

Current issues IN CONSUMER LAW

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5/11

Editorial

Fear the worst for the customer	2
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Articles

Editorial Fear the worst for the customer	2
Greener diesel will not save the planet.....	3
Premium pay sports channel UrhoTV added to channel package without order from client	4
Advance payment on the Internet – is the risk too big to take?.....	5
Telemarketing of mobile subscriptions to end.....	6
A euro for the poor at the cash machine?	7
Large and small consumer issues in the Government Programme.....	8
Updates to contract terms for rural tourism	10
A website for a media cannot be used as a channel for subliminal advertising	10
No need for EU-level instructions on cosmetics.....	11
A suitable balance benefits both consumers and the owners of copyrights.....	12
Improving client protection in public welfare services	14
Price ceiling for roaming data.....	15
Use of kilos should be general practice also in outdoor markets.....	16

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Editorial**Fear the worst for the customer**

This year, the main themes in the traditional Elonmerkki event of communication professionals were design and user-oriented service design. The speakers talked enthusiastically about how to develop straight-forward and well-functioning services by listening to users.

However, the presentations failed to cover one element central from the viewpoint of the user, i.e. materials associated with the services. There is still plenty of room for improvement in the user-orientation of various contract and use terms as well as terms associated with special offers.

It is possible to draw up terms and conditions in such a way that they, in a genuine way, account for the user and function to make his or her life easier. With this aim, it is not purposeful for the company to try to underline its expertise by coming up with terms and conditions filled with professional jargon. Terms like these are likely only to generate uncertainty in customers and lead to conflict situations that create more work for everyone, the company itself included.

One indication of user-orientation at its best is that when making major changes in its system, the company does not base its actions on the blind faith that everything will go according to plan. Backup plans and processes must be in place to cover for the eventuality that things can go wrong. Sampo Bank and Communications service provider Elisa, among others, have experienced this for themselves when implementing significant changes in their information systems.

This is why it has been perplexing to observe the state-owned railway company VR struggle with its ticket reform. When competing with other modes of transport, taking your customers for granted is not an option. Moreover, it is not acceptable to justify your blunders in retrospect by saying that the demand was too high.

Automatia, however, was successful in learning from its mistake. It rectified the mistakes of its fundraising campaign last spring by listening to both its customers and authorities.

The lengthy preparation work for the Consumer Rights Directive is practically finished. Among the positive results of the work is the harmonisation of certain regulations associated with distance selling, such as time limits. Attempts have been made to clarify difficult-to-determine situations for example by providing a clear definition of home selling.

The Commission has now set its sights onto a new project and is actively promoting an alternative instrument of contract law for the member states. The aims are laudable, but numerous issues are yet to be settled. In a worst case scenario, a familiar operating environment will be replaced with a fragmented system of contract law with no single market benefits.

It is also possible that the instrument may displace current legislation protecting the consumer and thus have a significant negative effect on consumer protection. This will be the case if companies are given the right to decide on the use of the instrument in their contractual relations with no real choice afforded to the consumers.

Anja Peltonen
Director

Greener diesel will not save the planet

If a product harmful for the environment becomes less harmful, it is acceptable to include this information in advertising. Making too grand statements about eco-friendliness is not recommendable, however.

In a TV ad campaign for Neste, a man is refueling in his car. The voiceover exclaims: "Who wouldn't like to be a hero. Just grab the fuel pistol and save the planet. Significantly cleaner than ordinary diesel, Neste Green diesel is our dream come true. Tell us your dream and get a chance to win it"

Environmental advertising often raises the question whether the argument put forward in the advertisement constitutes a factual claim, loose salesman-like praise or something in between. Expressions of salesman-like praise are a part of marketing. They are so general in meaning that no evidence is required to back them.

A factual claim concerns a matter of a significant importance. The more categorical the claim, the more likely it is to require evidence to back it.

