

Current issues IN CONSUMER LAW

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Up-to-date information for those interested in consumer policy and trends in consumer law.
Current Issues in CONSUMER LAW]

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Online newsletter gets a makeover

The Current Issues in Consumer Law online newsletter has been given a makeover in conjunction with a system update. The goal was to improve the newsletter's readability and to clarify its production process. Previous issues of the online newsletter are still available in the archives, which can now be browsed with the help of a new search function. Along with the changes, the "Consumer Affairs in the Courts" column moves to the Consumer Agency's website. The practical implementation of the changes was done by Sininen Meteoriti Ltd.

Let us know your thoughts on the changes by sending us feedback at utiskirje@kuluttajavirasto.fi

Editorial staff

Responsible Editor-in-Chief: Anja Peltonen Editors: Marita Seitsalo, Laura Salmi, Maija Puomila

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[From the Editor]

The consumer's financial risks and developing new services

In certain sectors the very nature of business entails considerable financial risks to consumers. This has led to special arrangements for consumers' protection. For instance, real estate agents and investment advisors are required to have statutory liability insurance, while banks have their own system of deposit insurance. In addition, certain services are governed by minimum capital requirements.

These systems have been created at different times and their existence is primarily justified by the argument that housing and saving pose the most significant risks in terms of consumers' personal property. With the consumer's operating environment becoming electronic and increasingly complicated and the supply of services growing and broadening, we must wonder whether the consumer is still sufficiently protected from risks. The consumer's information and expertise simply aren't adequate to assess the risks of each new service on the market. This problem has already become evident in the context of investment products. Certain investment instruments may not be as safe as consumers might assume based on the information provided to them.

Security services becoming more than guarding duty

It isn't always easy for the consumer to know whether a service falls under special regulation with specific statutory provisions concerning the responsible persons, procedures and risk coverage. New service concepts purport to offer the consumer a simple and safe existence. Unfortunately the providers of new services also include businesses who look to exploit the consumer's confidence.

Old definitions may not apply in the present as planned. Security services, for instance, are becoming more than guarding duty and protecting assets from theft and damage. Savings are now often in the form of something more complicated than bank accounts or bonds. As the world around us grows more complex, there is increasing demand for services that make it easier to manage daily affairs. Constructing new services often requires consumers' personal information. Damages can now potentially extend beyond traditional physical property. For instance, misuse of personal information may result in the consumer suffering much more than just financial losses.

Businesses must minimise the risks to consumers of new services

What should be done? New services entering the markets is a good thing. What is needed is experiences of their use. The consumers with the most complete skill sets are often both the first target group of service providers and the most eager early adopters. This may make it unlikely that the risks are realised. Things are quite different when there is little proof of the effectiveness and risks of a service, yet it is marketed aggressively and its use rapidly becomes widespread. Legislation may lag behind in such cases. Legislative amendments may not even be necessary when it is unclear whether the service is a fad or on the market to stay. Even in the short term, however, consumers may lose time, money, their personal information as well as their trust. It's the duty of supervisory authorities to intervene in illegal practices, but due to the time required by the intervention process the consumers' losses may not always be prevented. Disseminating information is another option, but it never reaches every single consumer.

Balancing between the need to develop new services and the duty to avoid risks to consumers is first and foremost a job for the businesses themselves. A responsible business takes the requirements of consumer protection and privacy protection into consideration from the start. A responsible business communicates openly to consumers regarding its products and services and does not hide from sight if problems arise. This would be a good starting point for successful innovations that bring genuine added value.

Anja Peltonen
Director

Strong supervision despite meagre resources

A report evaluating the legal activities of the Consumer Agency, published in 2009 by Professor Jyrki Tala, finds that the Consumer Agency has successfully developed new supervisory measures. It has accomplished this despite having a broad field to supervise with meagre resources, Tala writes.

The Consumer Agency's supervisory work has, for 30 years, been based on the measures determined by legislators: negotiation with businesses, injunction and petitioning the market court.

Experiences of the last decade indicate that the Agency simply does not have the time or resources to resolve each individual matter with the business in question. There are simply too many cases to handle. As a result, the Agency has resolutely focused on preventive measures and finding various ways of working.

A new perspective to the matter has been provided in recent years by the discussion that began in the OECD and then continued at the EU level on how the consumer really acts. In the past, discussion of consumer policy was based on the assumption that the consumer is a rational actor. The production of information has also often relied on the old-fashioned "hypodermic needle model" of communication. It suggests that the intended message of the sender is directly received and wholly accepted by the receiver. Of course, things are not quite that simple.

