

Consumer Ombudsman's guidelines

LOYALTY MARKETING AND LOYALTY PROGRAMMES

The goal of loyalty programmes is to get consumers to consolidate their purchases and build long-term customer loyalty. Consolidating purchases can be problematic from the viewpoint of consumer protection and efficient competition, however, if consumers make purchases simply on the basis of bonuses, without comparing products and businesses. For this reason marketing must provide customers adequate information to support decisions and comparisons. The contract terms in a loyalty programme must be clear and fair to consumers.

Loyalty marketing emphasizes the advantages of consolidating purchases. Loyalty programmes have traditionally given consumers bigger bonuses (rewards or rebates) the more they buy. Consolidating purchases without making comparisons can lead to market concentration and reduced competition, however. Consolidating purchases on the basis of bonuses is not necessarily economical for consumers.

In order for consumers to have a

real possibility to evaluate the benefits of a loyalty programme in their particular case and make intelligent decisions, they must be supplied sufficient information concerning the content of the programme and what special offers are available at different times.

Loyalty programmes and privacy

With the help of loyalty programmes businesses receive information on customers' consumption habits and purchasing behaviour. According to the Data Protection Ombudsman, consumers must be asked to give their consent to the use of personal data when they join a loyalty programme. Any procedure with regard to marketing or contract terms that does not meet the requirements in legislation concerning the processing of personal data also violates the Consumer Protection Act.

Consumers' personal data can be used with their consent in planning the product range and target groups

for marketing, for example. In giving consent to the use of personal data a consumer receives the right to bonuses based on the amount of purchases. If consumers do not give their consent, they can only receive other benefits such as reduced prices on particular products but do not accumulate bonuses. The processing of consumers' personal data plays a key rule in many loyalty schemes.

When consumers give their consent to the processing of their personal data, information can in principle be used by any company in the same group or by other members of the loyalty programme through a joint customer register. Protecting privacy is important to many consumers, however. Since receiving benefits may require that a consumer consent to the processing of personal data, consumers should be given a proper chance to weigh the benefits of joining a programme in relation to consenting to the processing of their personal information.

Loyalty programmes and consumer mobility

A loyalty scheme should always be understandable and clear. If a scheme is so complex that it confuses consumers about a business's price level and makes it difficult for them to compare prices, its use in marketing can be considered unfair under the Consumer Protection Act. If a scheme is expanded so that consumers can get bonuses by concluding contracts with businesses in different fields, the risk that they will fail to compare prices and quality increases. The risk is large particularly in contracts for continuing services. This can reduce consumer mobility. Precise requirements should therefore be set for the marketing of continuous contracts as part of a loyalty scheme. Such contracts should not be marketed to customers simply on the grounds that they increase bonuses.

If a product with a complicated price structure, such as a mobile phone subscription, is combined with a complex loyalty scheme, this makes it more difficult for consumers to understand and compare costs related to purchasing and using the product. The Supreme Court noted in decision 2006:6 that to ensure healthy price competition and consumers' possibility to make intelligent decisions, it is essential that pricing principles and costs resulting from using a product are expressed in a way that is as clear, transparent and comparable as possible.

Consumers should be encouraged to make comparisons. To support this they need fair contract terms that do not impede consumer mobility unreasonably and also clear and easily understandable information. In Britain, for example, emphasis has been placed on giving customers adequate information on store card credit services. A consumer who has a store card and needs credit may accept

credit services without exploring other credit options that are available on the market. The Competition Commission ordered that store card credit providers must, where annual percentage rates are 25 per cent or above, warn cardholders on monthly statements that cheaper credit may be available elsewhere. The goal is to encourage consumers to compare different credit options. This example shows how different measures can be taken to ensure consumer mobility and thus efficient markets.

Another example of the significance of information when it comes to increasing consumer mobility is presented in a study that was conducted by the Nordic Council of Ministers concerning consumer mobility on financial markets. This study showed that most financial institutions use some type of loyalty programme that makes it more difficult to understand the price level of financial services. The study notes that consumer mobility on financial markets is lower than on other markets. In order to increase market transparency and consumer mobility, the study recommends that consumers should be sent a yearly statement showing how much they have paid for basic banking services during the year, among other things.

