



Current Issues in

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From the Editor

Looking for a top operator**Virhe. Kirjanmerkkiä ei ole määritetty.**

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[From the Editor]

Looking for a top operator

Telecom operators' ways of doing business have given cause for astonishment, frowns and complaints. Currently there are a couple of cases pending in the Market Court and in the recent past, there have been numerous injunctions backed by conditional fines.

One would think that somewhere out there is a telecom operator who is willing to sort out its contract terms, get rid of the small print and institute a new way of doing business with genuine customer focus. There are attempts to do this, but no operator has been able to stand out just yet. The rival operators in the market seem to have a consensus on fixed-term contracts being the best product to offer, free customer service numbers being completely unfeasible from a budget standpoint and seeking legal loopholes being the best approach to contract terms.

Competition in the telecommunications industry has been opened up for quite some time now, and one would expect the businesses to have moved on from no-holds-barred competition to acknowledging the existence of rules. There have, of course, been some changes - such as all telecom operators these days swearing by the "customer comes first" principle. But where are the steps to translate this principle into practice? Why are we only seeing baby steps in very limited areas? When will the industry make a concerted effort to work on this?

An amusing example of "consumer-centric thinking" was the recent news item where a telecom operator stated that consumers had voluntarily given up landline telephones. The use of the term "voluntary" was, however, quite misleading considering the fact that the voluntary move was preceded by significant price increases. Another example was that of offering bundled contracts as part of a focus on long-term customer relationships and characterising the approach as "flexible". Where is the flexibility in a contract which gives the consumer no way out during its fixed duration? Not even when the telecom operator fails in its part of the bargain in the customer relationship, regardless of how customer satisfaction is measured.

Do we really have to raise a white flag and be satisfied with entertaining ourselves by exchanging funny stories of customer service failures by telecoms on online discussion forums? I am not ready to give up just yet. If all the seeds of better customer service planted by the telecom operators could be brought together under the same roof, we would be well on our way towards improvement. The models for better customer service are out there for an operator who is eager to score a significant increase in market share. Or have we reached some kind of strange consensus on differentiating ourselves from our rivals being a bad idea and having the top spot in customer complaint statistics not being cause for concern?

On the 5th of May 2009

Anja Peltonen
Director

This is how the dream of an information society is implemented

Finland wants to be at the forefront of the development of an information society – so what is the problem? If you ask the consumer, the problems start with very basic things: service quality, ambiguity in marketing, inflexibility in dealing with changes to contracts, problems with billing and difficulties in dealing with such billing problems through customer service. At their worst, the experiences with information society have reached Kafkaesque proportions: cancelling a fixed term contract has been impossible even for a deceased person, or a customer has had to pay to have a mistake by a business rectified.

Strengthening the user's position has been set as one of the focal points of both the Consumer Policy Programme led by the Ministry of Employment and the Economy and the Ubiquitous Information Society Programme led by the Ministry of Transport and Communications. The goal is to jointly prepare an action programme to improve the consumer's position in the provision of communications services.

User focus - from festive speeches to the core of business operations

Many of the problems recorded in the programme are such that the consumer authorities alone are not able to solve them or to manage them simply through supervisory measures. If a genuine effort is to be made to improve the user's position and view the user as the focal point of service innovation – as declared in several programmes – there is a need for rethinking and finding the will to improve things not only among consumer policy actors, but in several other realms of action as well.

It is widely recognised that taking the user's position into consideration is essential in creating trust in the markets. Without trust, there won't be enough new business activity and competitiveness.

Perhaps less clear are the questions of what does this trust mean in practice and what are the preconditions for creating it. The following are some of the current focal issues. If these would be managed appropriately, the development of information society would pick up speed.

In a robust information society:

1. Every consumer has access to a reliable, high-quality telephone and broadband connection.

Current problems in this regard are related to the present technological turning point in terms of, for example, shutting down landline networks and the effects it will have. At present, wireless connections are not always equal in terms of quality to fixed connections. The prices of e.g. fixed broadband connections have increased considerably, yet the wireless broadband products sold as alternatives do not offer equally good characteristics and transfer speeds often fail to live up to promises. Some regions are only served by one service provider, which means that the consumer may

sometimes have only poor choices available to him. Fortunately, by the end of 2010, everyone must be guaranteed a reasonably priced broadband connection. The target transfer speed in the first phase is 1 Mbps. The consumer's position must, however, be protected even before this requirement takes effect.

2. Subscription contracts must have fair and unambiguous terms. Changes to contract terms must comply with legislative requirements.

At present, contract terms too often favour the telecom operator over the consumer's position. Terms of contract are also often difficult for consumers to understand. A subscription may be simultaneously governed by the special terms of a fixed-term contract, the general terms of subscription as well as various benefit structures. There are also amendments made to contract terms which are contrary to legal requirements and materially change the contents of the contract. For example, major increases in price are implemented by simply notifying the consumer.

3. The consumer must also be able to change the content of a subscription contract in a flexible manner in response to changes in personal circumstances.

