



Current Issues in Consumer Law

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[From the Editor]

Mobile phones with bundled contracts, cars with estimated prices

Bundled offers for mobile phones were earlier permitted under a temporary law, but the situation has now been stabilised through the introduction of permanent legislation. While the preamble of the new legislation specifies death of the consumer as grounds for release from contract, several flaws observed in the previous law still remain.

Businesses are keen to market fixed term bundled contracts for almost all communications devices. There are extensive requirements on retailers to ensure that consumers are clearly informed of the essential contents of the contract during the customer service encounter. Based on our observations, salespeople in the telecommunications sector aren't always successful in making it clear to the customer that they are entering into a fixed term contract. Knowing how the magazine industry has struggled for years to clarify the contents of telephone sales, it will certainly be challenging to make telephone sales successful for a much more complicated product. The advertiser and seller are, however, free to choose the channels they use based on product and target group in question. Consumer feedback, just like desperate adverts fraught with small print, too often indicates a lack of genuine media consideration.

Another legislative change seen in the beginning of April concerns the tax regulations on cars. In Finland, as in EU member states in general, indicating the total price for a product has been the norm: the consumer must be able to see what the final price of the product is. For cars sold to order, the outcome of the newly implemented law is that adverts for individual vehicles will not feature a total price, but rather a price estimate based on certain measurements of carbon dioxide emissions. This type of legislation must not spread to other industries. Fortunately the adverts seen on the first weekend the law was in effect appeared well planned and carried out: most of them followed the guidelines recommended by the car industry and consumer authorities.

Protecting the position of consumer debtors is important. When we were preparing a summary of the situation in Finland after the 1990s recession, it was clearly evident that in the present situation developed legislation, case law, statutory debt advisory services and co-operation also with the third sector are of great significance. Several countries are now interested in these solutions.

More resources are being allocated to debt advisory services, which will hopefully give advisors a better opportunity not only to process the cases of single debtors, but also to observe recurring unfair practices and report them to the consumer authorities. The Consumer Ombudsman supervises not only the fairness of contract terms in general, but also terms of guarantees and debt collection including the terms of voluntary debt conciliation. The successful continuation of this work requires not only reports from consumers and legal consumer advisors, but also valuable observations from debt advisors.

On the 7th of April 2009

Anja Peltonen
Director

Bus passengers deserve a smooth ride

Bus passengers have not been able to lean on a framework of clear regulations for making complaints and receiving compensation for events such as buses running behind schedule. The new Mass Transportation Act offers an opportunity to remedy the situation.

The Ministry of Transport and Communications is currently working on a new Mass Transportation Act with the objective of securing mass transportation services throughout Finland and to increase the use of mass transportation particularly in urban areas. The Act would apply to professional bus transportation services and, in part, also to rail transport.

The position of bus customers has been somewhat volatile. Even before the new legislation, it has naturally been possible to argue that a bus arriving late or failing to operate as scheduled is a case of service defect. However, the passenger has thus far not had the support of specific regulations for pursuing his rights.

Without clear legislation, consumers have also not had the ability to file complaints regarding service defects. Dissatisfaction with mass transportation is not communicated in complaints to the Consumer Disputes Board, but rather on Internet discussion forums.

To remedy the situation, the Mass Transportation Act must include a separate chapter on passenger rights and legal protection. Acts concerning other essential services such as the Communications Market Act, Electricity Market Act, Water Services Act and Railway Transport Act already have a chapter with provisions to this effect.

Compensation for those who suffer the most

According to the preamble to the legislative proposal for the Mass Transportation Act, passengers have no choice but to accept the fact that city buses may be late due to circumstances such as traffic congestion or road works. A bus that is late or fails to operate as scheduled may not cause the passenger any detriment other than frustration – at least when the bus route in question has frequent service. The situation is different if the route only has a couple of buses per hour. It is absurd that the bus operator pays a penalty to the service provider for missed departures, but no compensation is paid to the customer shivering at the bus stop and possibly being late for work.

According to the legislative proposal, the transport license holder or an association of license holders must specify quality requirements regarding their transport services and communicate these to passengers. However, giving service providers the right to unilaterally specify service quality and using the quality standards established by them as the sole benchmark for determining when a defect has occurred is not a good solution from the consumer's viewpoint.