One way to increase consumers' freedom of choice is to pay bonuses that have been earned in a programme in the form of cash. Then consumers could freely decide where and how they wish to use their bonuses. Bonuses paid in cash would not bind consumers to the shops in the programme and consumers could make quality and price comparisons more broadly. Furthermore, bonuses paid in cash would not expire, unlike bonuses tied to store cards, for example.

Definitions and field of application

These guidelines review requirements concerning loyalty marketing and the terms in a loyalty programme. In these guidelines "loyalty programme" means a contract between a business and a consumer in which the business promises to provide the consumer various benefits on certain conditions in return for loyalty and the possibility to process personal data. Benefits can be bonuses based on the amount of purchases, special offers limited to programme members or other benefits such as club nights, tours etc.

The guidelines concern broad loyalty programmes that include businesses in different fields as well as shops' individual schemes. In broad loyalty programmes businesses obtain consumers' consent to process information concerning purchases so that they can plan their product range and target groups for marketing. In the simplest loyalty schemes, consumers may collect stamps on a card and on this basis receive a discount or other benefits later on, for example. Both types of scheme involve a contract between the consumer and the business.

The provisions concerning marketing that are contained in Chapter 2 of the Consumer Protection Act also apply to loyalty marketing. The aim of these provisions is to prevent the unfair influencing of consumers and make sure that marketing provides adequate information to support intelligent purchasing decisions. Another aim is to ensure the transparency of markets. Consumers should easily be able to compare the properties and prices of products that are offered to them.

Chapter 2 section 4 of the Consumer Protection Act concerns the marketing of additional benefits and special offers, which includes loyalty marketing. According to this section, if several

consumer goods or services are being marketed at one price or so that the purchase of a good or service entitles one to another good or service at a reduced price or to another specific benefit, the following information must be clearly noted in marketing:

- the content and value of the offer
- for goods and services marketed at one price, their individual prices, unless the individual price of a good or service is less than 10 euros
- the conditions of the offer, especially its duration and the volume restrictions and other restrictions applying to it.

The Government bill (79/2000) stated that this provision is intended to improve competition benefiting consumers and to increase the openness of marketing and the amount and level of the information that must be supplied to support consumers' decisions.

The marketing of benefits is also evaluated on the basis of Chapter 2 sections 1 and 2 of the Consumer Protection Act. Marketing must not be misleading or use unfair practices such as allowing additional benefits to play a dominant role.

On the basis of the Decree on the Indication of the Prices in Marketing Consumer Products, loyalty marketing as well as other marketing must indicate selling prices in a clear and simple way so that they are easy for consumers to understand and notice.

Chapter 3 section 1 of the Consumer Protection Act prohibits unfair contract terms.

These guidelines do not apply to non-profit organizations that do not offer, sell or market consumer goods to consumers in order to obtain commercial gain and therefore do not fall within the scope of the Consumer Protection Act. For instance, membership of a cooperative or non-

profit association is not a consumer good. If a member of a cooperative can purchase consumer goods that are generally available on the market or obtain benefits related to the purchase of consumer goods, this activity falls within the scope of the Consumer Protection Act and these guidelines apply to it.

In these guidelines "bonus" means a rebate that a consumer receives according to the value of purchases or the use of paid services. Since in order to receive a bonus a consumer must first purchase goods, a bonus falls in the category of another specific benefit as referred to in Chapter 2 section 4 of the Consumer Protection Act. Bonuses are regarded as additional benefits that are obtained when a product is purchased and are subject to the same provisions as additional benefits. Immediate discounts are not included in the definition of a bonus.

LOYALTY MARKETING

Marketing of a loyalty programme contract

The marketing of a loyalty programme contract must include information that is necessary for consumers' financial safety (Chapter 2 section 2 of the Consumer Protection Act). An example of this kind of marketing is "Join our programme and get valuable benefits". In this case marketing specifies a particular product, which is a loyalty programme contract.

- The marketing of a loyalty programme contract must supply consumers adequate information

concerning the content of the contract, regardless of what medium is used.

- Does getting benefits require that consumers give their consent to the use of information on purchases or other personal data?
- Information concerning the price or any membership fee must be supplied in a clear way so that it is easy for consumers to understand and notice.