The prevailing practice among telecom operators is to tie their customers into fixed-term contracts through various benefit programmes or bundling handsets with subscriptions. Broadband connections are also increasingly offered on fixed-term contracts only. This is problematic for e.g. students or consumers undergoing changes in their circumstances which do not literally meet the legal criteria for a social obstacle to performance that would enable them to cancel the contract. A legislative amendment that entered into force in the beginning of April makes it possible to cancel a fixed-term contract, but a customer wishing to do so must make a lump-sum payment of the remaining fees for the handset and subscription plus any compensation payable for cancellation as stipulated by the contract. For instance, a customer fed up with poor customer service may vote with his wallet and change telecom operators in the middle of a contract term - but only if he can afford to bear the costs of doing so.

4. Advertising and marketing must convey an accurate impression of what is being sold and what is its total price. Impressions conveyed through advertising are tantamount to the whole truth of the offer.

At present, the customer's view of marketing is too often like this: the primary message focuses only on one of the subscription's pricing elements or additional benefit, marketing is otherwise deficient or ambiguous with regards to price information, the meaning of the fixed-term nature of the contract or the network coverage area, limitations of offers and the actual contents of the offer are not clearly communicated, a telephone salesperson neglects to mention essential information and cancellation is difficult, or the price of data transfer services while roaming abroad only becomes apparent when an invoice with a surprisingly large due amount appears in the mailbox.

5. The consumer is provided with an itemised invoice, giving him the opportunity to check that the charges are accurate. Invoices are sent on time and the amounts are accurate.

Currently the customer doesn't always get information on what he is paying for and invoices may be hard to understand. Checking the promised benefits by reviewing the invoice is often difficult. Invoicing periods may vary and customers may end up paying overlapping fees when terminating, cancelling or assigning a contract. If businesses genuinely want to promote the use of mobile phones as a payment method, the itemisation of invoices needs to be improved. The party offering invoicing services is responsible for the accuracy of invoices.

6. The customer is able to exercise his statutory rights free of charge and basic support is included in the price of the service.

Long queuing times and the difficulty to even get in touch with the relevant customer service person or department have been highlighted as problems in customer service. Even more unreasonable is making the customer pay for customer service and for trying to rectify mistakes made by the business. In addition, measures promised by customer service are too often left untaken.

7. Telecom operators and service providers ensure that the counterparty is properly identified.

Confidence in telecommunications services is currently eroded by a failure to identify contractual counterparties in a reliable manner and take the position of minors into consideration. Unreasonable situations are not rectified in a timely fashion. Legislation on electronic identification will be introduced soon. However, what really matters is that more reliable identification methods are actually implemented.

Changes in invoicing not properly communicated

The Consumer Agency intervened in the way TeliaSonera Finland communicated a change in invoicing when Tele Finland customers were not provided accurate information on what the change meant in terms of their contractual relationship.

In late October 2007 TeliaSonera integrated its invoicing systems by moving Tele Finland customers into the TeliaSonera invoicing system. As part of the change, the invoicing periods of Tele Finland customers were adjusted to match the invoicing periods used in the TeliaSonera invoicing system. The change in contract terms was communicated to Tele Finland customers in a customer bulletin sent in September 2007. Customers were not, however, informed of the new invoicing periods applied to them. The bulletin also failed to mention when the change to the new invoicing system would take effect.

Due to the deficiencies and ambiguities in communicating the changes, consumers were surprised to find their invoicing had changed in November-December 2007. The Consumer Agency received dozens of reports from consumers on the matter. Consumers were displeased with the way the company implemented the change in contract terms.

TeliaSonera justified its actions by stating that, due to the method of implementing the changes in invoicing, the company was unable to notify Tele Finland customers of the new invoicing periods prior to the change taking effect. According to the company, it was sufficient to inform customers of the upcoming change in the operational model used in invoicing and direct consumers to contact customer service at a later time.

The right to amend contract terms unilaterally comes with responsibilities

The Communications Market Act defines the conditions for circumstances where a telecom operator can unilaterally amend the fees charged under a subscription contract and other contract terms. The law states that the company must inform the consumer of the amendment of contract terms and the content of said amendments no later than one month before implementation of the amended terms. The legal provisions contain, among other things, a list of information to be included in the contract. The specific purpose of regulation is to protect the consumer in situations where the service provider unilaterally amends the terms of contract. The provisions are mandatory for the benefit of the consumer. These provisions of the Communications Market Act are part of the implementation of the Services Directive.

Making a general reference to a new operational model is not sufficient

If contract terms are amended, it should be clear that consumers must be informed of the contents and significance of such changes in as much detail as the contract terms are legally required to have in consumer contracts. The communication of the changes, therefore, needs to be equally accurate and detailed. Without sufficiently detailed information, the consumer is not able to assess the significance of the change with regards to his contract.

Changing the consumer-specific invoicing period must be considered, from the consumer's perspective, a material amendment of a contract term, one which he is entitled to receive detailed information of in good time before the change takes effect. The duration of the invoicing period and any changes thereto affect the price paid by the consumer for the service.

The obligation to inform can't be fulfilled merely by notifying the customers that an amendment to contract terms will be implemented. Instead, the service provider must provide detailed information regarding the contents of the amended contract term and its significance. It is also not sufficient to provide detailed information only after the change has already taken effect.

A need to prevent this type of action in the future

In the view of the Consumer Agency the manner in which TeliaSonera informed customers of the change in invoicing was even in conflict with the company's own contract terms. Customers were not provided information of new invoicing periods pertaining to them, as referred to in the terms of service, in the manner stipulated by Tele Finland's general terms of service. The company's actions were also deemed to be in direct breach of the Communications Market Act and the Consumer Protection Act.