There is nothing to stop an advertiser from discussing measures taken by the company to reduce negative environmental effects. This means, however, that the significance of the change must be presented in correct proportion to operations as a whole. Too broad conclusions should not be made based on changes in production process.

Saving the planet is done more effectively by deciding not to buy something than by making a purchase. For this reason, it can rarely be claimed that the consumer could effect major positive changes regarding the state of the environment through the mere fact of buying products.

The idea of a heroic deed presented in the text of the advertisement evokes a notion that diesel oil would not have a negative impact on the environment but that the opposite would in fact be true. According to the Consumer Ombudsman, the claim was both clearly exaggerated and not based on fact.

Diesel can be Bio and Green

An environmentally-conscious consumer who filed a report on the advertisement also found that the names given to the fuel brands convey a misleading image of their eco-friendliness.

An EU directive defines the criteria for biofuel used in transport. If the fuel in question fulfils these criteria, use of brand names such as Bio Diesel or Green Diesel does not misrepresent the properties of the product, stated the Consumer Ombudsman.

Neste Oil notified the Consumer Ombudsman that it would no longer be running the advertisement in question. The Consumer Ombudsman urged the company to make sure that in the future, their marketing would adhere to provisions laid down in the Consumer Protection Act with reference to environmental marketing.

KUV 10447/41/2009

Premium pay sports channel UrhoTV added to channel package without order from client

Competition for premium pay TV channels is often carried out on the outskirts of the law. Delivering products without an order is prohibited by law.

The complimentary UrhoTV channel was added to the Canal+ channel package in autumn 2009. Clients were informed of this in the Canal Digital customer magazine, but were not asked for permission or order for the addition.

At the turn of the year, the company made UrhoTV an additional service that could be provided separately from the channel package. Separate pricing was introduced for UrhoTV, and the prices for the channel packages were raised. The new prices were valid from February 2010. The customers were informed of this prior to the change in three customer announcements. To avoid the price increase, the customer had to expressly cancel UrhoTV.

A classic marketing method prohibited by law, the delivery of products without an order, is today rarely encountered in its original form. This means sending a product to a consumer and later requesting payment or return of the product. The practice is nowadays encountered in connection with different services. The service is free at first, but within a short period of time it will become subject to charge. The consumer would then need to take measures to cancel the service they have not ordered and that is now subject to charge. The practice is prohibited in the Consumer Protection Act.

In the marketing of premium pay channels, the companies often offer a fixed-term complimentary trial viewing period for channels not included in the package previously ordered by the customer. If, after the trial period is over, a consumer wishing to continue the service must actively order the channel, the marketing is both fair and lawful.

The Consumer Ombudsman demanded that Canal Digital no longer deliver premium pay channels to consumers without order or require payment, return, storing or any other measure of them. The company was willing to agree to this.

KUV/2014/41/2010

Advance payment on the Internet – is the risk too big to take?

Online shopping is risky business for consumers if the only option available is advance payment. Finnish e-commerce will increase only with the confidence of consumers.

Small businesses emerge and disintegrate constantly on the Internet. An advance payment is always a risk taken by the consumer. If the company goes out of business, the money is often lost.

Use of credit card enables the user to reclaim the funds, but not everyone is eligible for a credit card. Reasonably-priced payment after receiving the product should be available to all customers irrespective of their credit rating.

According to law, the main rule in commercial activities involving consumers is the principle of simultaneity of transactions. The purchase is paid for at the point at which it is the product is obtained by the consumer. Advance payment is thus considered an unlawful and unreasonable contractual term in cases where no justifiable reason exists for requesting the payment in advance. In e-commerce, such a reason rarely exists.

Internet Industry Finland (Verkkoteollisuus) has established a quality certificate for Finnish e-businesses. The certificate indicates to potential customers that the company operates in a reliable and appropriate manner. In order for the company to obtain and retain the certificate, it must follow the rules established by Internet Industry Finland in cooperation with the Finnish Consumer Agency and the Consumer Disputes Board. According to the rules of the quality certificate, the company must, in addition to advance payment, also provide opportunities for payment after the reception of the goods. Charging significant additional fees for this is not acceptable.