Online newsletter and Internet-based assistants

New communication channels and methods have been added to the range of tools at the disposal of the authorities charged with consumer law supervision. The starting point is that a business must be able to find out the correct ways of operating as easily as possible. In the section for businesses on the Consumer Agency's website we offer continuously updated information on regulations and the operating models allowed under the regulatory framework in effect. Some helpful assistants have also been created to support the Agency's supervisory work. The assistants are web-based tools for use in practical customer service situation. For instance, the warranty assistant can help a salesperson or an entrepreneur planning a warranty campaign check the correct way of doing things. The tools are easy to use and they provide quick answers to practical customer service situations.

When a temporary employee is faced with a customer toting a broken digital set-top box, sorting out the situation can take time. The customer's confidence in the retailer is also likely to be compromised at such times. The warranty assistant is easily accessible online and it provides step-by-step instructions on how to proceed. The retailer receives additional points for reliability for using a tool devised by the consumer authorities.

Before these types of tools can be put together, there needs to be legislation to protect the consumer, case law to add more specifics to the legal provisions as well as Consumer Agency guidelines to provide a comprehensive treatment of the subject matter. For instance, the marketing of special offers has cases resolved through negotiation by the Consumer Ombudsman as well as market court decisions. This was followed by the Consumer Agency issuing guidelines on defects in marketing. The logical next step is the planning of an online tool.

The tools provided by the Agency online are particularly intended to help the employees and salespersons of small and medium-sized enterprises. The Current Issues in Consumer Law

online newsletter and the guidelines produced by the Consumer Agency, often in collaboration with industry organisations, are intended for experts who require background information on consumer law.

Industry-specific influence, co-operation with businesses, seminars on specific topics

SAVA (Planned industry-specific influencing) has become a regular tool in the Agency's arsenal of preventive measures. SAVA involves writing articles on consumer protection to industry publications, organising training events and preparing guidelines in collaboration with industry organisations.

In order to make the handling of consumer complaints faster and smoother, we have reached agreements with certain organisations and businesses to have the supervised entity assume responsibility for resolving individual cases. It then reports to the Consumer agency on how the matter was handled and what kinds of changes in systems and processes did the matter result in to prevent it from being repeated.

As scarce resources must be carefully allocated, the Consumer Agency has decided to focus on seminars on specific topics organised by the Agency itself. The goal of our seminars is to illustrate to the participants what the industry situation looks like in light of consumer reports. What matters require urgent responses and what aspects can the Consumer Agency and industry representatives co-operate on?

Co-operation does not require unanimity, but it does require a mutual willingness to act

The Agency's co-operation with organisations and businesses does not require unanimity, but it does require a mutual willingness to act. In the last few years we have seen both prime examples of assuming responsibility and frustrating inability to engage in constructive co-operation.

While a great deal of new kind of co-operation is done with businesses and organisations, the old tools are still useful as well: We can't effectively inform businesses and organisations unless we have case law on which to base our message. There are also businesses with whom working lines of communication can't be established, or businesses who compete by any means necessary, without regard for legislation. The consumer will certainly not benefit from unlawful practices by businesses. Instead, they often end up having to pay for it.

The assessment report highlights areas where legislation needs to be developed. We hope action will be taken soon in this regard. The welfare of consumers and the promotion of fair and healthy competition call for sufficient resources and effective tools for supervision. In addition to new preventive measures, traditional supervision is still required.

More information:

[Evaluation of the legal activities of the Consumer Agency](#) Ministry of Employment and the Economy publications 64/2009 (pdf file, 111 pages)

On the Consumer Agency's website:

[The Consumer Ombudsman's supervisory tasks](#)

[Basic surveillance requires carefully planned measures](#) (Current Issues in Consumer Law 6/2007)

[Warranty Assistant for Sellers](#)

[Consumer law guidelines](#)

[Materials for seminars on specific topics](#) (in Finnish)

New consumer protection legislation

Public Transport Act and EU Regulation on Rail Passenger Rights

The Finnish Public Transport Act and the EU Regulation on Rail Passenger Rights entered into force on December 3, 2009. The Act includes a provision concerning the operator's duty to give a quality promise regarding transport services. According to the paragraph on the Act's entry into force, the quality promises must be drafted and published by the end of 2011.

According to the EU Regulation on Rail Passenger Rights, the Finnish state rail operator VR must pay standard compensation when a train is over one hour late (25% of the ticket price when the train is at least one hour late, 50% of the ticket price when it is at least two hours late). In addition, the Regulation includes provisions concerning meals and refreshments, the provision of information, the rights of disabled persons and persons of reduced mobility etc. The scope of the Regulation does not cover district trains in the Helsinki region or rail services to Russia.

Compliance with the Regulation in Finland is monitored by the Transport Safety Agency Trafi, the Consumer Agency and the Consumer Disputes Board, each within their jurisdiction. The Consumer Agency monitors compliance with the Regulation from the perspective of the consumer collective. Individual disputes are handled by the Consumer Disputes Board.

