

Current issues IN CONSUMER LAW

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Editorial staff

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

E-mail: uutiskirje@kuluttajavirasto.fi Archives and subscription: <http://www.kuluttajaoikeus.fi> ISSN 1796-5497

Editorial**People facing the screen and on the phone world**

This web magazine is the fourth to focus on the theme of communications services. Mobile phones and connections, telephone contents services, the infiltration of the internet into our everyday lives – the digital revolution is still underway, only some of its teething troubles have been resolved. Most of the communications sent to the Finnish Consumer Agency are still concerned with communications services in one way or another.

A lot of hard work has been done however to improve the position of the consumer and there are some glimmers of light. For example, telephone operators' customer services has become more effective compared with the early days, the first standard terms and conditions for the sector have been negotiated and the digibox finally seems to work alongside the television.

However, there still seems to be some work to do in relation to advertising. The recent investigation by the Finnish Advertising Council into Finnish attitudes to advertising reported that the most positive issues in advertising according to Finns were information about the prices of goods and services, special offers and information about products. Finns are most influenced by simple advertising that provides information. Advertising that is too gimmicky, where the product plays second fiddle to the advertising idea, was not well received.

Particularly with regard to complicated communications services, gimmicks should be replaced by genuine concentration on how issues that are important to consumers could best be presented in marketing.

For example, one would think that the days of small print at the bottom of the television screen had been consigned to history. However, it sometimes feels as if the issue has to be progressed one company at a time via the Market Court. Looked at from a behavioural economics perspective it is at least absurd that the consumer has to navigate through so many strange messages.

Let's look then at the person as a consumer and let's learn that there is still a lot to do to make changes so that buying and using communications services becomes part of a functioning everyday life.

Anja Peltonen
Director

Led by television

Column/ Riikka Rosendahl

As television viewers we are used to seeing reforms in television operations. Technical development has been very visible: black and white to colour screens, analogue transmission to digital requiring a digibox, from SD quality to HD transmissions and picture quality. Previously all that was necessary to receive a new picture was to go out and buy the most modern television set. This time the change is more fundamental: the equipment required depends on how you want to use the receiver.

At the change of the millennium there was a lot of talk about convergence, the coming together of technologies and this is now seen in consumers' everyday lives. A television set is no longer just a television, but a home entertainment centre that is capable of many different functions. Many people are also thinking why a television set is still needed when television programmes can be watched on the internet from a computer screen.

Consumers are expected to show clear choices and be able to perceive their own needs. However, it is relatively difficult to gather information about the various features of equipment, services and contents. Equipment sales staff and importers can only tell you about the features of the brands they are promoting. Each pay TV operator only provides information about the contents of the selections they offer for sale. The compatibility of the decoder equipment that is needed to access pay TV services with equipment at home also has to be checked separately. Therefore it is not possible to watch the television programme you want to see at home unless the consumer can select all the equipment and services needed correctly.

The world of television is a world of the imagination. However, the viewer's experience is not limited to the emotional experiences awakened by the programme's contents. Completely different feelings are awakened if the evening is wrecked by not being able to see the picture on the screen or if the programme contents are completely different from what was expected. The television viewer is above all a user of equipment and services and at the same time a consumer who is making buying decisions. If marketing communications gives incorrect information about technical compatibility or the sufficiency of capacity, this will soon be clear to the user. In the same way, if programme contents change continuously and time after time the content wanted disappears from the channels that are available at home, the viewer soon begins to wonder what they are really paying for.

The flow of communications to the consumer authorities concerning communications services is evidence that in such situations the consumer does not fail to take action. The report of consumers' experiences is at odds with the glowing speeches made by the companies. Even though the speeches emphasise user-centred planning and service design, this is not what the consumer sees. The speeches will remain far removed from the day to day experience of the consumer if the ideas are not carried through and put into practice. It is the consumer's experience that counts.

Riikka Rosendahl is a lawyer in the Consumer Law division.

Vague broad band campaign condemned

The Market Court stated it again: the prices of communications services must be communicated and significant information cannot be left in the small print.

Sanoma Entertainment Finland Oy (Welho) marketed fixed broadband service contracts in a manner that contravened the Consumer Protection Act. The marketing did not communicate the total price for the fixed term period nor the terms and restrictions applying to the offer. Information about the main features of the broadband connection was also unclear. The Consumer Ombudsman took the case to the Market Court which gave its verdict at the beginning of June.