According to the Consumer Protection Act services provision must be competent and careful. In a similar vein, a transport service provider must meet a certain minimum requirement in terms of service quality and contract terms may not be used to circumvent this. The characteristics of a quality service include, among other things, making consistent schedule information easily available to customers, notifying customers of any price changes well in advance and following the so-called one stop service principle in receiving complaints.

The Mass Transportation Act is scheduled to enter into force coincidentally with the EU service agreement on December 3, 2009. Considering the extent of the legislative proposal, the schedule is tight enough to make postponing the Act's entry into force an option worth considering. This would help ensure sufficient time for drafting the legislation and making preparations for its entry into force.

Rights of air passengers thus far only effective on paper

The overbooking decree intended to protect the rights of air passengers has not completely fulfilled its objective. As the regulations still leave too much room for interpretation, more solid ground is sought through establishing case law through real life disputes.

The overbooking decree, which entered into force in February 2005, covers cases where the passenger is denied boarding, the flight is cancelled or delayed or the class of service is changed. The airline responsible for the flight may, in such cases, have to refund the price of the flight to the passenger, arrange rerouting under terms corresponding to the original agreement, offer to care for the passenger or pay compensation. In Finland the application of the overbooking decree is supervised by the Consumer Agency, the Finnish Civil Aviation Authority and the Consumer Disputes Board.

In 2007 the European Commission frowned upon the fact that airlines don't always take the requirements set by the decree seriously. Too often, airlines may explain the cancellation of flights by exceptional circumstances and neglect to pay standard compensation on those grounds.

Even if the regulations are complied with, the end result isn't always good for the consumer. Despite their detailed nature, the regulations contained in the overbooking decree are very much open to interpretation.

Case law to provide guidelines for application

The best way to clarify the contents of the decree is to gather court decisions on the practical application of the regulations. The need for case law is highlighted by the fact that the Court of Justice of the European Communities currently has several cases related to the overbooking decree pending.

In December 2008 the Court handed down a decision, which indicates what types of exceptional circumstances are acceptable grounds for airlines to decline compensation to passengers for cancelled flights. According to the Court, technical problems observed during aircraft maintenance or resulting from defects in maintenance do not, in themselves, constitute such exceptional circumstances. In the Court's view, fixing such problems should be considered part of the normal operations of an airline.

The Court of Helsinki currently has a pending case against Finnair where the Consumer Ombudsman is assisting a consumer. The claimant was unable to get on his Finnair flight from Barcelona to Helsinki due to the airline's decision to allocate seats to passengers stranded in Barcelona earlier in the same week due to a strike. The Consumer Disputes Board recommended that Finnair compensate the consumer for the amount of 400 euros, but the airline refused to do so.

Support from actions by the authorities

The Commission, for its part, has joined forces with supervisory authorities in an attempt to solidify the position of the overbooking decree by preparing answers to questions of interpretation related to the decree. A document on procedures by authorities and a complaint form for consumers have also been prepared. The Commission has also gathered statistical information from supervisory authorities regarding complaints received and actions taken.

The Consumer Agency, together with the Finnish Civil Aviation Authority, has issued guidelines to various airlines on procedures compliant with the decree. The Agency has also requested that airlines report to it on how they inform passengers of the rights provided to them by the overbooking decree and what their primary course of action is in directing passengers to make complaints. The Agency has also commented on the guidelines and complaint form prepared by the Commission.

Online marketing of flights gives constant cause for complaint

Last autumn the Consumer Agency reviewed the websites of several businesses offering flights and holidays. Despite the fact that the Agency had already worked with several of them to fine-tune their marketing the previous spring, there was still plenty of room for improvement.

A sweep of 386 websites selling airline tickets was conducted in late 2007 by authorities supervising consumer protection in the European Union. Finland was represented in the sweep by the Consumer Agency. The sweep involved a check of whether the websites found problematic in the previous campaign of September 2007 had made the necessary improvements. More than half of the websites had been corrected, but the rest still had deficiencies. Last autumn the Consumer Agency inspected the websites again and demanded that the businesses commit to lawful marketing.