Act on long-term savings with tax incentives

The new Act on long-term savings with tax incentives and related amendments to tax legislation entered into force on January 1, 2010. Under the new legislation consumers can make tax deductions not only based on voluntary pension insurance, but also other fixed pension saving plans. The savings agreement can be concluded with a bank, an investment firm or a fund management company. Businesses can begin offering these new savings products no earlier than April 1, 2010.

Decree on the minimum rate of functional Internet access as a universal service

The Decree on the minimum rate of functional Internet access as a universal service was issued on October 15, 2009. Effective on July 1, 2010, Internet access of at least 1 Mbit/s will be deemed a universal service. This means that telecommunications companies designated as universal service operators must be able to provide, from the beginning of July, reasonably priced and good quality Internet access of at least 1 Mbit/s to every permanent home or place of business. The average minimum rate of downstream traffic must reach at least 75% of the required minimum rate in any 24-hour measuring period. The rate must also reach at least 50% of the minimum rate in any 4-hour measuring period.

Regional State Administrative Agencies and the Centres for Economic Development, Transport and the Environment began operating on January 1, 2010.

Consumer and competition matters previously handled by State Provincial Offices have now been transferred to Regional State Administrative Agencies under their areas of responsibility of basic public services and legal rights. Their tasks include, among others, monitoring the marketing of consumer credit and price indications and supervising real estate agencies and package travel providers.

More information:

[Public Transport Act](#) (Finlex, in Finnish)

[EU Regulation on Rail Passenger Rights](#)

[The public transport law reform to improve passenger status was ditched half way through](#) (Current Issues in Consumer Law 7/2009)

[Act on fixed long-term saving](#) (Finlex, in Finnish)

[Decree of the Ministry of Transport and Communications on the minimum rate of functional Internet access as a universal service](#) (Finlex, in Finnish)

[Reform Project for Regional Administration](#) (Ministry of Finance)

A more accurate definition given for "unfair"

Chapter 2 of the Consumer Protection Act, with provisions on marketing, was amended in October 2008. The amended provisions state clearly what practices are considered unfair to consumers and thereby in breach of the Consumer Protection Act.

One significant aspect of the amendment was that Chapter 2 of the Consumer Protection Act was extended to cover not only how a business operates in marketing, but also how the business operates in customer relationship after an agreement with a customer has been concluded. The concept of customer relationship covers the handling of customer complaint as well as the practices employed in debt collection. The chapter also provides a new and more accurate definition of what practices are considered unfair to the consumer and thereby in breach of the Consumer Protection Act. The amendments were brought about by the EU Directive on Unfair Commercial Practices, which was adopted into Finnish legislation through this amendment of the Consumer Protection Act.

The legislative amendment has resulted in new case law at the Consumer Agency. The following provides examples of how matters brought to the Consumer Agency's attention have been resolved based on the amended legislative provisions.

"If you are not satisfied, we will give you your money back"

A company's marketing campaign promised unsatisfied customers their money back after a 14-day trial. However, the terms and conditions of the campaign included a clause limiting the compensation to 10 euros. The promise made in the advertisement, "If you are not satisfied, we will give your money back", conveyed the impression that all expenses arising from buying the product would be refunded against receipts.

The main message in advertising must convey an accurate impression of the contents of the offer. The terms and conditions of the offer may not include limitations that are in conflict with the main message.

As a result, the marketing campaign in question was deemed to be misleading and unfair. In the Consumer Agency's view setting a limit in euros for the promise of a refund was not acceptable. In order to be considered fair and acceptable, the compensation should have covered the total amount the consumer paid for the product, as evidenced by receipts.

The company agreed to discontinue using limits in euros when marketing products with the promise of giving dissatisfied customers their money back.

Insurance marketed with letters that look like invoices

A company marketed bicycle insurance by sending consumers letters that looked like invoices. The company also sent payment reminders to consumers who had not paid the "invoices" sent earlier.

Marketing may not be contrary to good practice and practices that are unfair to consumers may not be used. Marketing may not convey incorrect or misleading information to consumers. Putting pressure on the consumer in order to have them make the purchase decision is also in breach of consumer protection legislation.

Based on the above grounds the marketing of bicycle insurance by using faux invoices was deemed misleading and aggressive. The Consumer Agency made it clear that consumers do not need to pay these types of "invoices" or "payment reminders".

The company in question responded to the Consumer Agency stating that the insurance was marketed on its behalf by a telephone marketing firm. Its practices were not entirely appropriate. The company discontinued its partnership with the telephone marketing firm. The company also settled the matter with those customers who had reported the matter to the Consumer Agency and promised to refrain from that type of marketing in the future.

Electronic direct marketing despite the consumer declining it

A company sent a customer advertisements through his mobile phone despite the customer having declined this type of marketing several times.