The total price and nature of a subscription have to be communicated

In several newspaper advertisements, Welho had offered 12 month, fixed-term contracts for its broadband services. The advertisements had given the connection speed, for example an XL connection and the price of the connection for one month.

According to the Consumer Ombudsman, marketing for the fixed term contracts should have clearly explained the fixed term nature of the contract, the total price for the subscription period and the amount of the monthly payment.

The marketing had related to fixed broadband service contracts for a fixed term. The Market Court considered that it would have been reasonable to calculate the overall price in advance and that this should have been stated in the advertisements. Since the determination of the price is based on the fact that the contract is for a fixed term, it follows that when communicating the overall price, information should also be provided about the duration of the contract. As the overall price was missing, the Market Court considered that the company's marketing was inappropriate in respect of the consumer.

Terms and restrictions on offers to be presented clearly

In the advertisements published in the newspaper, people taking out a subscription to Finland's fastest broadband connection were offered financial incentives for a channel package. At the bottom of the page, it explained, in small print, the details of the contents of the offer: the billing periods for the channel package, the fixed term nature of the contract and the significance of the taking out of the broadband connection on the prices of the channel packages. The information situated below the advertisement was presented in very small text so that the information was hard to read. It was made even harder to read by the use of white text on an orange background in the advertisement; challenging for the printer.

According to the Consumer Protection Act, when offering consumer goods at a joint price, or when buying a good another good or some other special benefit can be bought at a reduced price, the marketing must clearly include the conditions that apply to take advantage of the offer. If the consumer is given key information in a manner that is unclear or incomprehensible, it is considered as a misleading omission. It is thus not enough that the obligation to provide information is fulfilled formally. The text has to be understood correctly and to be readable.

The Market Court considered that the terms and restrictions of the offer were presented in such a manner that the consumer's attention would not naturally be drawn to them and that

they would not make the effort to clarify the contents. In its explanation, the Market Court also referred to its precedent KKO 2006:6. Because of missing information, the Market Court considered that the company's marketing was inappropriate in respect of the consumer.

The main features of the broadband connection are to be clearly communicated

In the 14 second television advertisement that was part of the advertising campaign a clear indication of the speeds of the broadband connections was given in the form, for example, 10M. At the end of the advertisement in the lower section of the screen it was written "the broadband connection speeds are maximum speeds and the real speed of the connection may be less than this." Information about the limits to broadband connection speeds was given in very small letters and only for 2 seconds.

The speed of a broadband connection is the kind of key characteristic that should be communicated specifically in marketing and its absence is to be considered as an omission of critical information. It is characteristic of broadband connections that the speed fluctuates. However, the range of fluctuation if the connection speeds must be such that the service speed corresponds to the connection speed promised in the marketing for most of the time at least.

According to the view of the Consumer Ombudsman, the information about connection speed in Welho's television advertisement was misleading for two reasons: firstly that the speed restriction was given too little emphasis in the advertisement in comparison to the advertised theoretical maximum speed, and secondly that it was not shown what level of deviation from the maximum speed was at issue.

Information about connection speed was left open

The Market Court stated that as the main characteristics of the broadband connection had not been communicated in a sufficiently clear manner in the television advertisement, the company's marketing was inappropriate with respect to consumers. Since the information about restrictions to connection speeds was shown in Welho's advertisements in an unclear manner, the Market Court considered that there were no grounds for evaluating the contents of the information. However, the decision of the Market Court left open as to whether the information about the restrictions to connection speeds was sufficient in itself if it had been more clearly expressed.

As early as in 2008, the Consumer Ombudsman had held that the illustrations of speeds used in marketing had to give the correct picture of the actual transfer speeds available to the consumer. Since the beginning of 2011, the Communications Market Act has also contained a stipulation that communications service contracts must always indicate the range of the connection speed. This requirement also applies to marketing.

The deadline for leave to appeal and to make an appeal ends on 9 August 2011.

The number of the decision of the Market Court on 10 June 2011 was 265/2011.

TV sellers must remember their obligation to provide information

Television sales staff would do well to enlighten themselves on the principles of consumer protection. If the ground rules are clear when the sale is being made, there is less aftersales work too.