Boxes on web forms to be checked by the customer only

Pre-checked selection boxes caused confusion on several websites selling flights, including Wingo xprs ab, Travel Partner, E-Ticket, Skytours and Seat24. Whether the pre-checked selection was for voluntary travel insurance, subscribing to an electronic newsletter, insurance against cancellation or insurance against bankruptcy, choices must be genuinely based on the customer's active expression of choice. A pre-checked box may easily go unnoticed by the customer. Requesting a general permission for electronic direct marketing is also considered an unfair contract term. A party requesting such permission should specify the limits of the right to direct marketing in a clear and unambiguous manner. *KUV/9610/41/2008, KUV/8172/41/2008, 10359/41/2008, 10358/41/2008*

Split prices caused confusion

Wingo xprs ab marketed attractively priced domestic one-way flights on its website. However, the discount price involved the condition that the consumer had to purchase a return ticket. As the price was only indicated for a one-way flight, the consumer had to calculate the final price himself. This practice is not permitted. Sales prices must be indicated in marketing as total prices including all taxes and surcharges. The company was urged to correct its marketing.

Another company admonished for indicating split prices was Travelpartner Ab, which automatically added a 9-euro booking surcharge to the price but did not indicate it in the total prices shown. These types of costs, which are not dependent on the passenger or type of travel, should be included in the total price. *KUV/9610/41/2008, 10355/41/2008*

Discount flights sold out

Ebookers Oy marketed discount flights on its website. On the date of inspection there were four days left in the campaign. The discount flights had been completely sold out, and the cheapest price offered was over ten times higher than the discount price. Once discount flights have been sold out or the offer is no longer valid, their marketing must be ceased immediately.

A special feature of advertising on the Internet is that marketing information can be updated quickly and practically at any time. As a result of this, businesses have a greater responsibility for displaying correct information in their advertising when engaging in online marketing. Information should be updated immediately when discount flights have been sold out and they are no longer available.

The consumer should be able to form a realistic perception of the availability of the marketed flights at a glance, and consumers may not be misled by attractive prices. Matka Vekka was issued guidance regarding the sufficient availability of discount trips. The "Holidays" page on the company's website did not feature a sufficient amount of offers at the "Cheap vacations starting from..." prices in proportion to the vigorous marketing the company was engaging in. The company was urged to make

its marketing communications more accurate, for example by indicating the time period during which the discount travel offers are available. Air Finland was also asked to adjust the volume of its marketing to better correspond to the amount of discount flights on offer and to give consumers more accurate information on what dates or months the discount prices cover. For instance, the company had dramatic advertising for discount flights to Malaga when it appeared that they only offered four such trips which took place over six months from the time they were marketed. *KUV/8523/41/2008*, *KUV/2789/41/2008*, *KUV/11388/41/2008*

The threat of class action has improved the consumer's position

The preventive effect of class action has matched expectations. So far there hasn't been a need to fully employ this heaviest weapon in the consumer authorities' arsenal.

The Consumer Agency regularly receives inquiries as to why class action, the heaviest weapon in the consumer protection arsenal, is yet to be employed despite its availability for over a year now. However, the right to use such expensive and heavy weaponry also comes with a responsibility: it should not be employed until all other means have been exhausted. So far it seems that the mere presence of the shadow of class action gives the business sector an incentive for better legal compliance. This is indeed a positive observation.

In 2007 the Consumer Ombudsman was given the right to pursue a collective solution to a problem experienced by several consumers. The two means for this are a group complaint brought to the Consumer Disputes Board or class action in a court of law. They are both special means, which may help consumers pursue their rights more effectively. However, class action in particular is a time-consuming, heavy and costly procedure. Furthermore, there are strict legal criteria for what types of cases may be pursued through class action. The preventive effect of these methods was highlighted as the primary objective already at the time of introducing the legislation.

Tight criteria for class action

The Consumer Ombudsman may initiate a class action in a matter where several individuals have claims based on the same or similar grounds against the same company. Processing the matter as a class action must be appropriate considering the size of the class, the contents of the claims presented and the evidence provided. The class must also be such that it can be defined specifically enough. A further precondition for bringing class action is that the matter is a dispute between a business and a consumer, which falls within the Consumer Ombudsman's jurisdiction.

The Consumer Agency has received dozens of reports where an individual consumer or consumer group requests that a class action or group complaint be initiated. The Agency has also considered using these means at its own initiative. In fact, however, there have only been a few cases where either of these methods would have been appropriate. Particularly with class action the matter must be of general significance to consumers in a collective sense.

