, electronic identification should aim for the same level of certainty.

With mobile certification it is possible to identify who is using the certification, the information about the person's age, necessary for creating a contract, remains unconfirmed. Therefore the electronic identification implemented does not meet the reliability of the procedures used in the real world.

The Ombudsman for Children in Finland has also specifically demanded that providers of software for viewing images on the Internet use identification technology that shows the age of the purchaser of the software.

Electronic identification available to all

The Finnish Consumer Agency knows that consumers have had difficulties in acquiring electronic identification tools. For example, acquiring an online banking identity has not always been possible for consumers that have poor credit records. The granting of an electronic identification tool to consumers is at the discretion of private service providers in the case of both the banks' Tupas system and the mobile phone companies' mobile certification.

Private identification service providers have no contractual obligation to provide an identification tool. The Finnish Consumer Agency regards it as important that there should be public sector service providers operating on the electronic identification markets.

Do the authorities have the right to close down scamming websites?

The EU Commission will survey whether EU legislation related to ecommerce needs to be developed. The Finnish Consumer Agency supports giving the authorities additional ways of combatting scammers.

At the end of last year, the Ministry of Justice organised a consultation for Finland on the development of EU legislation related to ecommerce. The Finnish Consumer Agency took part in the consultation.

The Finnish Consumer Agency considered that above all, the Directive should be amended so that under the Directive, a supervisory body could require an operator to shut down websites that were being used to scam consumers. In such a case, the supervisory body would be responsible for the basis and legality of the requirement. It would have to be a question of a clear breach of the law which caused financial loss to consumers.

The Finnish Consumer Agency did not support removing an exception to contract law from the Directive because, from negotiations on the proposed directive on consumer law, it has become clear that there are significant differences in consumer law between the Member States. There is also no reason to think that there would be a different legal system for ecommerce that spans national borders than for other commercial activities involving consumers.

The notification system contained in the Directive does not work in practice so it could be removed. As things stand, the authorities are required to notify the competent authorities in the country of dispatch when they wish to end illegal, cross-border marketing. Notification is not made, because in practice it is difficult for the authority receiving it to take care of the issue and the protection of consumers in the target country is not often given a very high priority. Now that marketing legislation regarding unfair commercial practices is almost completely harmonised as the result of the Directive, there is good reason to return to control by the receiving country. The notification procedure duplicates the consumer authorities' CPC system and for that reason could be eliminated.

The intention of the Commission's consultation was to map out what kinds of needs there were to examine the Directive. The Commission has not yet made any proposals to amend the Directive.

KUV/8076/48/2010

Intia-keskus in the District Court

The Consumer Ombudsman has made a decision to help a consumer in a court case concerning a price increase contrary to the contract.

The consumer had ordered two rail passes to Japan by telephone from Oy Intiakeskus/India Centre Ab. During the telephone conversation the salesperson had said nothing about the company having the right to change the price agreed on the telephone. The company sent an invoice for the amount agreed which the consumer paid on the due date.

However, the company later sent the consumer a new invoice for EUR 160 which said that it was because of the strong rise in the Yen exchange rate. In order to obtain the tickets, the consumer also had to pay this additional charge even though they did not accept the additional charge.

The consumer took the case to the Consumer Disputes Board which recommended that the company reimburse the consumer the EUR 160 because the contract was binding, and the company could not alter the contract unilaterally. In addition, according to the consumer, the increase in the Yen exchange rate between the original and additional invoice did not correspond to the change in exchange rate claimed by the company.

The condition on which the Intia-keskus based the increase, was in any case without foundation. In the order confirmation, the company reserved the right to change prices which were outside the control of the travel agency. However the condition did not specify the basis for the increase in any way. The issue is thus one of a contractual condition that is prohibited under the Consumer Protection Act.

A writ of summons has been lodged with the Helsinki District Court.

Consumer Protection Act chapter 3 section 1
Consumer Protection Act chapter 4 section 1

Upgrading a games console exposed weaknesses in customer service

A compulsory upgrade to the software of a Sony PlayStation3 games console was made which annoyed the owners of the console. Without the upgrade part of the functions would no longer have worked and the upgrade was to counter a data security risk. However, after the new upgrade, the game console was no longer compatible with open source code operating systems such as Linux.