These days the sale of television equipment and programme content causes upsets almost on a daily basis. Now it's a change in the transmission standard, now the card reader should be replaced and the net bandwidth is not enough for pay TV.

For the consumer, the increasing complexity of watching television can easily result in the feeling that they do not even know what they should be asking. An expert salesperson is needed to help make the buying decision. From the seller's perspective, expertise is a competitive advantage. In addition to that, it is also a legal obligation for the seller.

Technical compatibility has to be communicated

In the late winter of 2011, the Finnish Consumer Agency's attention was drawn to advertisements from the Expert chain in which massive reductions for old models were promised. Among other places, a whole page advertisement was run in the Helsingin Sanomat newspaper: "Sale ending! TV models changing! Everything must go!". At the same time there were technical changes in television operations which set new requirements for television sets. The card reader needed to receive pay TV was being changed from a Civ1 reader to a CI+ reader. In addition, because of a change in the broadcasting technology for the antenna network, a DVB-T compatible set was no longer sufficient for watching HD broadcasts, but the standard had to be DVB-T2.

In public advertisement in mass communications, the technical specifications of equipment often have to be shown briefly because of lack of space. The newspaper advertisements placed by the Expert chain, gave the technical specifications of the equipment in a way that corresponded to the features of the equipment and practice at the time. As regards the marketing, the Finnish Consumer Agency decided on a liberal approach. However, at the same time the Finnish Consumer Agency reminded the Expert chain that part of the seller's obligation to provide information concerns the technical compatibility of television equipment. It is not enough that the salesperson provides the information only when asked. Sales staff must always give consumers key information about the equipment's properties and the limits to its use that technical developments, already known about, will impose.

Care over meeting the obligation to provide information is to the advantage of both consumers and businesses. Giving correct and full information improves customer satisfaction and reduces the need for consumers to make complaints about a product.

KUV 1215/41/2011

Legislation:

Consumer Protection Act chapter 2 sections 6 and 7

Consumer Protection Act chapter 5 sections 12 and 13

Some leads in mobile services' problems

A subscription can no longer be taken out by sending a text in error and the operator's responsibility regarding invoicing has been flagged up. The next thing is to get the legislation in order.

Over recent years there has been a continual flood of complaints to the consumer authorities resulting from problems related to various mobile content services. Particular harm has been caused by expensive subscription contracts which people have committed themselves to without noticing when they have bought content services for their phones.

After negotiations between the authorities and operators in the sector at the end of last year, the member companies of MAPEL, the The Finnish Ethical Committee for Premium Rate Services, committed themselves to sending confirmation messages. The subscription order process was changed so that consumers have to confirm the order by responding "OK" to a separate confirmation message. Without this response, the subscription will not take effect. Complaints from consumers to the authorities relating to this issue have clearly declined since the launch of the confirmation message.

In spite of this positive development, it is unfortunately typical of the sector that as new types of services are continually developed, new consumer problems arise. The Finnish Consumer Agency continues to monitor the sector closely.

Operators are comparable to credit card companies regarding invoicing

Mobile phones are used to order and pay for a lot more things than IQ tests or participating in a quiz. It is critical that the legislation is brought up to date to meet to the needs of today's society, and that stable legal principles and rules relating to consumer rights are included as part of the latest services too.

For years the Finnish Consumer Agency has been asking that telephone operator companies' status as regards invoicing and the responsibilities that go with that be defined in law. Operators can no longer be guaranteed the right to invoice other services without some kind of responsibility to the consumer for their accuracy. Operators should bear the same kind of responsibility as credit card companies.

Now the Consumer Disputes Board has also stated this in its recent decision at a full sitting of the Board. In its decision, the Board equates the ordering of mobile phone services with buying on credit and highlighted the rules regarding consumer credit in the Consumer Protection Act. According to the rules, the consumer has the right to withhold payment or receive a refund of the price or damages from the supplier of credit who funded the purchase, if he or she has the same right in regard of the seller or service provider as a result of their breach of contract. In addition, the Board noted the principle of the Promissory Notes Act, according to which the transferee cannot receive better rights than were part of the original debt.