Is there any other condition for receiving benefits, such as a minimum level of purchases?

If the marketing of a loyalty

programme contract refers to bonuses that can be earned by a customer and these are not in cash, in what form are they given? Consumers must be supplied information concerning the issuing of vouchers that can be used to pay for purchases, for example.

Marketing must also tell consumers in a clear way where they can get further information about benefits, other conditions regarding a loyalty programme and the processing of personal data. Suitable channels, depending on how a contract is concluded, can be a brochure distributed in a shop or a business's website.

Marketing must not mislead consumers

Since marketing cannot present all contract terms, it is important to make sure that the information that is supplied does not give a misleading picture. Chapter 2 section 2 of the Consumer Protection Act prohibits the conveying of misleading information in marketing. Marketing is misleading if it only tells consumers about benefits and fails to mention the processing of consumers' personal data or key information regarding consumers' obligations as contract parties. Marketing should not emphasize benefits in such a way that consumers are likely to focus all their attention on them.

Although it is enough for marketing to supply necessary information, customers should be given a real possibility to study complete contract terms before they conclude a contract. See the section on contract terms in a loyalty programme for more about complete contract terms.

Image marketing and use of a loyalty programme's logo

An advertiser does not have to supply information on a loyalty programme or related offer in the case of corporate image marketing or a mere mention that an advertiser or product belongs to a loyalty programme.

Corporate image marketing does not offer a specific contract but only refers to a loyalty programme in a general way without giving detailed information on the content of the programme. If an ad says that 1% of the revenue from a loyalty programme goes to charity, for example, it does not need to supply other information about the programme.

Slogans such as "It pays to be a member", "Get bonuses from us" or "Together we provide more" may also

be used in advertising. If marketing in any way refers to the content of a loyalty programme and particularly benefits, for example by encouraging consumers to join and get super benefits, this constitutes the marketing of a specific loyalty programme and the necessary information must be supplied concerning the content of the contract.

There is no need to supply detailed information if marketing does not offer a specific loyalty programme. This includes simply indicating that an advertiser or product belongs to a loyalty programme by including a picture of a loyalty card or a similar slogan or tune, for example. If the marketing of a loyalty programme contract says anything about bonuses, discounts or other concrete benefits, the necessary information must be supplied.

Comparative advertising regarding loyalty schemes can easily be misleading

According to Chapter 2 section 4a of the Consumer Protection Act, comparative advertising must not be misleading. If broad loyalty programmes are compared, it is very difficult to avoid misleading marketing, however. Comparisons between loyalty schemes are not even relevant, since schemes themselves are not decisive for consumers' decision-making. In order to get programme benefits, a consumer must first purchase a product or products, so the business's and possible partners' general price level influences the benefit of the loyalty scheme to the consumer. In practice it may be impossible to present sufficiently comprehensive and up-to-date research concerning this.

Making comparisons is made even more difficult by the fact that loyalty schemes are not alike.

Benefits depend on different things and schemes include different kinds of businesses. Each consumer's own purchasing behaviour also influences what needs to be compared.

Comparative marketing also includes the use of superlatives and similar expressions, such as "Best benefits" or "More bonuses" or "Top rewards".

All customers cannot be members of a loyalty programme

Special offers for members of a loyalty programme must be limited to a specific group of consumers. They must be different from special offers that are available to all consumers. In other words benefits for members of a loyalty programme must be real. This is not true if all or nearly all customers can purchase products at the same price. In this case the advertised price is simply the business's normal price and it is misleading to imply that it is a special benefit for members of a loyalty programme.

In decision 1993:017 the Market Court prohibited marketing in which advertised discounts were promised to consumers immediately after they obtained a loyalty card without product restrictions, since the discount benefit was in fact marketed generally to all consumers.

Requirements concerning the marketing of programme benefits also depend on whether marketing is aimed at all consumers or is aimed only at members of a loyalty programme.

Presenting prices and benefits in marketing that is aimed at all consumers

Marketing that is aimed at all consumers can involve the marketing of a loyalty programme contract or the

marketing of goods and services. If the main message in marketing concerns specific products, there is no need to supply detailed information on a contract. In this case marketing may mention the price for members of a loyalty programme, but this should not dominate advertising. In marketing current consumer goods, for example, attention should not be drawn primarily to prices for members. Marketing can also mention discounts for members on the weekend, for example, provided this is not the main message.