Warnings and operating instructions

Consumers generally react quickly if they have paid for a product and do not receive it. The information is communicated to consumer authorities and posted on numerous discussion boards on the Internet. The Consumer Ombudsman oversees the legality of the marketing and contract terms of companies and interferes with problem areas by providing written instructions or proposing negotiations.

If the company fails to act responsibly and does not respond to the requests for clarification sent by the controlling authority, operating instructions can be provided for consumers or a

warning for consumers may be issued on the website of the agency. Arbitration in individual disputes is carried out by consumer advisors.

During the summer, warnings were issued about electronics retailer Elektroni.fi and clothing retailer Sadkitten.com. Their customers were not receiving orders they had already paid for in the promised delivery time. The companies have also failed to answer customers' telephone calls or e-mails.

In addition, the online shop Bridezillas.com had problems with delivery that led to a police investigation. The company requested operating instructions from the Consumer Ombudsman. The company was advised to post operating instructions for customers on its website immediately. A representative of the company inquired about the possibility to include a link to claim templates by the Finnish Consumer Agency and was granted permission. The company has since ceased operations.

KUV 4840,5420,7343/48/2011

Telemarketing of mobile subscriptions to end

A two-year special project by the Consumer Ombudsman has managed to reduce problems and illegalities in the selling of mobile phone subscriptions. The methods used have ranged from creating a checklist for salespeople to impacting legislation. The aim is to achieve a total ban on telesales in the sector.

The telesales of mobile subscriptions in particular have involved a number of excesses. Complex products and subscription packages have been sold to consumers by providing misleading or incomplete information. Customers have also been pressured into obtaining a subscription, and contracts have been drawn up without explicit order. Some sellers have also failed to provide information about the statutory right of cancellation. Terms and conditions of the contract have not necessarily been delivered to the customer before, in the eyes of the company, a contract has been established.

In a special project of two years, "Functional processes in subscription sales", the Consumer Ombudsman has taken a variety of different measures in order to persuade mobile operators to improve their subscription sales practices throughout the line.

At the start of the project, the Consumer Ombudsman published a guideline for operators on the requirements of the law regarding the distance selling of communication services. Two rounds of negotiations have been carried out with leading operators, and problem situations reported by consumers have been discussed. In February, the Consumer Ombudsman issued a press release stating that telesales is not a suitable channel for selling products involving complex contractual terms. The Consumer Ombudsman called for legislative measures in case no improvement could be effected in the self-regulation of the field in the future.

Checklist to serve as a tool for sellers

In addition to impacting the field from the top down, the project has also included practical measures to ensure the legality of the sales processes. A checklist on the central issues to be established when obtaining a mobile subscription for the use of both the seller and the consumer was published in the summer.

With the help of the checklist, even the most inexperienced seller can act consistently in a sales situation and ensure that the consumer receives the necessary basic information to support his or her purchase decision. Consumers may also print out the list themselves and request the seller to provide the information not immediately volunteered to them. Operators have been heard in the making of the list.

New legislation to be initiated

Minister of Housing and Communications **Krista Kiuru** announced in August that legislative means would be used to address the telesales of mobile subscriptions. Central teleoperators and authorities gathered to discuss the telesales of mobile subscriptions and possibilities concerning restrictions to be imposed. According to Kiuru, preparation of changes to legislation that would enable the cessation of the telesales of mobile subscriptions in its current form will be started promptly.

The Consumer Ombudsman is pleased with the development but retains the view that legislative action to restrict telesales is also needed in other sectors.

KUV/1069/41/2010

A euro for the poor at the cash machine?

A fund-raising campaign implemented through cash-machines was discontinued early this year due to negative feedback. Supporting charities should be made easy, but cash withdrawals from bank account should remain a standard banking service.