The Board's solution applied to a situation where the consumer had not received clear information that participating in the chat service cost more than the price of normal text messages. The Board considered that there was not a binding contract between the service provider and the consumer, and recommended that the operator pay the difference between its charge and normal text messages to the consumer.

Itemised billing sorely needed

The rules on itemised billing regarding mobile phone bills should be reformed. The creditor, i.e. the operator, needs to explain to the debtor the basis of the payment requested. The first couple of numbers of the telephone number is not sufficient information. The whole number is not sufficient either unless that is sufficient to know what was bought and who from. There should also not be any charge for explaining the basis of the invoice. The change in the law that has been planned for many years, is now finally needed urgently.

KRIL Dnro 1059/39/2009

[Legal protection for paying by mobile phone still not up to standard \(Current Issues in Consumer Law 7/2010\)](#)

[Phantom purchases on the phone bill victimise the consumer \(Current Issues in Consumer Law 3/2009\)](#)

Legislation:

Consumer Protection Act chapter 7 section 13

Promissory Notes Act section 27

Gaps in customer service

Telephone companies' customer service does not run smoothly in spite of plenty of practice.

The Finnish Consumer Agency has received a lot of communications about telephone companies' customer service. On some occasions the consumer has had to log several error messages with the company with no result, on others the consumer has been given instructions to phone a toll number in order to get the issue sorted out. Annoyance has also resulted from that fact that getting matters sorted out takes too long, and that in spite of problems with the service, there is no interruption in the invoicing. The Finnish Consumer Agency has had to raise issues with Saunalahti, among others, about its customer service practices when there is a problem with its communications service.

Costs of resolving problems to be paid by the company

It is important that customers are credited for any costs resulting from sorting out problem situations, as required by law, if the demand is shown to be well-founded. If a customer has to contact an expensive toll service number to find out the reason for the problem, they must not be left under the impression during the complaints process that they are obliged to pay the telephone charges.

If the complaint is shown to be well-founded, the consumer has the right to be reimbursed for the costs of the complaint. The telephone cost of complaining must also not be made so excessive for the consumer that they don't bother to complain in practice.

No room for haggling over the award of flat-rate compensation

The Communications Market Act gives the consumer the right to flat-rate compensation if for example broadband does not work or the telephone connection malfunctions. Saunalahti's habit of paying customers flat rate compensation only from the time the customer informs them of a problem was not legal. The customer must of course let the company know about the problem in a reasonable time once they have noticed it, or should have noticed it. However, if there is no argument about the timing of the start of the problem, or the situation can be shown to have begun before the complaint was made, the compensation is to be paid from the date of the occurrence of the problem, if necessary then retrospectively.

The Finnish Consumer Agency also had to interfere in the practice whereby the company most frequently gave credit for the fault in the service by releasing the customer from the monthly payment for the duration of the problem. Saunalahti did this irrespective of whether they should have paid the customer the legal flat-rate compensation for the interruption of the service.

The Finnish Consumer Agency pointed out that the consumer must always receive the full amount of flat-rate compensation stipulated in the law. In other words, the monthly fee cannot be offered as compensation if it is less than the flat-rate compensation that is legally payable. If the user is paid flat-rate compensation they do not have the right to a reduction in price in respect of the same interruption to the service. The customer cannot get double the compensation for a service interruption, but the flat-rate compensation is always the primary way of reducing the price for an interruption in the service. Not charging the monthly fee can be used as a solution when it is not an issue of service interruption and if the amount of monthly fee not charged is commensurate with the gravity of the problem.

The company indicated that it would adopt the procedure required by the Finnish Consumer Agency in future.

Floundering around in maintenance

Customer service procedures have been under examination at the Finnish Consumer Agency for a long time. The Finnish Consumer Agency asked DNA for an explanation regarding their customer service procedures when repairing a fault in a terminal device. According to the complaint made by the consumer, the customer who had bought the device was passed from the seller to the manufacturer once the fault had shown up. The company itself admitted that it knew of cases where the customer had received incomplete or contradictory instructions or the case had not been handled appropriately.

The company said it had started to take measures to improve its guidance and procedures. Even though the company's explanation was otherwise satisfactory, the Agency encouraged the company to further clarify its instructions on how devices should be sent for repair. If a faulty device has to be sent for repair to a place other than where the customer lives, they do not need to take it there personally, but it can also be sent by post.