Marketing that is aimed only at members of a loyalty programme

Special prices or special offers for members of a loyalty programme may be emphasized only in marketing that is aimed at members and not distributed to the general public, such as magazines published in connection with loyalty programmes.

Adequate and clear price information concerning partners' services

If partners' services are marketed to consumers in general or to members of a loyalty programme, marketing must provide clear price information and any other information that is necessary for consumers' financial safety. There is no need to supply detailed information if marketing simply mentions the names of partners in a loyalty programme.

Any benefit or bonus related to a partner's product or service may not be the main message in marketing that is aimed at all consumers. An advertising message such as "Buy electricity from X and get more bonuses" does not comply with the law, for example. Bonuses and other benefits can be mentioned in marketing that is aimed

at all consumers provided they do not play a dominant role and normal price information is supplied for the product that is being advertised.

Additional benefits must not dominate marketing at the expense of price and product information, and this also applies to the marketing of partners' services to members of a loyalty programme.

Bonuses must not dominate marketing

Additional benefits must never dominate marketing. What is important for consumers is how much they pay for purchases after receiving a rebate. Bonuses should not be emphasized because overall economy depends not just on bonuses but on a business's general price level as well as the price of the products and services that a consumer purchases. The principle is the same as in the advertising of discounts: the size of the discount is not what counts, but the final price that the consumer must pay.

Bonuses that are paid on the basis of purchases should not play a dominant role in marketing that is aimed only at members of a loyalty programme, either. According to established case practice, marketing that is dominated by additional benefits is unfair and is prohibited on the basis of the Consumer Protection Act (Supreme Court decisions 2006:6 and 2005:81, Market Court decision 1999:016). Bonuses are regarded as additional benefits. In order to receive a bonus a consumer must first purchase products and services. Like an additional benefit and in contrast with a discount, a bonus does not directly concern the actual product or service.

Bonuses are part of businesses' pricing within the framework of a loyalty programme. Nevertheless bonuses may not dominate marketing

so that they divert consumers' attention from actual products and the total cost of purchases. The Supreme Court noted in decision 2006:6 that call time, which is also part of the pricing of a product, may not be presented in such a way that the consumer is likely to focus attention on call time rather than the product and operating costs.

Evaluating whether bonuses dominate marketing depends on the overall impression created by advertising, including visual and verbal elements. Bonuses must not be emphasized at the expense of the product or service. Benefits must not be presented in such a way that consumers' attention is drawn to matters of secondary importance and they are less likely to compare products carefully and make intelligent decisions. Marketing that draws consumers' attention to the amount of benefits or how benefits are accumulated while leaving the products whose purchase is required to obtain benefits in the background is unfair.

Another essential thing is whether consumers receive actual information about products from advertising. In television commercials, for example, products must be displayed long enough and clearly enough so that consumers have real possibilities to receive information.

Marketing must not give a misleading picture of bonuses

The impression created by an ad or commercial must correspond to the true content of the product or benefit that is being marketed. If claims are presented concerning the amount of bonuses, information must be clear enough so that consumers can get a good picture of the effect on their own bonuses. Information must also be provided in such a way that consumers

have a real possibility to study it and can easily notice all pertinent points.

An advertising message such as “Bonus up to x %” is not sufficient, since it does not tell consumers what level of purchases is required to obtain the maximum bonus. Even if marketing contains correct information, it can be misleading if it fails to mention pertinent points or does not present them clearly. The Supreme Court noted in decisions 2005:81 and 2006:6 that marketing must give a truthful picture of additional benefits and must present benefits clearly.

Marketing can mention in a general way that purchases increase bonuses without the need to supply detailed information on the amount of bonuses. Consumers who are members of a loyalty programme can be expected to understand how bonuses are accumulated on the basis of the information that was supplied to them in the contract. If bonuses are accumulated in an exceptional way in certain situations, this should be explained separately.

If any reference is made to the size of a bonus in euros, bonus percent, points awarded for purchases or some other grounds for rewards, marketing must tell what conditions regarding purchases or the customer relationship must be met in order to receive these benefits. Otherwise the overall impression will be misleading.