A fund-raising campaign implemented in March by Automatia, the company in charge of Otto cash machines, to benefit the charity organisation Plan attracted wide public attention. The campaign yielded a large number of contacts by the public to several different parties, including the Finnish Consumer Agency. Automatia saw it best to discontinue the campaign.

People using cash machines were asked to give permission for a one euro donation after entering their PIN code and choosing the cash withdrawal option. Several people made the donation by accident. They were given back the euro upon request. However, many also stated being opposed to collecting funds in connection with the use of cash machines in principle. There was particular concern over the ability of the so-called weaker consumer groups to understand the functionality of the donation option. There were, however, also positive comments regarding the provision of an easy way to donate funds for charity.

The conclusion from negotiations with Automatia was that withdrawing money from a bank account is a standard banking service that should not require special skills from the consumer. As the number of branches and the services provided by them are constantly diminishing, the use of a cash machine is, for many, the only means available to make a withdrawal. When designing the campaign, not enough attention was perhaps paid to the position of senior citizens, young people, disabled persons and other people with special needs as users of cash machines.

The Otto fund-raising campaign was relaunched in the autumn. The provision of consent for the donation was now clearly separate from the cash withdrawal function, thus minimising the possibility of mistaken donations.

Plan and test

An effective way to guide consumer choices is using little nudges in the desired direction. This is the basic theme of nudge thinking based on behavioural economics. In both purchase decisions and fund-raising, many consumers are likely to choose the option that has been made easy for them.

Yet, consumers find it important that they themselves initiate the transaction. In the case of fund-raising, they want to be the ones to decide on the time, place, target and sum of the donation. In one successful campaign implemented in a small grocery shop, the donation boxes were attached to the wall next to the bottle return machine. Donations could be given to promote children and young people's recreational opportunities in either ice-hockey or ice-skating. To take part in the campaign, the customer only needed to slip the receipt containing the sum of the bottle refund into the box. A similar option has been developed for some customer loyalty programmes. The customers have the option to direct funds obtained as bonus from their purchases to different charities.

KUV 3637/41/2011

References: Fund-raising examples from the book Anja Peltonen: *Kunnioita asiakasta, lisää luottamusta*, Lakimiesliiton Kustannus 2011.

Large and small consumer issues in the Government Programme

Decisions affecting the position of the consumer are made in several different administrative sectors. The Government Programme contains some 30 items stating projects with some connection to the activities of the Finnish Consumer Agency.

To grasp the full picture consumer issues associated with the Government Programme, it has now become traditional to prepare a separate consumer policy programme under the leadership of the Ministry of Employment and the Economy to complement the Government Programme. The term of the current programme will finish at the end of the year, and the goal

of preparing a new one has been included in the Government Programme. The Government Programme also contains a promise of strengthening the steering potential and operating conditions of consumer policy.

Generating genuine competition and producing markets that function to benefit the consumer are stated as one of the goals of the Government's economic policy. In its policy concerning international trade, Finland stresses corporate and social responsibility and aims to impact the development of the rules of international trade in a way that, among other things, accounts for the needs of both environmental protection and consumer protection. The Government Programme also states the aim of purposeful development of cooperation between the Nordic countries in consumer-related issues.

Stress on the consumer perspective

The Government Programme mentions several sector-specific projects with particular significance from the viewpoint of the consumer. These include a reform of legislation on vehicle inspection, the development of a national public transport ticketing system as well as a national scheduling and route service for public transport, securing fast and reasonably-priced broadband connections for homes and reforming the compensation system for different platforms of storing information.

Including assessment of potential effects for consumers as a stage in the preparation of all legislation would be important at this point. The Government Programme promises improvements in the assessment of effectiveness and that special attention will be paid to projects crossing the boundaries between different ministries.