The Act on the Protection of Privacy in Electronic Communications states that sending direct marketing is subject to receiving voluntary and specific approval for this from the consumer in advance. Under the Act, direct marketing is allowed when the recipients are existing customers of the company. The customer does, however, have the right to decline electronic direct marketing and the company must comply.

According to the marketing provision in the Consumer Protection Act, inappropriate and aggressive practices comprise persistent and unwanted sales contacts by telephone, telefax, e-mail or other distance communication means.

Based on these legislative provisions, the Consumer Agency notified the company that it must give consumers the opportunity to decline the use of their contact information for direct marketing purposes. The company must also include information in each direct marketing message on how the consumer can decline the marketing in question. In addition, the Consumer Agency required that the company comply with requests to decline direct marketing made by consumers.

Using telephone numbers subject to surcharges in debt collection

A debt collection company used a telephone number subject to surcharges as its customer service number.

The Act on the Collection of Debts states that debt collection may not incur unreasonable costs to the debtor. According to the Act, the debtor must pay for the costs of sending debt collection letters and preparing a payment plan. Incurring costs other than those specified in the legislation is deemed to be contrary to good collection practices and in breach of law. Good debt collection practice also calls for the company to encourage the debtor to pay off the debt. This is also important from the perspective of the company's social responsibility. A debtor often contacts the debt collection company by telephone. Calling a telephone number subject to surcharges, however, increases the costs borne by the debtor and makes the debtor less inclined to contact the debt collection company.

The Consumer Agency resolved the matter based on both the Act on the Collection of Debts and the amended provisions of Chapter 2 of the Consumer Protection Act. Debt collection is considered part of the customer relationship, and as such inappropriate practices are not allowed. A practice may be deemed inappropriate e.g. if it is contrary to generally acceptable appropriate business practices. Using a customer service telephone number subject to surcharges for debt collection was deemed to be inappropriate on these grounds

The debt collection company discontinued the use of the customer service number subject to surcharges. In conjunction with the case in question, the Consumer Agency notified the debt collection industry of the guidelines it issued. The guidelines state that using telephone numbers subject to surcharges is contrary to good debt collection practice.

More information:

[Marketing and practices in the customer relationship \(Consumer Agency's website\)](#)

[Council of State Decree on Inappropriate methods in marketing and customer relationships \(Finlex, in Finnish\)](#)

The Services Directive and the Act on the Provision of Services

The EU Services Directive came into effect on December 28, 2009. In Finland the implementation of the Services Directive has comprised, among other things, the following:

- drafting a general law on the provision of services (entered into force on December 28, 2009)
- establishing a single point of contact for service companies on the EnterpriseFinland website (laita tästä linkki keskitettyyn asiointipalveluun)
- establishing an administrative point of contact at the Consumer Agency

The Directive requires that member states offer their citizens information on general consumer protection regulations and advise them on who to turn to for assistance. In Finland these services have been established for quite some time:

- [Information on consumer protection](#) (Consumer Agency website)
- [Instructions for making complaints and other consumer advice](#) (Consumer Agency website)
- [Information on and instructions for cross-border trade](#) (European Consumer Centre website)

The service provider's duty to provide information is specified in Chapter 2 of the Act on the Provision of Services:

Paragraph 7: Obligation to give information

In addition to the provisions elsewhere in the law on obligations to give information, the service provider must provide the recipient of the service with the following information:

- 1) the service provider's name and legal form;
- 2) the service provider's address, e-mail address and other contact information for the recipient to use in the event of directing a complaint to the service provider or requesting information concerning the service;
- 3) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;
- 4) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority;
- 5) the service provider's VAT identification, if the provider exercises an activity which is subject to VAT;
- 6) in the case of regulated professions, the service provider's occupational title and information on the EEA member state where the title was awarded and on the professional body or similar institution with which the provider is registered;
- 7) standard terms of contract used by the provider, if any;
- 8) the service provider's terms of contract concerning the court of jurisdiction and applicable law, if any;
- 9) the existence of an after-sales guarantee, if any, not imposed by law;

10) the price of the service, where a price is pre-determined by the provider for a given type of service;

11) the main features of the service, if not apparent from the context;

12) information on liability insurance or collateral, if any, and their geographical scope as well as the contact information for the insurer or guarantor.

Paragraph 8: Information to be provided on request

The service provider must provide the recipient with the following information on request:

1) where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;

2) as regards the regulated professions, a reference to the professional rules applicable to the provider and how to access them;

3) information on their multidisciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest;

4) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;

5) information on the recipient's recourse to a non-judicial means of dispute settlement and how to access detailed information on the characteristics of, and conditions for, the use of these.

Paragraph 9: Providing information in documents describing the service

The service provider must give the information referred to in Paragraph 8(3) in all documents describing the services in detail.