In the interest of transparency, marketing should preferably indicate the value of bonuses in euros instead of talking about a percentage or points. In this case consumers could more easily judge the value of bonuses and their significance for purchasing decisions. A typical example or a range of bonuses can be used for this purpose.

Examples of the use of bonuses in marketing:

- “Bonus 10-100 euros on 3 months’ shopping totalling at least 800 euros”
- “Average bonus 15 euros on 3 months’ shopping totalling at least 500 euros a month”
- “Bonus 30 euros on 3 months’ shopping totalling 2000 euros”

Prices can only be omitted in exceptional cases

If the selling price of specific products that are marketed to members of a loyalty programme is known, this price must be indicated in marketing specific products to members. There are two exceptional cases in which the price can be expressed as a percentage or euro discount rather than a price in euros.

- Indicating the selling price for members and the normal selling price is impossible because of constant price changes. An example is fuel.
- The price varies according to the consumer, so that it is not possible to market a specific product. This is true of many insurance policies.

In these exceptional cases marketing can indicate the size of a benefit without specifying the price for members of a loyalty programme. The benefit can be expressed in brochures aimed at members in a form such as “10 cent discount on fuel” or “5% discount on insurance”, for example.

If it is possible to calculate the size of a benefit in euros, for example on the basis of rates (electricity x euros/kWh), the value of the benefit should be indicated in euros.

Campaigns involving stamps

Loyalty marketing uses campaigns in which consumers can purchase a campaign product at a special price by

collecting a certain amount of stamps, points etc that can be used to purchase goods or services. Such campaigns can be regarded as a combined offer, in which a consumer must purchase a particular product or products in order to get some other product at a reduced price. Therefore the discount received by a consumer on a campaign product or a campaign product itself cannot be separated from the products that a consumer must buy in order to get the campaign product. Such campaigns are also subject to the provisions in Chapter 2 section 4 of the Consumer Protection Act.

Marketing must tell consumers

- what products they must purchase in order to collect stamps
- during what period products must be purchased
- the total price of the product, i.e. how much money they must spend (in euros) to get the campaign product at a special price or get it free, plus any cash payment that is required
- the value of the offer, i.e. the discount on the campaign product
- the reduced selling price of the campaign product.

In a sample case a consumer receives a stamp for every purchase amounting to 10 euros. The consumer must collect 20 stamps in order to purchase a sheet at the special price of 5 euros. In this case marketing must supply the following information:

- what products the consumer can buy and get stamps
- the campaign period
- the total price the consumer must pay to get a sheet: 200 euros on purchases + 5 euros in cash = 205 euros
- the value of the offer: normal price 8 euros - campaign price 5 euros = 3 euros

If a campaign product is marketed

along with other goods or services, a campaign product or related benefit that is only available to members of a loyalty programme must not dominate marketing. Consumers' attention should not be focused on the amount of a benefit and drawn away from the characteristics and prices of other products that must be purchased in order to get a product.

Preferential treatment may not be given to customers who buy on credit

Some consumer products are of such a nature that the use of additional benefits

is subject to special restrictions. Consumer credit differs from other consumer products because credit has a long-term effect on personal finances. Therefore marketing may not lure consumers into buying on credit with the help of additional benefits. In loyalty programmes customers who buy on credit may not be offered better benefits than customers who pay cash. If members of a loyalty programme are given benefits solely for the purpose of saddling them with debt, this is not in harmony with society's general objectives.

When goods and services are marketed, credit may not be the main

message. In marketing credit, there are special rules for indicating the annual percentage rate of charge. Their purpose is to make it easier to compare credit costs and draw consumers' attention to the costs of credit.

Responsible parties

In addition to advertisers, all parties for whom marketing takes place are responsible for seeing that marketing complies with the law.

CONTRACT TERMS IN A LOYALTY PROGRAMME

Loyalty marketing promises consumers benefits based on purchases, many of which are received later on. A loyalty programme is a contract between a consumer and a business. Both parties must meet their contractual obligations. Often a consumer must apply to become a member of a loyalty programme. When an application is approved, a contract is concluded. Membership of a loyalty programme can also be based on membership of a cooperative. In the simplest type of scheme a consumer collects stamps on a card, which also constitutes a contract. Consumers cannot be made members of a loyalty programme without their express consent. Consumers can give their express consent by accepting and using a card, signing a contract etc.