The Consumer Agency issued an injunction against TeliaSonera Finland Oyj implementing an amendment detrimental to the consumer in the contract terms of a communications service if the contents and significance of such amendment are not clearly, accurately and unambiguously communicated to consumers no later than one month prior to the amendment taking effect. The injunction was backed by a conditional fine of 100,000 euros.

More determination needed in protecting young media users

The government proposal for new legislation on audiovisual media services was recently circulated for comment and the draft was found to still have several shortcomings. Children must be protected more vigorously from inappropriate content and hidden advertising in subscribed services.

The matter boils down to essential rules of consumer protection - advertising being able to be identified as such and protecting minors from content that is inappropriate for them. The new regulations should be based on consistency with the Consumer Ombudsman's and Market Court's existing case law. This is certainly possible, considering that the directive in question is a minimum directive which allows for stricter national legislation. One of the positive aspects of the proposal is that the key principles in regulating advertising would be implemented through references to the Consumer Protection Act, which already takes the position of children into consideration to a good extent.

Restrictions on product placement too artificial for practical implementation

The new legislation would allow product placement in films, so-called TV movies and TV series, sports programmes and light entertainment programmes. Product placement would also be allowed in cases where no fee is paid for it, but instead advertisers would simply provide products or services for use as furnishings, fittings and prizes to be included in the programme for free.

The threat is that programmes would increasingly become vehicles for advertising various products, which is something we are already beginning to see. Another worrying aspect is how this type of development would influence print media in the future. There have been bad examples recently, for example in the form of advertorials, or advertisements designed to resemble articles. The Council for Mass Media in Finland has also presented its objection to allowing product placement and highlighted media's own responsibility in maintaining a clear line between marketing and editorial content.

Children's shows not the only programmes on at children's TV hours

Both the Consumer Agency and the Ombudsman for Children have voiced their concern regarding the position of children as a target audience for product placement. Children watch not only children's programming, but many other kinds of programming on television as well. If the proposed regulation passes into legislation, programming broadcast during hours when children watch TV would often feature prohibited product placement. The issue does not merely pertain to children's programming, but rather interpretation of the regulations would be based on broadcast times. In the Consumer Protection Act the wording "advertising that generally reaches minors" is used.

The fact that product placement is identified by the use of a logo in the programme does not solve the problem and make advertising appropriate for children. Regarding Consumer Protection Act reform, the Parliamentary Commerce Committee issued a statement specifically pointing out that media education can't replace the responsibility of businesses to protect children and minors from the harmful effects of advertising.

Also incongruous in the proposal is allowing the placement of products - even ones of considerable value - in children's programming by giving them for use as furnishings, fittings or prizes for free. The basic principle of advertising having to be identifiable as such is based on the idea that the target of advertising must understand when he or she is being subjected to commercial influence. Whether the product was paid for - and what its value might be - is in no way relevant to the interpretation of this principle. The significant aspect should always be how products and services are used in television programming and how they are depicted.

Both the Ombudsman for Children and the Education and Culture Committee of the Finnish Parliament have suggested the best solution to be prohibition of product placement altogether in any programmes shown during the hours when children watch television.

Providers of subscription programming are responsible for children

The new regulation also applies to subscription-based content services such as movies and pay television. EU member states should ensure that such subscription programming is not made available to children. The measures mentioned in the Directive include, among other things, the use of personal identification numbers (PIN codes). The Consumer Agency is concerned that this requirement of the Directive is not sufficiently prominent in the legislative proposal. The Ombudsman for Children has also noted in his statement that the provision as worded in the proposal is too broad and general in nature.

The Directive does not allow for any exceptions. Service providers must, in every context and situation, be made responsible for developing adequate technical solutions. The legislation must therefore provide for an unconditional obligation on TV companies and other service providers to practically confirm the age of the user of the service or the person placing a subscription and to prevent minors from accessing inappropriate programming. The matter is very broad, highly significant and important from a societal standpoint as the supply of programming services increasingly shifts to the internet and, in the future, to mobile phones in the form of mobile content services. According to legislation the primary responsibility lies with the service provider, who is always obligated to develop and implement adequate technical solutions when offering services.

Gaps in supervision must be fixed

At present, there is no competent authority that could intervene in the advertising of TV programming in e.g. magazines, newspapers or radio. During the past few years, the Consumer Agency has repeatedly highlighted this gap in supervision in its own statements. Fortunately the recently circulated proposal promises some improvement through assigning supervisory authority to the Consumer Ombudsman, but the proposed legislative provision still needs to be clarified further.

The Ombudsman for Children has also supported the idea of giving consumer authorities jurisdiction to intervene in advertising for TV programming that is harmful from children's point of view or, for instance, in advertising of subscription programming services that is contrary to good practice. The Ombudsman for Children and the Consumer Agency have received numerous complaints from parents regarding advertising for late-night television shown in the early evening, the parents having felt that the advertising includes content that is scary for children or inappropriate for children's eyes due to its sexual nature.