Initiating class action or a group complaint is of little advantage to the consumer if, for example, the company in question is in financial difficulty or has gone out of business. This was the case e.g. when RHS Promotions Oy was unable to pay compensation to all consumers concerned for a cancelled concert by the rap artist Timbaland due to the company's financial difficulties.

Expediting negotiations

So far the desired result for the consumer has, in all cases, been reached through means less onerous than class action or a group complaint, such as negotiation. The Agency has considered the option of class action in several cases, but the businesses in question have elected to rectify their practices rather than argue the matter in the Consumer Disputes Board. In such cases, where agreement on rectifying business practices has been reached through negotiation, individual consumers may seek compensation from the company e.g. with the help of a consumer advisor.

The threat of a group complaint and class action has also proved to be an effective instrument in cases where the counterparty is a foreign business.

Seen from this perspective, class action presents itself as a measure that provides solid support for the consumer's legal position. In light of this, reopening discussions on its applicability in matters other than those related to consumer protection may be warranted.

First class action initiated in Sweden

In Sweden the option of initiating class action in consumer matters has been available for several years. Thus far only one class action, against Ståvrullen Finans AB (formerly Kraftkommission i Sverige AB) has made it to the courts. After the case had been pending since 2004, the Supreme Court decided last December that class action may be brought in the matter. Next the Umeå District Court will judge whether the collective, who exceed 2000 in number, has the right to receive compensation in the dispute over electrical supply agreements.

More information:

[Moderate Class Action Would Improve Consumers' and Businesses' Legal Security](#)
2/2006

[European Commission Developing Quality Criteria for Collective Redress](#)
6/2008

[Examples of Cases in Which a Group Action Could Be Brought](#)
2/2006

[Finnish Practices to Ensure That Consumers Can Obtain Individual Redress](#)
6/2007

Rapporteur: More money for financial and debt advisory services, service provision through legal aid offices

The Ministry of Employment and the Economy has had an evaluation made on the effectiveness and development needs of financial and debt advisory services. Financial and debt advisory services are socially cost-effective and important, yet throughout their history they have been plagued by a lack of resources and the existence of regional differences in service availability and quality.

Rapporteur Kirsti Rissanen proposes that financial and debt advisory services be offered through legal aid offices and the responsibility for their development and management transferred to the Ministry of Justice. The service network of legal aid offices is sufficiently dense to provide personal service. The objective is to harmonise the incoherent structure of financial and debt advisory services, to guarantee customer equality in terms of service availability and to improve the consistency of procedures.

A similar change for the same types of reasons has recently taken place through the centralisation of municipal consumer advisory services (offered through local administrative courts under the supervision of the Consumer Agency) and the supervision of interests in the area of guardianship (offered through legal aid offices under the supervision of the Ministry of Justice) and the earlier transfer of legal aid services from municipalities to the state.

A counterweight to a strong debt collection and recovery industry

It has also become obvious that debt problems are not merely a recessionary symptom. Considering how actively credit is marketed and how easily it is available in today's consumer and credit society, it is natural that debt problems are constantly present. They are seen across all age categories and socioeconomic groups. Managing consumer credits and quick loans, both which have rapidly increased in the past few years, have proven to be particularly challenging for people. A strong debt collection industry and effective debt recovery procedures must be counter-balanced by professional financial and debt advisory services.

The Rapporteur also finds that state financing for the organisation of financial and debt advisory services has been insufficient. There are also substantial discrepancies in the working conditions and salaries among advisors. According to the Rapporteur's estimate, the annual budgetary allowance needed for debt advisory services is approximately 11 million euros. At present the state has financed the system by approximately 5.7 million euros, with some municipalities allocating further resources totalling some 2.5 million euros.

Advisory services call for ever more extensive competence

Another challenge facing financial and debt advisory services is striving for consistency and uniformity of quality across Finland as well as developing the occupational and supplementary education of advisors. With customers increasingly presenting multiple problems and deficiencies in financial management, there is a great need to develop working methods, strive for more effective customer encounters and increase co-operation with other authorities, civic organisations and the private sector.

Financial and debt advisory services have natural interfaces with social services, and in several cities financial and debt advisory services have functioned well in connection with social services. According to the Association of Finnish Local and Regional Authorities, this arrangement can be successfully implemented only in large cities, which makes legal aid offices a better general alternative for organising financial and debt advisory services. However, the Rapporteur proposes that

municipalities which wish to continue offering financial and debt advisory services to their citizens as part of the municipal service structure should be given this opportunity.