Contract terms must be fair and clear

The terms in a loyalty programme are subject to the provisions in Chapter 3 section 1 of the Consumer Protection Act. This says that a business offering consumer goods or services may not make use of a contract term which, considering the price of the good or service and other relevant circumstances, is unfair from the viewpoint of consumers. The fairness of a term also depends on whether it involves products whose price and quality level consumers can evaluate daily and on this basis consumers can change shops freely or whether it involves a service in which consumers depend on a single provider. In the case of electricity, for example, consumers cannot use more than one power company at a time. In some financial services it is also

impossible in practice for consumers to change service providers all the time.

Unclear contract terms are also prohibited on the basis of Chapter 3 section 1 of the Consumer Protection Act. Terms concerning benefits must be presented in an understandable way. A loyalty programme may not be so complicated that consumers are not able to evaluate its significance in view of their own purchasing behaviour. If terms are too complicated, this also reduces transparency and makes it more difficult for consumers to compare prices. Benefits that are accumulated according to progressive criteria can particularly reduce transparency.

Before a contract is concluded, consumers must be given a chance to study contract terms, i.e. the rules of a loyalty programme. If an application can be made on the Internet, web pages must be designed so that a

consumer cannot make an application without looking at contract terms. (See separate guidelines on e-commerce)

Contract terms must clearly specify the following matters with regard to the content of a loyalty programme:

- matters concerning the accumulation and use of benefits
- models for calculating the accumulation of benefits
- rules for converting benefits into bonuses. If the calculation model is graduated or if terms vary in some other way, terms can be clarified by using a table showing bonuses, for example.

According to the Data Protection Ombudsman, when a contract is concluded a consumer must be clearly informed that the processing of personal data in a loyalty scheme is based on the consumer's consent. Before a consumer gives consent and a contract is concluded, the consumer must be told for what purpose personal data will be processed and any other party to which data will be disclosed in accordance with regulations. Consumers must also be provided information concerning their rights, including the right to check their own personal data, the right to demand that data be corrected and the right to forbid the processing of personal data for direct marketing purposes. Consumers must also be told what steps they can take to ensure their rights.

The terms in a loyalty programme can be unfair if the rights of the consumer and the business are out of balance. This can happen if the consumer is tied to an exceptionally long-term contract or cancelling a contract is unreasonably difficult. A term according to which a consumer loses all accumulated benefits if the consumer withdraws from a scheme before the end of a period is unfair,

unless the value of benefits is minor.

If a term is unfair, the fact that a consumer has agreed to it in a contract makes no difference, since customers cannot generally influence the content of standard contracts. Consumers only have the freedom to choose between concluding a contract as it is or refusing to sign.

The requirement that terms must be fair applies to all consumer contracts. Particular attention must be paid to the fairness of terms in the case of essential services such as electricity, water, telecom service and basic banking services. Although members of a loyalty programme may have lower service or monthly charges than other customers, the use of these benefits should not result in other customers having to pay unfair prices for services.

Businesses can also offer members of a loyalty programme non-monetary benefits such as better or faster service. According to the general principles of contract law, the parties to a contract have a loyalty obligation to each other. This obligation cannot be turned into something that is subject to a special charge or a benefit that is restricted to good customers. All customers must be ensured an adequate level of service, including the prompt handling of claims, the proper investigation of enquiries concerning billing etc.

Altering a contract

A loyalty programme is a contract between a consumer and a business. Any altering of the terms in a loyalty programme is subject to the general principles of contract law.

A business cannot unilaterally make substantial changes in contract terms in a way that is detrimental to the consumer, without the consumer's express consent. If a business wants to make substantial changes in a contract,

it must dissolve the existing contract and offer the consumer a new one. Minor changes can be made according to grounds that are specified in the contract, provided consumers are given sufficient notice. Consumers must be informed of changes well enough in advance so that they can use the benefits they have earned according to the old terms. If a business wishes to raise the amount of purchases that is required to obtain a bonus significantly, for example, it must renegotiate contracts with consumers. If it only wishes to make a small increase, this is possible, but the change can only come into force at the beginning of the next benefit period and at the end of the present period consumers should receive benefits according to the old terms.