While supervision of television programming is not one of the Consumer Ombudsman's tasks, the Consumer Agency is worried about the fact that protecting minors from inappropriate radio programming seems to be of little concern to actors in the radio industry. The Ombudsman for Children has also suggested in his statement that the Ministry of Transport and Communications

should initiate discussion on self-regulation by actors in the radio industry regarding the protection of children from programming inappropriate to their age group.

More information:

Television Directive places excessive responsibility on children and their parents (Current Issues in Consumer Law 7/2008)

Product placement to be separated from surreptitious advertising (Current Issues in Consumer Law 4/2008)

Product placement in practice hidden advertising (Current issues in Consumer Law 2/2006)

Committees adopt stances on proposed TV Directive (Current Issues in Consumer Law 3/2006)

The Finnish Consumer Agency reminds advertisers of principles concerning product placement (Current Issues in Consumer Law 6/2006)

Background to the legislative proposal

The Directive on Audiovisual Media Services (the so-called Television Directive) is being implemented through amendments to the Act on Television and Radio Operations. The Consumer Agency has participated in the work of a ministerial working group on the matter. The government proposal was circulated for comment earlier this year and is scheduled for parliamentary discussion this spring. The Agency has issued a statement voicing its concerns regarding the contents of the legislative proposal, particularly from the viewpoint of protecting children.

Phantom purchases on the phone bill victimise the consumer

A consumer paying a mobile phone bill still does not know exactly what the total amount consists of. The need for new regulations has been recognised for a long time, and now it's time for actions. With operators soon revamping their information systems in response to the new Act on Payment Services, there is a golden opportunity to institute appropriate itemisation of invoices.

The regulations on the itemisation of invoices protect consumer rights and improve general trust in electronic commerce and communications services. The Consumer Agency has long called for new regulations to improve the itemisation of invoices for mobile phone subscriptions. According to a basic principle of consumer protection consumers must be able to confirm the accuracy of their invoice free of charge by checking not only the records of phone calls made and text messages sent, but also whether purchase transactions have been correctly recorded. In their role as the invoicing party, telecom operators are responsible for the contents of invoices also when invoicing customers for services sold by third party service providers. A creditor may not collect a debt without making the basis of the debt clear to the debtor.

Electronic commerce is a one of the central elements in the development of the information society. The extent to which consumers consider various processes to be reliable and convenient is significant to the promotion of electronic commerce and the entire development towards the information society. Mobile phones are a convenient method of paying for various services and purchases. There is also an increasing amount of various contents that can be purchased for the handset itself. These developments emphasise the importance of providing consumers with easy access to detailed information on what the total amount on the invoice consists of. Consumers should not have to specifically ask for this level of detail. Complete itemisations can be produced by the company's information systems. Clear regulations also serve to reduce unnecessary handling of invoice-related matters afterwards, thereby freeing up customer service resources for the business.

Payment Services Act - expectations are high

A new Payment Services Act, currently being circulated for comment, is about to be introduced in implementation of the so-called Payment Services Directive. The new Act would cover, among other things, payment services offered by banks and credit card companies, and partly also those offered by telecom operators. The new regulations will result in additional costs to businesses offering such services. Among other things, their information systems would have to be extensively revamped. The Act is scheduled to enter into force in November 2009.

The Payment Services Act includes a provision on what information the service provider is obligated to provide to the payer on payment transactions made. The point of departure is that service providers must provide all such information to users at no charge. Telecom businesses are strongly opposed to the breadth of the Act's scope of application. There is also the potential of a major gap in legislation if the obligation to provide information regarding

payment services does not extend to operators' own services. If the Payment Services Act ends up not placing extensive obligations on telecom operators regarding the itemisation of invoices, the matter must be quickly taken care of e.g. through amendment of the Act on the Protection of Privacy in Electronic Communications. In any case, the legislative provisions and preamble must be worded in such a way as to not leave gaps in the consumer's position.

Problems in invoice itemisation must be overcome by any means necessary

The legislative reform on invoice itemisation was formerly included in the reform of the Act on the Protection of Privacy in Electronic Communications (the so-called "lex Nokia"). Work on the legislative provisions and preamble had progressed quite far. In the end, however, the provisions were not included in the legislative proposal and there were plans to include them in separate legislation. The clarification of invoice itemisation was also discussed by self-regulatory bodies in the industry years ago, but this work was hindered by the current rules on itemisation and the interpretation of those rules. The need for rules has thus been recognised by every sector concerned.

As the provisions of the new Payment Services Act will, in any case, call for changes to operators' information systems, these changes should be implemented in such a way as to facilitate giving consumers a sufficiently complete itemisation of their invoice in all cases. While the contents of the Payment Services Act are yet to be finalised, it presents an excellent opportunity to finally implement consistent regulation on invoice itemisation. If need be, this should be done with separate legislation, as long as the problem is rectified on the whole.

More information

Phone bill itemisation would increase confidence in mobile markets (Current Issues in Consumer Law 4/2008)

Fully itemised would make mobile handsets into genuine payment instruments (Current Issues in Consumer Law 3/2006)

An internet subscription can be a tricky travel partner

More and more people are taking a laptop computer with them when travelling. Using the internet abroad can, however, result in gigantic bills.

By using a mobile broadband connection a traveller can stay in touch with friends while on the road, take care of errands and be entertained. All this can, however, come at a price that is vastly different than that paid back home. This is due to the fact that monthly fixed charges have not yet been extended to cover data transfer fees outside Finland.