Sony Computer Entertainment considered that the console was marketed primarily as a games console even though it could in fact be used to perform other functions. In addition the contractual conditions that the buyer of the product had received did reserve the right to make upgrades to the software. The company therefore did not accept the product return nor did they offer the consumer compensation because of the software upgrade.

The Finnish Consumer Agency did not regard the company's contractual conditions themselves as unreasonable, but did criticise the company for its poor management of customer relations. The upset customers' complaints were not handled appropriately; they were just instructed to make an appeal directly to the consumer authorities. The company was required to instruct its user support and the games console's importers and retailers, so that in future they would be able to manage customer service in respect of similar kinds of complaints.

KUV/2798/41/2010

Consumer Protection Act chapter 5 section 12

Consumer Protection Act chapter 2 section 1

Collections in instant credit frequently irresponsible

Good collections procedures seem to be a thing of the past in the hectic world of instant credit.

The Finnish Consumer Agency compiled a list of problems that had arisen regarding collections by instant credit firms and sent the companies a letter about the issue last autumn. Now, new efforts are being put into cleaning up collections, since the problems that beset the sector do not seem to have gone away.

Irregularities that the Agency has identified include, for example, various “due date transfer fees”. Debtors receive a text message which offers them the possibility of changing the due date by sending a chargeable text message to the credit company’s number. The Agency has also come across cases where a due date transfer fee has automatically been charged when the debtor’s payment is late.

Payment reminders sent to debtors are also often charged for, even though they do not meet the requirements of the Debt Collection Act. In order for a fee to be charged, the message must identify the debt sufficiently clearly and give clear instructions on how to proceed. Charges for payment demands have sometimes even exceeded the maximum amounts allowed by law and up to ten demands have been sent before legal collection has been started.

The credit companies have engaged in aggressive and threatening collections where the debtor has continually been sent vague reminders at short intervals. The regulated time limits for collections have thus not been observed. It is not even always clear from the communications who sent them or what the intention was. Messages are highlighted using the words “default” and “immediately”. This kind of aggressive procedure is both contrary to the Consumer Protection Act as well as good collections practice as described in the Debt Collection Act.

KUV/1684/41/2010

Tax rebates handed out as early as the summer

Veronpalautusheti.fi (Taxrebateimmediately) and Veronpalautusnyt.fi (Taxrebatenow) offer consumers the opportunity to take out a loan against their tax rebate. The contractual conditions of each of the loans are in part unreasonable for the consumer.

“Now you can convert next December’s tax rebate into money and get it into your account immediately!” That was how Veronpalautusheti.fi advertised its service in 2009. Svea Direkt and Freedom Rahoitus Oy were the companies behind the loans. Consumers who had received a tax rebate of at least EUR 500 in 2008 could apply for a loan by sending the company their tax assessment and by entering into a direct debit agreement with the bank. On the payment date for the tax rebate, the company would take the amount of the loan from the consumer’s bank account.

In the marketing of the loans and in the contractual conditions there were several problem areas, which is why the Finnish Consumer Agency took the issue on. However, the company stopped offering the loans while the matter was being dealt with.

Customers cannot be charged for calling in a loan

Soon after this another loan appeared on the market working with the same concept, Suomen Ennakkopalautus Oy’s Veronpalautusnyt.fi. Its contractual conditions were also illegal.

The company did not inform people about the real annual interest rate on the loan. In addition, it levied separate charges for calling in the loan. The Finnish Consumer Agency stated that the costs associated with calling in a loan are part of the normal business expenses in the financial sector and are the responsibility of the company. The late interest charges made by the company were also contrary to the Interest Act.

A consumer applying for a loan had to give assurances that he or she was not subject to enforcement of alimony or other debts. The Finnish Consumer Agency pointed out to the company that a consumer knew what his or her situation was only at the time the loan was applied for. However, things could change by the time the tax rebate came to be paid. If the tax rebate was seized in respect of a debt for example, the amount to be repaid would not necessarily be on the consumer’s account on the due date.

In the credit conditions it was also stated that if the tax rebate is larger than the loan applicant had said, the company will take a certain amount from it. The Finnish Consumer Agency emphasised that the entire tax rebate belongs to the consumer and the company cannot take some of it for themselves.