Tekstikappale

Shadow economy also impacts consumers

Combatting shadow economy is one of the Government's primary objectives and requires the input and cooperation of several different actors. The impact of shadow economy also stretches to the consumer, e.g. in the form of a poor quality and financial losses. Because of this, the operating potential of consumer administration should be included in project plans for the prevention of shadow economy.

Out of the welfare policy projects listed in the Government Programme, development of public services and restricting of alcohol advertising also constitute issues of consumer policy. Responsibilities regarding the organising and production of public services should be clarified and differentiated in municipalities; also the rules for economic activities engaged in by the public sector should be clarified. Both aspects concern matters that also affect the legal position of the consumer.

Updates to contract terms for rural tourism

Entrepreneurs in the field of rural tourism should adopt the updated contract terms of Lomalaidun ry. All contract terms must be delivered to the consumer by latest as the reservation is being made.

The Consumer Ombudsman has consulted the Theme Group on Tourism (Rural Policy Committee) on the contractual terms of rural tourism. The Theme Group on Tourism is part of the activities of the Rural Policy Committee, and it coordinates the development of rural tourism in all parts of Finland.

The aim of the Theme Group on Tourism was to update the terms to correspond to the principles of the recently reformed Package Travel Act. Rural tourism services do not in all cases constitute package travel. Yet, general package travel terms and conditions were used as a model in the reformative work. If the entrepreneur offers accommodation as well as recreational services that can be considered expensive in relation to the total price, the Package Travel Act is applied. If the company charges advance fees for package holidays like this, it must register in the Finnish Consumer Agency's register of package holiday companies.

The Theme Group on Tourism has expressed concern over some entrepreneurs not posting their contractual terms on their website and the fact that they are not always delivered to the customer. The group wishes to remind the entrepreneurs of their responsibility in this.

The concern is justified. It must be possible for the consumers to study the terms and conditions of the contract in advance. If this opportunity is not provided, the consumer is not bound by the terms of the contract. In this case, the company may, for example, forfeit its right to invoke the binding nature of reservations and lose the possible reservation fee.

The Consumer Ombudsman can cooperate with umbrella organisations for entrepreneurs when they wish to draw up contractual terms that are just and reasonable from the viewpoint of the consumer. However, consultation of the Consumer Ombudsman is available to individual companies preparing their separate terms and conditions only in exceptional cases.

KUV/5272/41/2011

A website for a media cannot be used as a channel for subliminal advertising

An advertisement for Danone Activia on the MTV3 website was badly mixed up with editorial material The Council for Mass Media in Finland issued a notice to MTV3.

The Internet is perceived as a free communication channel, the regulation of which is only now being discussed. This may well be the case regarding citizens' freedom of speech. Yet in

terms of marketing, the Internet constitutes no more an open playing field than any other type of marketing. The provision in the Consumer Protection Act on the recognisable quality of marketing applies to all marketing channels. The Council for Mass Media oversees the practices from the journalism viewpoint.

A story published in the Helmi section of the MTV3 website focused on a contest arranged by MTV3 and Danone Activia for testing a yogurt marketed as a 'functional food'. According to the story, "the rating given by the test group to Activia products was a staggering 4 Helmi points on a scale of 1 to 5". The end of the story was marked "MTV3/Helmi" and included a link leading to a specific Danone section of the MTV3 website. It began with the same headline and text as the story on the editorial page by MTV3/Helmi. The top of the page contained the following statement: "Test group is provided by Danone". The links lead to a story on the contest implemented as a cooperation between the two operators and the results of the contest.

According to the Finnish Council for Mass Media, the boundary between advertisements and editorial material remains unclear on the Helmi section of the MTV3.fi website even after the adjustments made by the company. For example, the website uses terms such as editors and article. They are traditional journalistic expressions. Special vigilance is required of a person browsing the site in order to perceive the producer of the page he or she is viewing at a particular moment. The practice in the Helmi website was clearly to incorporate stories credited to the editors and resembling news stories among the more openly commercial material. Their aim was to promote the commercial message of the advertiser and lend credibility to the message of the advertiser using journalistic means. The Finnish Council for Mass Media considered that MTV3 was in breach of good professional practice of journalism and issued a notification to the channel.