In a programme in which a consumer does not receive benefits at the end of the period on the basis of purchases in the preceding period but instead receives lower fixed charges during the next period or benefits that can only be used later on, a change that weakens the consumer's benefits can only come into force after the end of the period in which benefits can be used. Otherwise the consumer might lose benefits earned during the preceding period.

A business can dissolve a loyalty programme by giving notice early enough so that consumers can use accumulated benefits before the programme ends or by ensuring that consumers can use accumulated benefits after the programme ends.

Children as members of loyalty programmes

Businesses offer loyalty programmes for children in the form of different kinds of club memberships, whose purpose is to raise businesses' profile and create and build a customer relation

with children. In programmes that are aimed at children, attention should be paid to the following matters:

- how children are enrolled in a programme
- the processing of personal data
- direct marketing
- materials that are not suitable for children

A minor can join a loyalty programme only with the express consent of parents in advance. According to the Guardianship Services Act, minors may only perform transactions which, in view of the circumstances, are usual and of little significance. Joining a club or other type of loyalty programme cannot be considered usual and of little significance since the purpose of club membership is to strengthen the commercial relation between a child and a business. Parents have the right to decide what kind of commercial influences their children are exposed to. Membership of a club is a form of commercial influence, even if materials intended for members do not contain marketing.

Before parents give their consent, they must be told what principles

are followed in a club with regard to marketing aimed at children and the processing of children's personal data. Children's personal data that are collected in a loyalty programme can be processed only with their parents' consent. Likewise direct marketing can be sent to persons under the age of 15 only with their parents' consent, and restrictions also apply to direct marketing aimed at persons between the ages of 15 and 17.

Materials aimed at children may not contain direct appeals to purchase products, anything that is unsuitable for children or surreptitious advertising. Loyalty programmes intended for persons under the age of 15 may not include bonuses or other benefits whose content is difficult to understand. Children are not able to evaluate the significance of future benefits for purchasing decisions in the same way as adults. Loyalty programmes intended for persons between the ages of 15 and 17 can include bonuses provided these are accumulated by purchasing products that can be considered usual for this age group.

Marketing aimed at minors may not contain appeals to purchase collectibles. If collectibles are offered as additional benefits together with another product, they may not dominate marketing at the expense of the actual product. Additional benefits used in marketing another product that are attractive to children should also be available separately, for a charge, without having to purchase the main product.

See the Consumer Ombudsman's guidelines on "Minors, marketing and purchases" and the recommendation prepared by the Consumer Agency, the Consumer Ombudsman and the National Public Health Institute on "Children and Foodstuffs Marketing".

KEY ARTICLES AND COURT DECISIONS CONCERNING LOYALTY PROGRAMMES

ARTICLES

Articles in Consumer Protection magazine www.kuluttajavirasto.fi/kuluttaja-asiamies

- 1/1994 Cost-free bill payment in Plussa contract
- 3/1994 Programme benefits should be advertised with care
- 4/1995 Loyalty programmes and price benefits
- 2/1997 Survey of petrol cards - discounts not advertised
- 3/1997 Nordic guidelines on loyalty programmes
- 4/1997 Bank's direct marketing does not belong in children's club magazine
- 5/1997 Prices and benefits for members must be presented clearly
- 4/1998 Bonuses also apply to welfare department's payment commitment
- 4/1998 Tours sold separately to club members
- 4/1998 Size of bonus comes as a surprise every time
- 5/1998 Rules should be clear to members of a loyalty programme
- 3/1999 Comparisons of loyalty programmes should be avoided
- 3/1999 Credit institutions' loyalty programmes favour profitable customers
- 4/2000 Bonus obscures price of electricity
- 1/2001 New provisions on additional benefits in Consumer Protection Act
- 5/2001 HOK promises to indicate amount of purchases required for bonus
- 1/2002 Conditions for receiving benefit must be explained to members
- 5/2003 Programme benefits are practically impossible to compare

Current Issues on Consumer Law <http://uutiskirje.kuluttajavirasto.fi/>

- 2/2006 Customer loyalty packages make it difficult to compare financial services