Paragraph 10: Provision of information

The service provider must make the information referred to in Paragraph 7 available to the recipient:

1) at the location where the service is offered or the contract is concluded;

2) on the Internet at the address indicated by the service provider;

3) in brochures and other documents pertaining to the services being offered; or

4) in another manner comparable to items 1-3 above.

The provider must supply the information referred to in Paragraph 1 in good time before conclusion of the contract or, where there is no written contract, before the service is provided.

The goal of the Directive is to expedite and facilitate the expansion of operations by businesses in the internal market, both in terms of establishing a company in another EU member state and engaging in business directly in another member state. Some of the key methods of achieving this are reviewing and expediting processes concerning licences and permits, increasing the supply of electronic service channels as well as collecting information for businesses to single points of contact. Co-operation between the authorities that control licences and permits will increase.

The Act applies to all service providers who are entered in the Finnish trade register. The Act also applies to service providers based in other EU member states who offer services in Finland on a temporary basis without being entered in the Finnish trade register. All service providers have a duty to provide information on themselves and the services they sell. According to the Services Directive, the Act does not apply to certain industries, such as financial services, insurance services, taxi services, healthcare services and pharmacies.

More information:

[Act on the Provision of Services](#) (Finlex, in Finnish)

[Service directive enforced: services - point of single contact to open](#) (Ministry of Employment and the Economy)

[Services Directive](#) (European Union Internet portal)

Dalli appointed European Commissioner for Health and Consumer Policy

John Dalli from Malta has taken his post as the Commissioner responsible for health and consumer policy in the European Commission. Dalli has stated that his priorities are increasing communication aimed at consumers, ensuring the availability and reasonable price of essential services as well as safeguarding consumer rights in the digital environment.

The Commissioner considers it justified to continue the dialogue on class action legal proceedings and the development of the Consumer Scoreboard. Dalli also finds it important to develop more effective supervisory means for fighting counterfeit products and monitoring the implementation of consumer protection in that context.

Dalli expressed these views in writing on January 7 to the Environment, Public Health and Food Safety Committee of the European Parliament. In his response he first dealt with matters related to health and food safety, followed by consumer issues. Dalli fielded questions from MEPs on January 14.

Changes in the Directorate General for Health and ConsumersThe Consumer Contract and Marketing Law (SANCO B.2) will be moved from the Directorate General for Health and Consumers to the Directorate General for Justice, Freedom and Security

The European Parliament approved José Manuel Barroso's second commission in a vote on Tuesday, February 9, 2010.

More information:

[EU Consumer Policy](#) (European Union web portal)
[The Directorate General for Health and Consumers](#)
[Consumer Markets Scoreboard](#)

Establishing co-operation between EU authorities in cross-border supervision

The network of national enforcement authorities responsible for implementing EU consumer protection regulations has been operational for a little over three years. The Finnish Consumer Agency acts in the network both in the role of a competent authority and as a liaison office. The obligation on EU member states to provide mutual assistance is a useful means of protecting consumer rights in cross-border trade.

The objective of the Consumer Protection Cooperation network is to improve compliance with consumer protection legislation in the EU. Practical enforcement measures comprise requests for information, warnings, requests for implementation and sweeps. Member states must report observed infringements to a joint database. A member state must offer its assistance to another state's supervisory authority in cases where the company in question operates in several countries. The aim is to make the implementation of the decisions made by supervisory authorities more effective and to prevent companies from taking practices that have been found to be in breach of law in one member state and continuing to employ them in another member state.

In the three-year period from 2007 to 2009 the Consumer Agency has received approximately ten requests for assistance per year. The Consumer Agency's experiences of the co-operation are chiefly positive. EU-wide sweeps have also proved to be an effective means of intervention in problems specific to certain industries. Sweeps will continue in the future as necessary.

In the most recent case of co-operation with network partners, the Consumer Agency assisted the German consumer authorities in a matter related to the marketing of mobile content and contract terms in distance selling. According to the German consumer authorities who made the request for enforcement measures, the German-language website of Nokia Oyj featured misleading information on the consumer's right to cancel an agreement made by distance selling. The Consumer Agency requested the company to investigate the matter. Nokia Oyj responded by notifying the Agency that the website texts that had caused problems have since been revised. The German authorities that made the request accepted the company's response and the case was closed.

Members of the CPC network comprise EU and EEA member states. The EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws was issued in 2004. The Regulation took effect in 2006.

More information:

[The Consumer Ombudsman's surveillance tasks](#)

[Implementation of cooperation between national authorities responsible for the enforcement of consumer protection laws, report by the Commission on July 2, 2009 \(pdf\)](#)

Supreme Court precedent provides detail on the conclusion of a distance selling agreement

A precedent handed down by the Supreme Court provides additional detail on the conclusion of a distance selling agreement between a consumer and a business. An agency agreement concerning a used car was deemed to have been concluded as a distance selling agreement, thereby entitling the consumer to cancel it.