No need for EU-level instructions on cosmetics

The UCP directive and regulations on marketing are enough to curb the excesses of cosmetics marketing both in Finland and elsewhere in Europe.

The Commission is preparing a set of instructions on the effectiveness claims of cosmetics. According to the Finnish Consumer Agency/Consumer Ombudsman, the draft in itself is rather comprehensive. However, provisions on marketing laid down in the Consumer Protection Act already secure the control of cosmetics marketing. With the UCP Directive, these regulations were harmonised throughout the EU. The cosmetics instructions as such do not add anything new to the regulations on the control of marketing. For this reason, it would be useful to reconsider the feasibility of investing in the preparation of a separate set of EU-level instructions for a single sector and for the cosmetics sector in particular.

In 2007, the Finnish Consumer Agency / Consumer Ombudsman together with the Finnish Cosmetic, Toiletry and Detergent Association prepared a guideline for the rules cosmetics advertising. The guideline is based on marketing provisions. Its particular focus lies in clarifying how the marketing of cosmetics should account for the all-round impression delivered by it as well as the correct presentation of test results and promises on the

effectiveness of cosmetics. The Finnish Consumer Agency / Consumer Ombudsman suggested that if a decision is made to draw up instructions on cosmetics marketing, aspects such as those listed above should also be covered.

There is no such thing as a standard consumer

The idea of a consumer as reflected in the Commission's draft instructions is based on an average consumer who operates on the basis of rational thinking. The Finnish Consumer Agency / Consumer Ombudsman proposed altering this perspective towards a more recent understanding of the behaviour of consumers on the market.

In reality, consumers do not act rationally or always make decisions that are beneficial to themselves. This can be seen particularly in the cosmetics market. The OECD Committee on Consumer Policy has applied the viewpoint of behavioural economics to consumer policy. A typical feature of cosmetics marketing is that the small print in the advertisement contains information on the type of research the factual claims made in the advertisement are based on. Studies of consumer behaviour have shown, however, that consumers generally assume that any small print in advertisements only contains information that is insignificant and unessential. Advertising is generally glanced at quickly and superficially, and the purchase decision is made based on the main message put forward in the advertisement. For this reason, the main message of the advertisement should convey truthful and essential information at first glance.

KUV 6277/48/2011

A suitable balance benefits both consumers and the owners of copyrights

Active discussion on the copyrights of digital works and services in the EU single market continues. The position of the consumer as their user remains unclear.

Accounting for the legal position of consumers is necessary when planning new regulation, such as licensing crossing national boundaries. This is necessary only to ensure that new services and content would be genuinely available to consumers. Where there is supply, there is also demand. This means that income will be directed to authors of the works and other right holders. Accounting for the position of consumers thus also strengthens the position of right holders.

Questions central from the viewpoint of the consumer include usability and reliability of digital services, reasonableness of contractual terms, questions associated with compatibility and the compensation fee for private copying.

The consumer must have certainty that products legally purchased by him or her will remain usable also in the future. Their use should not be subject to the equipment used or whether the

place of purchase might be closed down sometime in the future. Moreover, the consumer's freedoms regarding the material purchased should not be unduly limited.

The points of emphasis are related to a statement made by the Finnish Consumer Agency to the Ministry of Education and Culture regarding a communication issued by the European Commission on a single market for industrial and intellectual property rights.

In the communication, the Commission also listed different measures for improving the current situation. One of them would be to announce the codification of EU copyright directives i.e. the creation of a copyright law for the EU. From the consumer's viewpoint, the most central requirement would be to first harmonise the exceptions and restrictions to intellectual property rights, noted the Finnish Consumer Agency.