Market Court (MC) and Supreme Court (SC) decisions

- MC:1993:017 Misleading advertising - Discount advertising - Loyalty programme benefit
- MC:1999:016 Unfair additional benefit - Giveaway
- SC:2005:81 Regulation of marketing - Contract terms
- SC:2006:6 Regulation of marketing

OTHER MATERIALS

Competition Commission

- News Release 41/06 Home credit proposed remedies

Tema Nord

- 2006:507 Mobiliteten i den nordiske finansielle sektor

SUMMARY: LOYALTY MARKETING

- 1. Loyalty marketing must always include information that is necessary for consumers' financial safety.**

The marketing of a loyalty programme contract must tell consumers what they have to do to get benefits, such as paying a membership fee, and whether membership requires the processing of consumers' personal data. Consumers must also be told how and where they can find complete information regarding the contract.
- 2. Marketing must not mislead consumers.**
- 3. There is no need to supply detailed information on a loyalty scheme in the case of general corporate image marketing or a mere mention that an advertiser or product belongs to a loyalty programme.**
- 4. Comparative advertising regarding loyalty schemes can easily be misleading.**

Special care must be taken if broad loyalty programmes are compared. In practice it may be impossible to make comparisons between schemes without misleading consumers.
- 5. All customers cannot be members of a loyalty programme.**

If all customers can receive a benefit, it is misleading to imply that it is a special benefit for members of a loyalty programme.
- 6. Programme benefits should not dominate the marketing of goods and services when this is aimed at all consumers.**

The price consumers in general have to pay for a product must be the main price information. This general selling price must be indicated in a clear and unambiguous manner in marketing so that it receives at least as much attention as the price for members of a loyalty programme. Special prices for members of a loyalty programme may only be emphasized in marketing that is aimed only at members.
- 7. Adequate and clear price information must be supplied concerning partners' services.**

If a member of a loyalty programme can increase benefits by concluding a contract for a continuing service with a business in a different field, adequate and clear price information must be supplied concerning this service.
- 8. Bonuses must not dominate marketing regardless of whether it is aimed at members of a loyalty programme or all consumers.**
- 9. Marketing must not give a misleading picture of bonuses.**

If detailed claims are presented concerning the amount of bonuses, the conditions that must be met to receive these benefits must be explained. A typical example can be used for this purpose.
- 10. If specific products are mentioned in marketing that is aimed at members of a loyalty programme, the price of these products can only be omitted in exceptional cases.**

In these exceptional cases the price can be expressed as a percentage or euro discount.
- 11. Preferential treatment may not be given to customers who buy on credit.**

In loyalty programmes customers who buy on credit may not be offered better benefits than customers who pay cash.
- 12. In addition to advertisers, all parties for whom marketing takes place are responsible for seeing that marketing complies with the law.**

SUMMARY: CONTRACT TERMS IN A LOYALTY PROGRAMME

1. Membership of a loyalty programme is based on a contract between a consumer and a business.

Consumers cannot be made members of a loyalty programme without their express consent.

2. Contract terms must be fair and clear.

A loyalty programme may not be so complicated that it unfairly weakens consumers' possibilities to understand the price level and compare prices.

A contract must specify the factors that determine the accumulation and use of benefits. Conditions must be easy for consumers to understand.

Loyalty benefits may not unfairly restrict a consumer's right to cancel a contract by taking away accumulated benefits if a consumer changes contract partners.

In essential services a fair price level and access to services must be ensured for all consumers and not only members of a loyalty programme.

A reasonable level of customer service in claims or assistance, for example, must be guaranteed to all consumers.

3. A contract may not be changed unilaterally in a substantial way that is detrimental to the consumer

Minor changes can be made on grounds that are specified in a contract. If a business wishes to make substantial changes in a programme or end the programme, it must give notice to consumers. Changes must be made in such a way that consumers do not lose accumulated benefits because of a change.

4. Restrictions concerning minors

A minor can join a loyalty programme only with the express consent of a guardian in advance. Loyalty programmes intended for persons under the age of 15 may not include bonuses or other benefits that are difficult to understand. Benefits for persons aged 15-17 can include bonuses provided they are connected to products that can be considered usual for this age group.