KUV/6574/41/2009, KUV/5848/41/2011

Compensation for the consumer if the dustbin is left unemptied

The brand new Waste Act brings some necessary clarification to the charges associated with waste management.

The new Waste Act will take effect from the beginning of 2012. The Act includes some important changes for the consumer. For example, according to the regulations regarding errors and price reductions, the consumer in future will have the right to a price reduction if the dustbin is not emptied, or if waste management is otherwise not organised in accordance with the municipality's waste management regulations or contract.

The consumer has to bring the mistake to the municipality's attention within a reasonable time. The reduction in price should be appropriate to the scale and duration of the mistake. The new regulation is significant in principle in that it applies not only to fees charged for waste management services under private legal status, but also under public legal status; waste fees paid to municipalities. It is also noteworthy that the right to a price reduction applies not just to consumers, but also to other waste management services, for example housing associations.

Reasonableness test for waste charges

Waste management can no longer receive a full exemption, even if it treats all the waste produced by a property, through composting for example. For that reason an important provision has been included in the Act: If a municipality's waste charge calculated according to its waste tax is considered to be unreasonably high taking the amount of waste into account, the charge may be waived or determined without reference to the waste tax. Making the charge reasonable or waiving the charge is necessary for example when a property is empty because of the occupant's long term hospital care or because of a move to another municipality.

A municipality may only charge a waste fee that gives a reasonable return on its capital. The intention is to ensure that the charge is based on the real costs of waste management over the long term including the investment costs. Municipalities must inform their inhabitants of the total income from the waste fee and how that money has been used. However, there is no separate control over the reasonable return produced by the waste fee.

Removal of waste organised by the municipality or occupant is still an option

According to the new Waste Act, the municipality is responsible for ensuring that the transport of waste away from consumer's dwellings is provided comprehensively and reliably on conditions that are reasonable and non-discriminatory. This applies to waste transport organised by the municipality and waste transport arranged by the occupant. In the latter case, the consumer enters into an agreement with a transport company concerning waste removal. The requirement for the service to be reasonable and non-discriminatory means that different customers, customer groups or different areas may not, for example, be charged different prices for the service if there are no grounds for distinguishing between them.

The new Waste Act also sets additional requirements for municipalities' decision making for the choice of waste transport organised by the occupant of a property. A condition is that the effects of the decision are evaluated overall as positive taking particular account of the effects of the position of households and the companies' and officials' operations. Among other things, the effects of the decision on consumers' and others' waste management costs is to be considered.

The postal service is operating, even though the law is changing

The Transport and Communications Committee has considered the government's proposed Postal Services Act. The committee considered the proposal necessary and appropriate and supported the approval of the proposed Act with certain comments and proposed amendments. The Finnish Consumer Agency also considers that the position of the consumer is fairly well protected in the proposal.

Postal services must be available to all

The postal service is undergoing significant changes that will affect its operating environment. The use of electronic messaging is reducing the number of letters sent. This in turn reduces the profitability of operations, particularly in remote areas. In spite of the future outlook for the operating environment, the committee agreed with the views of several of the statements submitted that deliveries on five days is an integral part of a quality and functioning postal system. The committee considered that maintaining the postal service on reasonable, open and non-discriminatory conditions was vitally important.

The Finnish Consumer Agency also considered that the consumer's right to a universal service was protected in the proposed legislation. This view was also influenced by the fact that exceptions to the collection and delivery frequency were restricted in accordance with the current legislation to very well delimited situations.

Reasonable distance to an outlet is most important

According to the legislative proposals, postal outlets must be located so that users of the universal service can carry out their business in premises that are a reasonable distance from their permanent home. The committee considered that in order to safeguard the availability of the service the Act must maintain the requirement that there must be at least one outlet providing this universal service in every municipality.

The Finnish Consumer Agency would have been prepared to give up the requirement for there to be an outlet offering this universal service in every municipality. It is more important to guarantee the availability of the service to the consumer as a reasonable distance from his or her permanent home than to keep the requirement to have an outlet in every municipality. One outlet per municipality does not necessarily guarantee a reasonable journey.