The Commission also flashed the possibility of creating a common European database of right holders. The database could be employed by users to obtain the necessary permissions for using the works. The Finnish Consumer Agency did not find this project very realistic, at least from the viewpoint of the end user of the most commonly acquired materials.

Emphasis on criminals, not home users

The Commission also places a firm emphasis on the education citizens with the aim of preventing counterfeiting and infringements of intellectual property rights. The education would include measures such as public awareness campaigns and training of enforcement authorities.

The idea of promoting public awareness is supported the Finnish Consumer Agency. New control methods must be in correct proportion to the interests sought. Enforcement should focus on large-scale violations that often have roots in organised crime. It should not focus primarily on often rather minor actions performed in homes. According to the Finnish Consumer Agency, effective measures could be reached for example by deepening cooperation with customs officials, a measure also proposed by the Commission.

Compensation fee for private copying to be channeled through a fund

In his report to the Ministry of Education and Culture, submitted in May 2011, rapporteur **Arne Wessberg** proposed that the compensation fee for copying be collected through a communication fund. The fund would be instituted on the basis of the current State Television and Radio Fund. In addition to television fees, possible income from the use or auction of frequency domains to be taken into use in future would also be channeled into it. According to the report, it could also be possible to consider a similar payment for broadband connections, in case spectrum fee is not adopted. Income from these sources would also be channeled to the communication fund.

The current compensation system is based on a so-called device payment, where the compensation for copying material is included in the price of CDs, DVDs, external hard discs, set-top boxes with hard discs and video recorders.

KUV 5912/48/2011

Improving client protection in public welfare services

A working group at the Ministry of Justice has prepared a draft for an act on client protection in public and certain other social, health, rehabilitation and training services. The Finnish Consumer Agency finds the proposed legislation useful and justified. The planned scope of application should be specified, and matters associated with oversight explored in more detail.

The boundary between private and public services has become more obscure, as the public sector has begun to seek new ways of producing services and the client's freedom to choose between different public services or different service types has increased. From the client's viewpoint, increasing parallels can be drawn between public services and private services, and the clients' needs and expectations regarding consumer protection are similar in both service types. However, clients of public services do not have the same opportunities for example concerning the rectification or compensation of possible mistakes.

Public services have a great significance for all clients and particularly to the ones whose position is the most vulnerable. For this reason, the working group considers it important to create clear provisions regarding whom the client can turn to as well as the rights of the client in situations where the service provided is defective. The draft legislation contains provisions on the marketing of the service, on rectifying a mistake in the service, on financial compensation paid on account of a mistake and on the processing of compensation claims.

As the preparation work continues, the scope of application could be further clarified. The draft legislation contains demarcations that in practical situations can create room for interpretation e.g. concerning when the provisions are applicable to both the marketing of the service and contractual terms and when they should be applied to marketing only.

New tasks proposed for consumer administration

One of the differences between public and private service types is that clients of public services do not always have the use of access to justice systems. The working group thus proposes new tasks for consumer advisors, the Consumer Disputes Board, the Regional State Administrative Agencies and the Consumer Ombudsman. The acceptance of these tasks requires ensuring the necessary level of both expertise and resources in these organisations.

According to the draft legislation, the Regional State Administrative Agencies would oversee compliance with provisions concerning marketing and the processing of compensation claims. When overseeing compliance with provisions on marketing, the Regional State Administrative Agencies should work in conjunction with the Consumer Ombudsman. This would enhance similar interpretation of provisions with similar content in different acts.

Due to lack of time, several aspects associated with oversight were left unaddressed by the working group. In addition to marketing, the control should also cover contracts concerning public services and other comparable arrangements.

Read more:

[Current Issues in Consumer Law 2/2010](#), theme issue on public services

Price ceiling for roaming data

The Finnish Consumer Agency supports extending the coverage of the Europe-wide price-ceiling regulation to roaming data tariffs. It is an efficient way to ensure reasonable pricing for consumers.