Compared to domestic prices in Finland, data transfer fees abroad are considerably higher. This can often result in bills that are far beyond what the consumer is used to. Even short sessions online can result in thousands of euros worth of charges.

Computers and mobile devices can sometimes also access foreign networks while the user is in Finland. The critical areas for this are border areas and seas between Finland and its neighbours.

Restrictions should be made clear

Surprisingly large invoices can't be simply made the customer's sole responsibility. Operators must make it clear to customers what their package rate includes and what does it not include. If data transfer fees abroad are not included in the monthly fixed charge, this must be clearly indicated in marketing. In addition to this, operators must indicate the prices of data transfer services in their price lists. Customers must also be provided information on ways to restrict the use of data transfer services abroad as well as network selection functions. A positive development is the fact that some operators have included an automatic restriction of data transfer abroad in some subscriptions.

Customers must also be provided instructions on how to avoid problems near national borders. In practice this entails disabling the device's option to automatically connect to the network with the strongest signal. Network selection should be set to manual and the device's home network should be the mobile network of one's own telecom operator.

Prices about to come down?

Improvement is on the way for high data transfer charges abroad. The EU has decided to lower the price ceiling applied to charges collected for phone calls made and received while roaming abroad. A similar price ceiling is also proposed for text messages.

For data transfer charges, the price ceiling will apply at the "wholesale level", i.e. to fees charged by operators from one another. The final effect this will have on consumer prices remains to be seen.

When the operator stumbles, customers are left in a jam

Fixed-term subscriptions gave grey hairs to consumer customers of GSM Suomi Oyj when DNA Oy unexpectedly terminated the company's network rental agreement in mid-April.

The situation threatened to render consumers' subscription connections unusable. With just one week left before the date their connections threatened to go offline, consumers still had no information on how to ensure continued service. The situation was unreasonable from the consumers' standpoint.

The consumers' subscriptions were, at least in part, fixed-term contracts. As a rule, fixed-term contracts can't be terminated before they have run their course. In the Consumer Agency's view it was unreasonable to expect that consumers would honour their contracts under the circumstances that prevailed. The service in question is an essential service to consumers, the continued availability of which was of considerable significance to both their security and financial position. According to the principles of contract law, a contract can be terminated if there are weighty reasons to expect that contractual obligations will be unfulfilled to a significant extent.

Transferring numbers another question mark

In terminating a mobile phone subscription, another central consideration for consumers is keeping their existing mobile phone number. Mobile phone numbers are transferable in such a way that the consumer can open a new subscription while keeping their old number. In the case of GSM Suomi Oyj, fixed-term contracts complicated the transferring of numbers and consumers were left unsure of how to proceed.

The case provided yet more evidence of fixed-term contracts generally not being in the best interest of consumers, as they complicate the process of changing operators or prevent consumers from changing operators altogether, even when such a change is genuinely necessary from the consumer's standpoint.

Stuck with two subscriptions?

Some affected consumers quickly went ahead and opened a subscription with another operator to ensure that they would not be left without a functional mobile phone subscription. Another company, Dicame Oy, offered its network for DNA to lease at the last minute and the phones going offline was narrowly avoided. At this time it is unclear whether the company agrees to terminate the fixed-term contracts of those customers who went ahead and acquired a subscription with another operator to be on the safe side. The question of whether the situation was fair from the consumer's standpoint is presently handled by the Consumer Agency.

High definition TV on the way - schedules and hardware requirements yet to be finalised

HD, or high definition, broadcasts are currently available through satellite and cable television networks. For the antenna-based network, several technical decisions are yet to be made. Before decisions on the adoption of new technology are made, the questions of demand and the effects on consumers need to be given due consideration.

In order to implement the required changes for moving to high definition broadcasting in a controlled manner, it is important to ensure that there is a sufficient transitional period and appropriate information provided in the marketing of relevant appliances. Consumers must have the opportunity to use the appliances they have purchased, for their planned purpose, for their entire normal service life. In addition, the functionality of appliances must be ensured in advance. The Consumer Agency has collaborated with industry organisations and highlighted the requirements of consumer protection in implementing the upcoming changes.

Appliances purchased based on incomplete information?

The technical know-how of appliance salespersons is essential to facilitate purchase decisions based on accurate and relevant information. The hardware requirements related to high-definition technology must be known when marketing and selling appliances. This, of course, poses challenges - especially when nobody knows what the exact technical solutions to be implemented will be. Regardless of this, it must be remembered that the overall impression conveyed by marketing may not be misleading and the consumer must be informed of all aspects relevant to the purchase decision. One may not make promises one can't keep.

Buyers can't be allowed to get surprises such as their appliance - contrary to the impression conveyed in marketing - not being suitable for receiving all pay television services or the viewing of HD content in the near future. If necessary, a careful look should also be taken at what legislative provisions, the licence terms of various actors and technical requirements state - or could state - regarding these matters.

Pay TV and free TV broadcasts are not in the same position, as their hardware requirements may differ from one another. Particularly with HD Pay TV services the requirements for content protection by copyright holders are in a significant role as illegal distribution is prevented through smart card links, which in turn place certain technical requirements on hardware. Nevertheless, there should be discussions on at least how to implement the required protection in a manner that is convenient to consumers. The method of implementation should not be taken for granted, particularly if it threatens to pose unreasonable difficulties for normal use.