The consumer had completed an assignment form on the website of a company that acts as an agent for used cars from the German market. The information entered in the form specified what vehicle the consumer was interested in. In response to the submission of the form, the company contacted the consumer by e-mail and telephone. Based on this correspondence, an agreement on the agency assignment for a car and a horse trailer was concluded between the consumer and the business. Subsequently both parties to the transaction deemed that the agreement was void, each with their own grounds. After this, the dispute was over whether the consumer was liable to compensate the business for the costs of preparatory work for delivering the service.

The consumer has the right to cancel a distance selling agreement

According to the Consumer Protection Act, the consumer is entitled to cancel a transaction within 14 days of confirmation of the transaction. Confirmation of the transaction is subject to the contract terms being provided to the consumer.

In the view of the Supreme Court the agreement in question was a distance selling agreement as the business had marketed its services online and the agreement between the consumer and the business had been concluded by e-mail and telephone. As the business had not provided the consumer with confirmation of the transaction, he was entitled to cancel the agreement at no cost. The Supreme Court rejected the company's claim for compensation from the consumer based on taking action to fulfil the agreement and the costs incurred as a result of the cancellation of the assignment.

Statutory right of cancellation does not extend to traditional trade

In distance selling the consumer usually has to make the purchase decision based on only pictures and text, with no opportunity to try the product. As a result, legislators have included the right of cancellation in the legal provisions governing distance selling. While many brick-and-mortar businesses voluntarily grant the right of cancellation to their customers, there is no statutory right of cancellation in traditional trade.

Distance selling comprises, among other things, telephone sales, sales by post, online sales and television sales.

The Supreme Court handed down its precedent on December 4, 2009.

More information:

[Supreme Court precedent](#), in Finnish

[Consumer Protection Act, Chapter 6, home door-to-door selling and distance selling](#) (Finlex, in Finnish)

Settlement reached with a house manufacturer on the liability for defects

The Consumer Agency and ÄlvsbyTalo Oy have reached a settlement on January 8, 2010. The dispute was over the customers' right to a price discount based on defects in the delivery of prefabricated houses.

A customer had refused to pay a sum of EUR 16,000 to the company for the delivery of a prefabricated house. The customer refused to pay on the basis of defects in the delivery. The Consumer Disputes Board had earlier recommended that the company grant the customer a discount of EUR 12,000 as compensation for the defects. Despite the recommendation, the company took continued measures to collect the original sum of EUR 16,000. As the company had repeatedly failed to comply with the Consumer Disputes Board's recommendations, the Consumer Agency decided to assist the consumer in settling the dispute. In the end, the dispute was settled as recommended by the Board.

The Consumer Disputes Board received a total of 57 complaints concerning ÄlvsbyTalo in the past decade. There are currently 11 complaints pending. The company has failed to comply with the Consumer Disputes Board's decisions a total of 9 times. In 2009 the Consumer Agency received four complaints concerning defects in prefabricated houses manufactured by the company.

The matter in which the Consumer Agency provided settlement assistance has been pending in Lahti District Court since November 2009.

Even an experienced business may provide poor customer service

Last year the Consumer Agency was contacted a number of times concerning defective headsets in the Nokia 5800 Xpress mobile phone, the Nokia Music Store and the Unlimited Streaming service. Good customer service, complaint handling and bearing the liability for defects are key when the consumer notices a defect in a purchased product or service.

A consumer had subscribed to the Unlimited Streaming service on a non-fixed term agreement. The service did not work. Later it was discovered that the cause of the problem was incompatibility: the service did not work on a certain version of the Windows operating system.

The Consumer Agency called on the company to disclose the technical requirements for using the service more clearly in the future. The company also needs to organise its customer service appropriately.

With regards to the defective headsets included with a mobile phone, the company responded by stating that its component supplier had taken steps to remedy the problem on the production line. Similar problems should not arise in the future. The company has also issued new guidelines to its customer service function and its authorised service centres.

With regards to the Nokia Music Store, the Consumer Agency reminded the company that technical copy protection methods may not unreasonably restrict the user's freedom to e.g. copy content for his own use. Technical copy protection must also be clearly disclosed in marketing the service.

Read more on the Consumer Agency's website:

[Good customer service](#)

[Product defects and warranty](#)

The service chain in public healthcare services must be clarified

The work to clarify the legal position of customers of public healthcare providers must continue. The Consumer Agency is calling for the entire service chain, from marketing to dispute resolution, to be analysed.

A report commissioned by the Ministry of Justice in September 2009 also indicated that the legal protection of the customers of public services is less comprehensive than that of the consumer. At the municipal level the position of users of the same company's services may vary depending on whether the company is supplying the service as an outsourcing partner of the municipality or the consumer is buying the service directly from the company.