KUV/8690/41/2010, KUV/3814/41/2010

Legislation:

Consumer Protection Act chapter 2 section 6, Communications Market Act section 67 d, 67 f, Government Bill 231/2005

Consistent terms and conditions for telephone companies

The standard terms and conditions negotiated for the telephone sector are a significant step towards a clearer and more equitable contract. However, key to concluding a contract are the situation in which the contract is entered into and management of customer service.

The Consumer Ombudsman and the Finnish Federation for Communications and Teleinformatics, FiCom, negotiated over the general terms and conditions of the services offered by telephone companies to consumers. The Finnish Communications Regulatory Authority, FICORA, also participated in the negotiations and presented its view of the contents of the model terms and conditions from the perspective of applying the Communications Market Act. The terms and conditions will be adopted by the beginning of October.

The contractual conditions are the minimum level of reasonable conditions recommended to FiCom's members, and a telephone company cannot offer conditions below this level on contracts concluded with consumers. The telephone companies can however, always offer consumers conditions that are better than those recommended. There is particular emphasis in the standard terms and conditions on the conditions being reasonable to both parties.

Complexity of the sector seen in overly complicated conditions

Communications services have complex products which are associated with rapid technical development. The wide application area for terms and conditions has resulted in part that the conditions can still feel complicated from the consumer's perspective and there are conditions that are difficult to understand. Monitoring will be important. The Finnish Consumer Agency and FiCom will monitor the functioning of the general terms and conditions and review the conditions on the basis of accumulated experience in new negotiations.

In addition to the general terms and conditions, the main documents for a connection contract are also the service specific special conditions, any possible conditions that are part of a campaign, prices and user instructions. The legality of contracts is always evaluated on the basis of these taken together.

In addition to contractual conditions attention is paid to the situation in which the contract is entered into

In addition to information about the terms and conditions, at the time the contract is entered into, adequate and relevant information about the service being sold must be given. It must be possible to study the terms and conditions of the contract in advance. The salesperson must specifically draw the consumer's attention to surprising and severe terms and conditions.

Because consumers do not always act rationally, the situation in which the contract is entered into is very important. Telephone companies have a broad area of responsibility for providing information on their own initiative. The most relevant issues that have to be communicated to the consumer are summarised on the first page of the model terms and conditions. The way in which information is provided is extremely important when deliberating as to whether a telephone company has met its obligation to provide information. Information should be

presented as clearly as possible and in such a way that the consumer can understand it as easily as possible.

Standard terms and conditions are also a control tool

Negotiating on standard terms and conditions is one of the Finnish Consumer Agency's main control tools. About thirty sector specific standard terms and conditions have been negotiated. The work done to promote sector specific standard terms and conditions is seen as being of collective benefit to all consumers. The issue is a significant one as the contract is a very critical part of a purchase. When consumers receive clear information about their rights and responsibilities, the number of disputes and complaints to customer service decreases.

Pay the shopping bill with a wave of your hand

In the future we will make purchases and contracts using near field communications. In order to avoid problems, particular attention must be paid to questions of liability and the position of weak consumer groups.

Near Field Communication, (NFC) is a technology which will enable a consumer to be identified over a very short range, perhaps just a couple of centimetres. NFC properties could be linked to a mobile phone for example which would enable the consumer to pay for their purchases in a shop just by waving their mobile phone over a reader. A phone could also be used to read products fitted with an NFC chip, register for services or buy a bus ticket. The new technology could make consumers' daily lives easier in many ways.

The Finnish Consumer Agency participated in the Ministry of Transport and Communications' working group which considered how the adoption of NFC could be promoted. At the same time an evaluation was made of what kinds of legislative and other hindrances there might be to the spread of NFC technology and services utilising it. The working group published its final report at the end of 2010.

Chains of responsibility clarified

The use of NFC technology will only increase if consumers see it as secure, easy to use and reliable. That is why issues relating to consumer protection, and well as privacy and data protection, have to be taken into consideration already in the planning phase for services. The first requirement is that when using NFC, the consumer knows in advance the prices of the service and the contents of the contract.