The Finnish Consumer Agency feels that mobile outlets could offer a good opportunity to bring services closer to the consumer, particularly in remote areas. However this would only happen if the availability of the service is organised so that the services are available to consumers sufficiently often and for long enough each time. Since the location of an outlet and the opening times have a critical influence on the consumer's opportunity to use the post office's basic services, the Finnish Consumer Agency regards it as important that the distance of outlets and availability are mapped out and monitored after the Act comes into force.

Letter speeds will slow down

The committee approved the proposal to slow down the speed of letters. The proposal put forward a minor change in the quality standard. The standard for overnight delivery of letters will be reduced to

80%, and delivery within 48 hours will fall to 95%. At least 98% of letters must be delivered by the third business day.

The Finnish Consumer Agency considered that the change did not have practical significance for the consumer's position as a user of the universal service, particularly as the majority of bills, collection letters, and for example, companies' customer bulletins are now sent by the slower second class post, and because this kind of post is increasingly moving over to electronic data transfer.

The committee stipulated that the Finnish Communications Regulatory Authority (FICORA) monitor the impact of the Act and the implementation of the Act's objectives and submit a report to the committee by 31.5.2013.

Electricity consumers' rights moving in a better direction

The EU's third energy market package is currently being integrated into Finnish legislation. The Finnish Consumer Agency also participated in the work as regards questions of consumer protection.

The third internal market package completes and details the obligations of public services and the regulations concerning consumer protection. From the report of the working group led by Finland's Ministry of Employment and the Economy, it showed that in certain respects the laws on electricity and gas markets need supplementing.

The new proposed regulations will lead to improvement and clarification in the legal position of consumers. For example it is recommended that the right of electricity user to receive information be widened and this can be regarded as a positive issue for consumers.

Consumers will also get the right to change electricity providers without charge within three weeks. It is proposed that the possibility to charge an additional meter reading charge if the consumer changes their electricity provider more than once a year be removed from the Electricity Market Act. The final invoice must be sent to the consumer within six weeks of the termination of the contract.

In order to protect customers in a weak position, it is proposed that some clarifications be made to the relevant regulations regarding cutting off the electricity supply. For example, in warnings that the electricity supply to a consumer is going to be cut off, there should be information as to how the consumer should proceed in order to invoke their legal rights relating to the cutting off of the supply and it should also refer to the possibility of receiving benefits to cover essential living costs.

Checklist for energy consumption

The working groups proposed that provisions be included in the acts on electricity and gas markets which would provide the consumer with information, either with the contract of the confirmation, concerning an "energy consumption checklist" and information about how to get one. The manager of the distribution network and the electricity sales person would have to give a copy of the checklist to the consumer on request. The checklist would contain information about the energy consumer's rights.

The Finnish Consumer Agency supports this proposal regarding electricity which goes a little beyond the requirements of the Directive. It is also a good thing that the duty to provide information concerns both the electricity seller as well as the distribution network manager. If the consumer has gone to a competitor when buying electricity, he or she will receive two invoices if the seller of the electricity is a different company from the distribution network manager. The provision is therefore necessary.

However it is important that any additional costs caused by the legal obligation to provide information are not charged to the consumer.

While considering marketing, it would also be good to address the sufficiency of information given in telephone sales and in face to face sales. At the moment, consumers often receive too little information to support their buying decision. For example, a consumer's electricity bill can sometimes increase considerably after a certain time at which point it is very important for the consumer to know what they should do and who they can turn to and how long the contract is valid for.

Problems with billing can give the right to compensation

The working group proposes that service quality in the Acts concerning gas electricity and gas markets should also include billing in future. Late bills or mistakes in bills would thus be regarded as a service

error for which the consumer may have the right to compensation. The objective is to have more effective handling of customer complaints and disputes.

In some countries, consumers receive comparative information with their bill, which shows what typical electricity consumption is in other households of the same size. It would be good if this kind of information was to be produced for Finnish electricity consumers as well. Consumers would then find it easier to monitor their own electricity consumption and alter their behaviour so that electricity consumption would decrease and their electricity bills would fall.

The government's proposal regarding the internal market package is intended to be presented to the new parliament after the elections.



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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