Defective service provided to a customer of a public service cannot be justified on the grounds that the customer of a public service does not pay the market price for the service. The consumer and the public service customer are equally entitled to receive service that meets certain quality criteria. The proportion of the cost of public services that is not covered by the fees paid by customers is funded by tax revenue, which means that the citizens using the services contribute to them as tax payers.

Ministry of Justice report provides a starting point for further work

The Ministry of Justice report mentions the following aspects where the position of the customer of a public service needs significant improvement:

- lack of regulation concerning the marketing of public services and the supervision of that marketing,
- there are no clear rules governing the customer's right to receive monetary compensation based on service defects and
- there is a lack of advisory services comparable to consumer advisers as well as a lack of a body for dispute resolution comparable to the Consumer Disputes Board.

The Consumer Agency finds that the measures proposed in the report are a good starting point for the continuing work to improve the legal position of public service customers. The Agency considers it important that the entire service chain, from marketing to dispute resolution procedures, is assessed with the customer's position in mind.

The report commissioned by the Ministry of Justice compared the legal position of the public service customer and the consumer customer of a comparable private service. The survey covered services produced by a public corporation itself, outsourced services and services acquired against a service voucher.

The Consumer Agency issued a statement on the position of the customer of public healthcare services to the Ministry of Justice on November 30, 2009.

More information:

[The position of the customer of public healthcare services \(2009\). Report on consumer law Ministry of Justice reports 4:2009 \(pdf file, 86 pages, in Finnish\)](#)

[The legal position of the customer of social and health services - comparison between private and municipally arranged services \(Consumer Agency publications 2006, pdf file, 26 pages, in Finnish\)](#)

No new private copying levies

In the view of the Consumer Agency, expanding the base of the private copying levy system would lead to a situation that is unfair to consumers and contrary to the system's principles.

According to the Copyright Act the private copying levy must be set at a level that is considered appropriate compensation for copying a work for private use. Aspects to consider in setting private copying levies include, among other things, the potential harm suffered by the copyright holder and the extent to which technical copy protection is employed.

In October 2009 the Ministry of Education organised a roundtable to ponder the future of the system of private copying levies. The Consumer Agency participated in the discussion and later responded to the written questions posed in the Ministry's background memorandum. The Consumer Agency considers it a highly positive development that the system of private copying levies is now examined also from the consumer's perspective.

Private copying levies were designed for the analogue world of the 1980s

The system of private copying levies was devised with the analogue world of the 1980s in mind. Back then home copying, for instance recording tracks played on the radio on a cassette, was an alternative to purchasing a recording from the store. This had the effect of reduced revenues for authors. In today's world there is less correlation between copying and sales. For instance, consumers may save television shows on a digital set-top box simply to watch them later and then delete them to free up space on the storage media. The Consumer Agency argues that the private copying levy is not justified in the event that private copying does not result in actual damages to copyright holders in the form of e.g. reduced sales.

In today's digital environment the consumer often ends up paying levies to the copyright holder several times for the same content. For example, the consumer may first buy music from an online store. After this, the content that has already been paid for once is saved on storage media and/or a portable music device for which the consumer has also paid private copying levies for when purchasing the device in question. The Consumer Agency's view is that having consumers pay multiple fees is not the point of the system. Expanding the base of the private copying levy system further would lead to a situation that is unfair to consumers and in contrast to the principles of the private copying levy system itself.

Levies should not be tied to devices or storage capacity to a greater extent than at present

The Consumer Agency is not in favour of tying the private copying levy to certain devices or their storage capacity to a greater extent than at present. This could lead to a situation where devices fall within the sphere of the copying levy once and then are never removed.

Collecting the private copying levy for the copying of works that feature technical copy protection is also not considered justified. The determination and amount of the levy must also become more transparent in the future.

Commission initiates discussion on the user's right to works

The Consumer Agency has also issued a comment in response to the European Commission's Communication and Reflection Document concerning the distribution of copyrighted materials and improving their availability. The documents discuss issues related to technological protection, user-created content and creative content.

Technological protection

The copyright holder is entitled to protect his work with the use of technological measures. Consumers, for their part, are entitled to privately copy / reproduce and to listen and view legally purchased works. The Consumer Agency noted that technological protection measures should not circumvent the consumer's right to use a legally purchased work.

User-created content

Drawing the line between modifying a copyrighted work and creating an altogether new work is difficult, particularly in the digital environment. In the Consumer Agency's opinion the end users of materials must, in the future, be given more freedom regarding materials they have legally purchased and paid for. If content creation is restricted, both the electronic trade and the consumers suffer.