Card linking of HD Pay TV to be implemented on the cable television network

Cable television operators are implementing the linking of Pay TV cards and digital receiver devices in their HD broadcasts beginning this spring. On the satellite television side, card linking has already been used for some time and various technical changes affecting hardware requirements have given rise to complaints by consumers. Consumers have also been displeased with the fact that use of a Pay TV card is restricted to one device. The card can't be used at the summer cabin, or even in the next room.

On the cable television side, appliance markets will remain open, i.e. products can be purchased from home appliance retailers, not only from one's own cable operator. Again, consumers must be aware of new hardware requirements. In addition, the serial number of the appropriate appliance must be provided to the cable operator.

On the satellite networks the hardware markets have been fairly restricted, i.e. appliances have been purchased bundled with fixed-term service contracts from the Pay TV operator. This will hopefully change as well.

One card system?

In 2008, a one-card system was adopted for standard definition Pay TV services on the antenna network. The goal was to protect the ease of use of Pay TV channels. While the change was hardly radical from the consumer's viewpoint, this was a positive development. Few consumers use the services of the two available service providers simultaneously. Their packages have, however, overlapped as they have included some of the same channels. Some consumers may, however, want to change service providers between the two available options in a flexible manner. In these situations it is sufficient for the consumer to keep using the same card. When changing service providers, there is no need to return the card. However, this does not translate to any savings in standard service fees.

On the cable network the one card system is not significant, as there is only one service provider on one network. The one card system has not been extended to the satellite network.

More information:

HD television does not alone guarantee a better quality of television picture (Press release 13 June 2008)

Which comes first, the user or technology? (Current Issues in Consumer Law 5/2007)

Even the wireless surfer deserves a quality connection

In choosing an internet subscription, connection speed is one of the key criteria. Based on reports received by the Consumer Agency, consumers are still being given misleading information regarding the speed of wireless internet services offered over the mobile phone network.

The actual speed of a wireless broadband connection often turns out to be far from what was promised. When service quality and features have not been clearly defined in their entirety, assessing when the service is defective becomes challenging. Consumers have found it difficult to appeal to service defects in practice and exercise their rights.

The majority of broadband connections are still offered over fixed lines. Use of wireless broadband services has increased in the past year and the problems associated with them have been reflected in the increased number of complaints filed with consumer authorities in various parts of Finland. On occasion, too many subscriptions have been sold relative to available capacity, network coverage maps have not been accurate enough or the salesperson has otherwise given too extensive general promises regarding network coverage.

The Consumer Agency sent the industry a set of guidelines on the marketing and contract terms of broadband subscriptions in June 2008. This has been followed by subsequent negotiations with individual operators. At the same time, there are pending legislative amendments which are expected to improve the situation.

Minimum connection speed offered to everyone set at 1 Mbps

The Parliament recently passed a legislative amendment which stipulates that the connection speed to be offered to every citizen at a reasonable price will be set by a Ministry of Transport and Communications decree. In the first phase the speed of internet subscriptions would be set at one megabit per second, and subsequent decrees could be issued to increase the minimum connection speed as technology develops.

The new decree related to the EU's universal service regulation can now also be used to set a reasonable range of variation for actual speeds provided in the universal service framework. The preamble notes that in the future it will be justified to set a minimum speed for subscriptions and a rule where e.g. a temporary 25% reduction in connection speed could be deemed acceptable.

The regulations on universal services are meant to ensure the availability of telephone and data transfer services throughout the country. The Finnish Communications Regulatory Authority is charged with appointing universal service providers for certain regions. FICORA last appointed universal service providers in March 2009, but the recently passed amendment calls for a reassessment of appointment needs.

What remains necessary, however, is that actual connection speeds correspond with the promises made or the minimum speed set through the universal service regulation. The current level of service, particularly with wireless subscriptions, has not always lived up to promises, and service levels are not sufficiently defined in contract terms.

Gift vouchers offer little consolation when internet service is interrupted

Customers found little consolation in the Helpson gift voucher they received from TeliaSonera as compensation for internet service interruptions. Businesses may not convey a misleading impression regarding the process of resolving problems and compensating for them. Instructions on how to use a broadband connection, for their part, should be included in basic customer service.

Updates and maintenance on a router on Sonera's network caused a service interruption. TeliaSonera Oyj acted in an inappropriate manner towards consumers by sending its customers a gift voucher for the Helpson support service, which is offered for a fee, after the customers' internet service had been interrupted. The gift voucher sent to consumers made a reference to the service interruption and apologised for the inconvenience. This was easily interpreted as the gift voucher being sent as compensation for the service interruption.

According to the Communications Market Act, however, consumers are entitled to standard monetary compensation for certain service delays and defects. The provider of communications services can't fulfil the statutory obligation to pay compensation by sending gift vouchers. In the event of a defect in communications services, consumers are entitled to file a complaint and the service provider is obligated to resolve the problem.

Instructions for use a part of service price

Communications services are essential services, which means that service functionality and related technical customer support are of particular importance to users. When a customer concludes a broadband subscription contract with an operator, instructions for how to use the service must be part of the contract and included in the communications service purchased by the customer. Resolving technical problems in communications services and processing customer complaints are part of the operator's responsibilities. The Helpson support service can't help customers with resolving a problem with their network connection. Rather, it is meant to offer support in problems related to e.g. the settings or use of the network terminal.