As the use of smart phones becomes more common, it is important to create a price ceiling for data services, too. Consumers have generated surprising and large data charges for example from accidental or automatic update data transfer while holidaying abroad.

Ministry of Transport and Communications requested a statement from the Finnish Consumer Agency for a decree on roaming in the most common mobile communication networks within the area of the European Union. The Commission proposes that the retail-level price regulation would be maintained at the same level throughout the transition period. The maximum retail prices of data services would be valid until July 2016 and the maximum wholesale prices until July 2022.

The difference involves a risk of a price increase. In business, the seeking of profit is based on the difference between wholesale and retail prices. According to the Finnish Consumer Agency, the price ceiling regulation should follow the same period validity, i.e. until 2022.

No separate contracts

According to the Commission, the EU area should make a coordinated shift to separate sales of roaming services.

The availability of roaming services as a separate service does not necessarily help solve the structural problems of the market. Several problems are associated with this from the consumer point of view.

For now, the likelihood of the actual formation of new business activity remains uncertain. It is possible that no new companies and growing competition would be generated in the sector. Current teleoperators could develop new branches of business based on the separate service. As the operators would then assess the profitability of their business, the situation could result in changes in pricing in the whole sector.

Making separate contracts for roaming services would be difficult for the consumer – making contracts for Finnish mobile phone subscriptions is already experienced as complicated. The threshold for making a separate contract for roaming services can be high, especially if the services would be used mainly when holidaying abroad.

The Commission's proposal stresses that the customer must be able to use the roaming services of the alternative service provider using his or her own phone number. In addition, the operators could specifically allow use of their services with the customer's regular SIM card and terminal device. The use of roaming services would thus not affect the consumers' regular patterns of mobile use.

This aim may enhance the adoption of the service. As concerns the interest of consumers, the most central aspect is the assessment of the whole operating process and its judicial stages from the making of the contract to invoicing.

In its statement issued on the matter, the parliamentary Transport and Communications Committee stressed that the feasibility and effects of the proposal require further assessment. Attention should be paid to aspects such as benefits and disadvantages potentially generated for consumers and other customers, impacts on the competitive situation in the markets, costs, invoicing and responsibilities between telecommunication companies.

KUV 6702/48/2011

Use of kilos should be general practice also in outdoor markets

The consumer should have the option to buy berries and potatoes in kilos, instead of litres or other cubic measures.

The Finnish Consumer Agency proposed in its statement on decrees to be issued on the basis of the new legislation on measuring equipment that a mention of the consumer's right to require the weighing of products in such a way that the weight of the container is subtracted from the result of the weighing is included in the statement of reasons for the decree. This would promote clarity and the opportunity to make comparisons in trade carried out in outdoor markets.

The new act on measuring equipment replacing previous legislation in the area came into force on 1 July 2011. As the new legislation was being prepared, the Finnish Consumer Agency proposed that the Parliamentary Commerce Committee consider whether maintaining the special position of trade carried out in outdoor markets is still necessary.

The Consumer Agency put to question the reasoning according to which the practice characterised as imprecise should be allowed simply because it is traditional or the custom of the trade. A central objective in the development of consumer protection legislation in both Finland and the EU is to improve information provided on the products and facilitate price comparisons. Exceptional practice allowed in trade carried out in outdoor markets and in berry and fruit stalls outside of supermarkets functions to hinder the achievement of this goal.

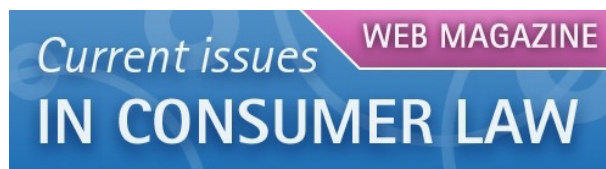
KUV 6660/48/2011



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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