The Commission's Reflection Document "Creative Content"

The Consumer Agency supports efforts to clarify and harmonise exceptions and limitations of copyright at the European level. This would help clarify the consumer's legal protection: What can a consumer do with legally purchased materials without having to fear being guilty of copyright infringement.

The Consumer Agency has issued the following statements on the matter to the Ministry of Education (in Finnish): [Private copying levies from January 1, 2010 onwards](#), pdf (issued on October 13, 2009)

[Developing the system of copyright levies](#), pdf (issued November 9, 2009)

[European Commission Communication "Copyright in the Knowledge Economy" and the Reflection Document "Creative content"](#), pdf (published November 25, 2009)

No purchase without due consideration

Last autumn the Finnish Communications Regulatory Authority requested a statement from the Consumer Agency regarding the designation of universal service providers and the reasonable pricing of universal service products. This is not the first time the Consumer Agency has issued statements on legislation and decisions concerning universal services, emphasising aspects such as the need to take the needs of special consumer groups into consideration.

The Communications Market Act provisions on universal services are intended to ensure that telephone and internet services at a certain basic level are offered on reasonable terms to all users. In other words, it is a question of essential services that must be guaranteed for all citizens. A universal service telephone subscription can be implemented by using any suitable technology. Wireless networks are increasingly used to offer telephone services. In the view of the Consumer Agency it is important that if the user is offered a reasonably priced telephone service using a wireless network, it must be a suitable and effective alternative for the needs of every citizen. Consumers must also be offered devices that are easy to use as well as guidance on how to use their telephone service.

The needs of special groups, such as the elderly, must also be sufficiently taken into consideration. For instance, a senior citizen may not *automatically* end up paying a higher price for a landline network subscription. This can easily happen if there are no easy-to-use telephones on the market. Deciding on the right service for oneself should be based on a conscious decision.

Monitoring pricing and the bearing of liability for defects

The Consumer Agency argues that the pricing of universal service providers should be monitored on a regular basis. Building new landline services and repairing old ones may incur costs to consumers. The regional price differences in the monthly fees charged by universal service providers should not be excessive in order to avoid inequality between consumers.

The point of departure is that the company is committed to delivering the promised service. In the experience of the Consumer Agency, telecommunications companies, for instance, haven't always been willing to repair a customer's defective landline telephone service and instead have offered a wireless service without even discussing the matter with the customer. As a rule, a business may only avoid the obligation to repair the defect if it can prove that it would incur unreasonable costs from doing said repairs.

Broad assignment procedure seen as positive

In January the Finnish Communications Regulatory Authority assigned the telecommunications companies that are obligated to offer internet subscriptions to consumers as a universal service. The Consumer Agency is satisfied to see the Communications Regulatory Authority employ the designation procedure in such a broad manner. The need to designate universal service providers is significantly more extensive from July 1, 2010 onwards, as that marks the time when an internet connection with a minimum speed of 1 Mbit/s will be considered a universal service.

This means that telecommunications companies designated as universal service operators must be able to provide, from the beginning of July, reasonably priced and good quality Internet access of at least 1 Mbit/s to every permanent home or place of business.

In its statement concerning the assignment of universal service providers, the Consumer Agency raised the following issues that were not adequately covered in the draft decision of the Finnish Communications Regulatory Authority:

In assessing the assignment need, more emphasis should be given to the fact that having fair contract terms is one of the key criteria. The use of fixed-term agreements and its effect on the designation of universal service providers in a certain area must be monitored. The Consumer Agency also emphasised the importance of monitoring the price level and quality of Internet connection services. The current level of service, particularly with wireless connections, has not always lived up to promises and the level of service has not been sufficiently specified in contract terms. In designating universal service providers, advance consideration should be given to how various technological methods of implementation impact the fairness of the price of an Internet connection now and in the future.

The Consumer Agency issued its statements on the assignment of universal service providers and the assessment of the fairness of retail pricing in universal service products to the Finnish Communications Regulatory Authority on November 23 and December 7, 2009.

More information:

[Draft decision on the designation of universal service providers](#), pdf (statement to the Finnish Communications Regulatory Authority, November 23, 2009, in Finnish)

[Assessment of the fairness of pricing universal service products](#), pdf (statement to the Finnish Communications Regulatory Authority, December 7, 2009, in Finnish)

[Improvements to consumer protection under the Communications Market Act – will there be fundamental changes?](#) (Current Issues in Consumer Law 7/2009)

[Even the wireless surfer deserves a quality connection](#) (Current Issues in Consumer Law 3/2009)



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.

Additional information: www.kuluttajavirasto.fi

A banner for the web magazine. It has a blue background with a white diagonal line. The text 'Current issues' is in a white serif font, 'WEB MAGAZINE' is in a white sans-serif font, and 'IN CONSUMER LAW' is in a large, bold, white sans-serif font.

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