The weakness of a card or mobile phone equipped with NFC properties is that anyone can use it if they are able to take possession of it. A phone that is stolen from someone could be used to make several purchases or agree contracts before it is possible to shut down the chip. From the point of view of security, it would be better if purchases above a certain value had to be confirmed using a PIN code for example.

Realistically, service providers should also prepare for various system problems and service interruptions. For example, a consumer may be charged more than once by accident without noticing it. In order to deal with such situations it must be clear who is responsible for errors and any possible damages. It is not the consumer's job to check whether the mistake came from the telephone, the chip, the reader device or the service provider's system.

NFC will not succeed regardless of age

Reliability of NFC requires that it is linked to strong electronic identification. Under-age children must not be able to buy whatever they like or to watch material that is harmful for people of their age.

On the other hand, consumers of all ages will not necessarily have the facilities to utilise the new technology. That is why services supplied in a more traditional manner must still be provided.

Trouble with virus protection

The installation instructions for a USB modem given by the salesperson led to damage to the customer's virus protection software. Compensation patterns result in headaches.

The consumer bought a mobile DNA broadband connection. The deal included a USB modem to be connected to the computer as well as virus protection software. When the sale was being made, the consumer was not told to remove the existing virus protection software before installing the USB modem. According to the consumer, the salesperson had, on the contrary, encouraged them to answer "yes" to all the questions posed during the installation process.

According to the consumer, there was no information given about the virus protection software that was supplied with the mobile broadband connection. Installation of the product onto the computer in accordance with the instructions did not work, and during the attempted installation the consumer's own virus protection software was damaged. The company stated that the consumer should have removed the previous virus protection software from the computer before installation and initially refused to repair the computer or compensate the consumer for the cost of a third party to re-install the virus protection software. The company relied on their own terms and conditions and those of the supplier of the virus protection software.

The Finnish Consumer Agency requested an explanation regarding the company's installation instructions given to the consumer and an account of compensation practices in similar situations. On the basis of the explanation received, the Finnish Consumer Agency clarified to the company that it should make the effect of installing its virus protection software on existing virus protection clear in its marketing and what the general principles regarding consumer protection required from them in situations relating to compensation.

The law requires relevant information to be provided

The instruction to remove existing virus protection software before installation was relevant information according to the Consumer Protection Act, and this should have been communicated to the consumer. The information, or lack of it, was liable to effect how the consumer acted in installing the software.

The USB modem and virus protection software were part of the product package that made up the internet connection. The virus protection software was an additional service to the mobile broadband connection. The virus protection installation software accompanies the latest USB modems automatically, existing users could order the installation software by text message or download it from DNA's website. The product package included an installation disc for the virus protection software and an instruction leaflet on how to install it.

A characteristic feature of virus protection software sold on the market is that while installing it, existing virus protection software on the computer is removed automatically. The CD disc contained the warning: "N.B.! If you are using virus protection or firewall software, they should be removed from the computer before installing this program."

The Finnish Consumer Agency considered that the information on the CD disk fulfilled the requirements of the Consumer Protection Act in respect of those consumers who automatically received the whole package, as long as the information was written using a sufficiently large and distinctive letter size that could immediately be seen on the disc. However, during the sales process, the consumer may not be given a misleading description of how to install the software. The Finnish Consumer Agency also required that consumers who ordered the software by text message or downloaded it from the company's web pages should receive the same information clearly and in a manner appropriate to the medium.

Indirect damage is also to be compensated

The Finnish Consumer Agency also had to point out to the company that if there is a fault in the service, the purchaser always has the right to compensation for indirect damage caused to them. Therefore contractual conditions which stipulate negligence as a condition for compensation, even when there is a fault in the service, are contrary to the Consumer Protection Act. According to the general principles of consumer rights, the contractor has a duty to compensate for indirect damage too if the fault or damage results from carelessness on their part. Therefore, a contractual condition which refuses compensation for indirect damage entirely is unreasonable.

The company said that its conditions did not restrict consumer rights. In addition, the company took responsibility for the indirect damage to the consumer. However, the Finnish Consumer Agency still had to point out that even though the company's procedure in practice was in accordance with the law, the nature of its terms and conditions cannot be contrary to the general principles of consumer protection. Conditions may not also be presented in so confused a manner that it is possible to draw the wrong conclusions from them. The Finnish Consumer Agency required the company to modify and clarify the form of its contractual conditions to bring them in line with the principles of the Consumer Protection Act.