The gift voucher conveyed a misleading impression of both the contents of the Helpson support service and the consumers' right to compensation for the service interruption. The company was notified that misleading information may not be conveyed to customers regarding the resolution of defects or delays in communications services and compensation for such defects or delays or the company's statutory obligation to provide instructions for basic use of the service. *KUV/11820/41/2008*

Legislative provisions applied to the case:

Consumer Protection Act, Chapter 2, Section 6

Tie-in sales still require monitoring

The new legal provisions on tie-in sales entered into force in April 2009. The previous temporary provisions on tie-in sales were effective for a trial period of three years. The introduction of the new legislative provisions on tie-in sales brought improvement to the consumer's position in a number of ways. Nevertheless, a lot still depends on businesses offering fair contract terms. The role of the authorities is now to keep monitoring tie-in sales.

Despite the fact that tie-in sales are now governed by permanent legislation, the Transport and Communications Committee of the Finnish Parliament deemed it essential that the practical effectiveness of the new legal provisions from the consumer's standpoint be monitored both in the short and long term. The inambiguity of pricing and facilitating comparisons was highlighted. Purpose-oriented pricing should not be used to restrict the consumer's opportunities to e.g. conclude tie-in sales contracts with a one year term.

The quality of customer service must also be regularly monitored. A customer fed up with poor customer service may not necessarily be able to vote with his wallet if he is stuck with a fixed term contract. Or, at the very least, doing so may be very costly.

Tie-in sales for all kinds of communication services

Fixed term tie-in sales contracts have been marketed in conjunction with nearly all communication services. It is now more clear than ever that the regulation of tie-in sales is fragmented and fails to suit its environment well. Consumers have difficulties in pursuing their rights when tie-in sales constitute their very own form of contract, one which old principles don't necessarily always apply to. There are also different regulations applied to different types of tie-in sales contracts.

Tie-in sales will continue to be prohibited for standard GSM phones. In tie-in sales of other subscriptions and devices used on the mobile phone network the consumer is protected by the tie-in sales provision in the Communications Market Act. Tie-in sales of other communications services, such as Pay TV services and appliances and fixed broadband and terminal bundles, is allowed, but not directly governed by the same legal provisions. There is a lack of consistency in regulation, which has already been reflected in the complaints received by consumer authorities.

Senior citizens to get a headache from tie-in sales contracts for desk telephones?

From April onwards, tie-in contracts have been allowed in the sale of mobile phones similar to emergency phones and desk phones. These types of devices are primarily purchased by special groups. As technology moves more and more towards wireless services, there is likely to be demand and supply for these types of special devices. These days mobile phone subscriptions are a product used on a daily basis even among consumer groups in weaker positions, such as the elderly. Many consider it important to still have the familiar desk telephone as well, but new types of contracts call for more vigilance compared to old landline subscriptions.

Tie-in sales may not be a cost-effective option for someone whose use of the telephone service is sporadic and simple. The consumer should be able to anticipate his needs to use the

service for a two-year period prior to committing to a long-term tie-in sales contract. Under the new legislative provisions, tie-in contracts may be terminated in certain circumstances and under certain conditions, but it may not be easy and, at the very least, it may be costly. Weaker consumer groups such as the elderly have already experienced problems with complicated tie-in contracts and their marketing.

Marketing directs towards tie-ins

The selling of tie-in contracts over the phone and at sales booths in shopping centres has, at times, been aggressive. Salespeople may sometimes neglect to mention the fixed-term nature of the contract, and comparing prices is difficult. There is the threat of the consumer finding himself in a situation where a two-year tie-in contract appears to be the only available way to acquire the device. It has already been observed that certain phone models may not be available at all without a tie-in contract. The legal provisions on tie-in sales do not require that the devices should be available without tie-ins as well. Subscriptions, on the other hand, must be available without the devices as well, but the actual supply and pricing on the market don't always make this an attractive option.

Tie-in selling is also a potential risk factor in consumers falling into debt. The legal provisions on communications services must ensure reasonably priced basic communications services throughout the country and for all user groups. Keeping in mind the long-term objectives of the information society, no consumer group should have its position as a user of communications services weakened.

The new legal provisions on tie-in sales entered into force in the beginning of April. The previous temporary provisions on tie-in sales were in effect for a trial period of three years.

More information:

New tie-in sale legal provisions as of 2 April 2009 (Press release 31 March 2009)

Channel packages can't be changed without restrictions

Subscribers of Pay TV services are all too familiar with situations where the content of channel packages changes unexpectedly. Channels may be removed or changed and the programme content of channels may change as well. Many people subscribe to a particular channel package to watch certain programme content such as their favourite sport.

Changes to channel packages, such as changing content or prices, are repeatedly giving rise to consumer complaints. Customers may be unable or unwilling to vote with their wallets when there are no better alternatives available to them. The same programme content may not be offered by other service providers, the consumer may be tied to a fixed-term contract or the consumer may have invested in appliances that only work with one service.

The Consumer Agency has engaged in discussions with individual companies in the industry on a yearly basis regarding situations where channel packages are changed. The most recent discussion dealt with Oy Viasat Ab's changes in contract terms last autumn. The matter was resolved by negotiation. Now all eyes are on the industry to see whether the situation on the whole improves.

The Consumer Agency has reminded companies of legislative requirements. The terms and conditions of fixed-term contracts can only be changed if the need for the change is based on legislative reform or a decision by the authorities. When changing the terms and conditions of contracts that are valid indefinitely, consumers must be notified of the change no later than one month prior to their coming into effect. At the same time, consumers must be informed of their right of termination. In notifying customers of changes the need for clear customer communications must also be kept in mind. The company may not, however, unilaterally amend the terms of a contract that is valid indefinitely in such a way as to change the contents of the contract to a material extent from the consumer's viewpoint.

Room for improvement in marketing and customer service

Two years ago the Consumer Agency issued guidelines to the entire industry on the marketing of Pay TV services. This has been followed by monitoring compliance with the guidelines and intervention in service providers' marketing. At the same time companies in the industry have been very active in their marketing and their customer numbers have increased. Nevertheless, there still appear to be problems. For instance, the total price of a package isn't always clearly indicated.

There have also been problems with the customer service of some of the companies. Customers may not get any service at all, or their complaints aren't handled in a conclusive manner as promised. For example, mistakes in invoicing have not been rectified as promised on the phone. Consumers have not been able to exercise their rights when their complaints have been stuck in the wheels of customer service. Problems have been resolved by negotiation and through the service providers' own measures.

The Consumer Agency also invited actors in the industry to a seminar last autumn to discuss ways to solve the prevailing problems and increase customer confidence. To form a more concrete view of the problems, the seminar included a review of complaints received from

consumers. The Consumer Agency expects service providers to take action based on these discussions.

More information:

Channel package marketing leaves too much guesswork (Current Issues in Consumer Law 4/2008)

Channel package changed on the fly, doubling the price (Current Issues in Consumer Law 4/2008)

Is moving sufficient grounds for cancellation of a fixed-term contract?

Is moving to a different city sufficient grounds for cancelling e.g. a one-year broadband subscription before the end of the contract term? The question should be approached from the standpoint of social obstacles to performance and the assessment of the fairness of contract terms.

Fixed-term contracts have become commonplace, particularly with communications services such as mobile phone and broadband subscriptions. Choosing a fixed-term contract is often an attractive alternative which offers various benefits to the customer. The general principle is that fixed-term contracts are binding on both parties and can't be cancelled easily. This principle is, however, overridden by certain legal principles such as protection of the weaker party and the fairness of contracts.

Unreasonable circumstances may justify the cancellation of a contract

Fixed-term contracts can often only be cancelled on the grounds of a so-called social obstacle to performance. Social obstacles to performance are usually considered to include illness, unemployment or some other unforeseen change in one's financial situation. As the preparative work on various legislation does not provide any examples of these other reasons, their interpretation has primarily been based on case law.

The question of cancelling a contract may also involve other types of unreasonable circumstances. Moving to another city can be considered such a circumstance, even when it does not directly cause financial difficulty. The government proposal for new legislation on tie-in sales suggests that moving abroad can be compared to a social obstacle to performance, which would make it possible to cancel a fixed-term contract. From the consumer's perspective moving from one city to another in Finland is no different to moving abroad, if the service can't be used in the new place of residence.

Paying one's way out of a broadband subscription

Businesses are generally not very eager to allow the cancellation of fixed-term contracts on the grounds of a social obstacle to performance. Often only illness and unemployment are considered to be acceptable grounds. The Consumer Agency recently dealt with a case where Welho Oyj charged a cancellation charge of 99 euros from a consumer who cancelled a 12-month fixed term broadband subscription due to moving. The consumer moved to a city where the business in question does not provide services.

Even if moving doesn't meet all the conditions of a social obstacle to performance, it can in some cases be considered a change in circumstances which would make it unreasonable to expect that the consumer remain bound by contract terms. If a broadband connection can't be used at all in the new residence, it is unreasonable to require that the user must continue to pay for it. In practice, if the consumer wanted to have a broadband connection at his new residence as well, he would have to pay for two subscriptions at the same time. If the balance of a consumer contract swings to favour the business to a significant extent, as in the case above, the contract must be considered unfair.

Right of cancellation must be assessed on a case-by-case basis

Unfairness has been discussed, amongst others, in cases related to leasing an apartment. The relevant legislative provision provides an appropriate "middle ground" for the assessment of when fixed-term contracts could be cancelled: resolutions must be made on a case-by-case basis, the change in circumstances must be significant and unforeseen, and there must be no other solution for remedying the unfair contractual situation. The previously mentioned case of a broadband connection is a prime example of a situation where a case-by-case assessment should be applied. The service provider may, of course, have standard charges specified in its fee structure, but the case-specific circumstances should always play a role in the final determination of compensation. Being discharged of a contract without paying compensation should be allowed in cases involving a social obstacle to performance, but where other types of unfair circumstances are present, collecting reasonable compensation could be allowed. For example, if the contract includes hardware such as a digital receiver, it would be possible to collect reasonable compensation relative to the value of the appliances - again based on case-by-case assessment. *2326/41/2008*

Legislative provisions applied to the case

- Consumer Protection Act, Chapter 3, Section 1 (Fairness of contract terms)



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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