KUV/4172/41/2010

Legislation: Consumer Protection Act chapter 2 section 7, chapter 3 section 1

Removal of a storage service gave right to cancel the contract

A service which enabled retrospective storage of television channels was abolished to the consumer's surprise. The company claimed that this was just a test version, but agreed to cancel the consumers' contracts.

Elisa Oyj announced in February 2010 that it was ending its storage service that was part of the Elisa Viihdekaista. The issue was a service which had been launched in November of the previous year which gave viewers the possibility of storing television channels retrospectively over the last 36 hours. The service contract is usually made as a 24 month, fixed-term contract. In principle a fixed-term contract cannot be cancelled in the middle of the contractual term.

According to the company, this was an experiment and the service was only being tested. This information however did not reach the consumers. From communications with the consumers it became clear that the storage service in question was marketed and presented at the point of sale very clearly. The retrospective storage facility was marketed on the company's web pages among other places. However, the terms and conditions of the Elisa Viihde service and the service description did not contain any mention of the 36 hours storage service.

The Finnish Consumer Agency stated to the company that after the launch of the storage service, consumers who had entered into a contract should have the right to cancel it if they wished. The company explained to the Finnish Consumer Agency that customers could alternatively receive a credit if they wished, but that the contract would always be cancelled if the customer wanted that.

The Consumer Disputes Board also gave a decision on the matter in February 2011. The consumer who had taken the dispute to the Board for a hearing had demanded a correction to the service and the restoration of the storage service. The Board did not consider the company to be obliged to correct the fault and did not recommend a reduction in price, but considered it appropriate for the company to offer the right to cancel the contract.

KUV/1114/41/2010

Consumer Disputes Board decision no. 769/39/2010

Legislation:

Consumer Protection Act chapter 3 section 1

Communications Market Act section 67 d

Credit for victims of games console system update

The Consumer Disputes Board took a view on the operating problems caused by a PlayStation 3 games console system update.

After an obligatory upgrade to the PlayStation 3 games console operating system, the games console was no longer compatible with the Linux operating system. If users did not install the update, the functionality of the games console would have been weakened. According to the manufacturer, removing the facility was essential for data security. The consumer took the matter to be heard by the Consumer Disputes Board.

The matter was also considered by the Finnish Consumer Agency. The Finnish Consumer Agency commented in its decision on the poor customer service of Sony Computer Entertainment and pointed out their obligation to process complaints. The Finnish Consumer Agency controls companies' operations for the collective benefit of consumers. The objective of the control is for companies to stop illegal operations and for the future benefits to accrue to all consumers. The Finnish Consumer Agency does not have the authority to resolve individual disputes. In the Finnish Consumer Agency's finding, it was stated that the question of whether there was a fault in the console would be resolved by either the court or the Consumer Disputes Board.

Price reduction as a credit

The Consumer Disputes Board gave a decision on the matter in February 2011. According to the Consumer Protection Act, the buyer has the right to demand that the seller correct a fault or supply goods without a fault. In its decision the Board stated that correcting the fault was not possible in this case because the manufacturer had stated that they had acted in the manner described precisely to protect the integrity of the games console.

The Board stated that the PlayStation 3 games console could still be used to a limited for gaming and watching films. The Board considered that the removal of Other OS feature did however weaken the features of the games console to that extent that the consumer who had suffered from the change was entitled to a price reduction. When considering the amount of the price reduction, the use the buyer got from the product had to be taken into account, the age of the device as well as the original purchase price without games and accessories. The Board recommended that a reasonable amount would be 100 euros.

KRIL 1494/36/10
KUV/2798/41/2010

Consumer Protection Act chapter 5 section 18

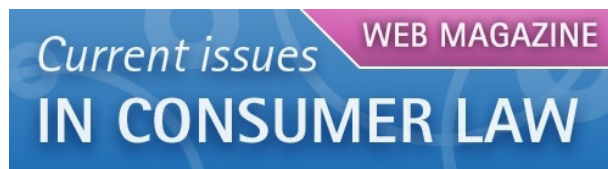
[The issue was covered in the Current Issues in Consumer Law 2/2011](#)



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

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

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