The Rapporteur's report also includes other suggestions for improving the position of insolvent and over-indebted private individuals, such as adopting social lending in all municipalities, re-evaluating the system of additional payments from increased income featured in debt arrangement payment plans and looking into the possibility of adopting a procedurally light system of debt recovery in debt arrangement proceedings. The risk-taking ability of municipalities related to social lending could be improved by using Finnvera's guarantees as collateral. The same approach could be used to increase the Guarantee Foundation's ability to guarantee voluntary arrangement loans.

Household debt problems were surveyed to collect background information

The National Research Institute of Legal Policy conducted research to find out what types of debt problems households experienced in the late stages of the economic upswing and what challenges are posed by the consequences of the economic crisis. The Ministry of Employment and the Economy ordered the research as background material for the Rapporteur's work. The survey is based on statistical information, expert interviews as well as other studies and reports on the subject.

Interest from abroad in lessons on recession recovery

Finland's struggles with the 1990s recession resulted in several legislative amendments and, to this day, have required persistent efforts from various authorities and associations. In addition to developing legislation, a central role has been assumed by the supervision of the fairness of contract terms. The objective has been to use legislation and supervision to ensure a minimum level of consumer protection regardless of the consumer's personal competence. Talk is now focused on responsible lending, with the hope that future business practices will abide by that principle. It has been – and still is – of utmost importance to protect the consumer debtor's position as a member of society and prevent social exclusion.

Several countries are now facing similar circumstances due to global financial instability. The OECD has begun to map out good practices for dealing with the situation. Finland now has a good opportunity to share its experiences regarding the range of methods to use. The Consumer Agency has prepared information for the OECD's disposal covering the measures aimed at improving the position of the consumer debtor, spanning the time period from the 1990s recession to the present. The materials will be published in the Agency's Publications Series.

More information:

Measures to improve the position of consumer debtors starting from the 1990s

New legislation to straighten out payment services

While work on the new Act on Payment Services is yet to be fully completed, the key reforms from the consumer's standpoint are already quite evident. Users of payment services, such as the customers of banks or credit card companies, can for the most part expect improvements to the current state of affairs.

If a debit or credit card is lost or stolen, the consequences are usually troublesome. Under the new Act, any business that grants credit cards must offer a 24-hour service for reporting lost or stolen credit cards. In cases where the card has e.g. ended up in the wrong hands due to its owner's negligence and it has been used to make purchases prior to being frozen, the cardholder is under liability to pay for such charges. The new legislation, however, limits this liability to 150 euros in most cases.

The legislative reform is part of an ongoing effort to strengthen the EU's internal market. The reform will also make cross-border payments within the EU faster and more efficient. The time it takes to execute domestic bank transfers should, at the very least, stay at current levels. The Act would also protect the consumer by requiring service providers to give out more information, thereby facilitating comparisons between services.

In the future a fixed term agreement signed with a bank could be terminated at any time, with a maximum notice period of one month. This practice would be a departure from the basic regulations covering contracts, which state that fixed term contracts are binding on both parties for the term of the contract. For instance, terminating a fixed term contract bundled with a mobile phone before the term has expired is all but impossible.

Changes coming to direct debit

The fate of direct debit has aroused plenty of discussion as work on the new Act has progressed. The underlying EU Directive obliges banks, at the payer's request, to return a sum charged by direct debit to the customer if the sum is surprisingly larger than what the customer might have reasonably expected. This payback rule may be overridden by contract terms only in the event that the customer is notified of the sum to be debited from the account at least four weeks prior to the due date.

How much does it cost to pay?

The costs incurred to the retailer from the use of various payment instruments are presently included in product prices – partly due to credit card companies' requirements. Under the new Act retailers can, should they want to, charge the costs arising from the payment instrument separately to the customer. In practice, it would then be possible that, for example, a product paid for with one card would be more expensive than the same product paid for with another card. This would increase transparency, but for retailers' customer satisfaction and the fluency of making payment are probably key considerations. As such, it remains to be seen what the effect of this legal provision will be at supermarket checkouts.

The new Act is part of the implementation of the EU Payment Services Directive. The drafting of the legislation is led by both the Ministry of Justice and the Ministry of Finance. The Ministry of Justice working group, including a representative from the Consumer Agency, completed its share of the work in December 2008. The parliamentary reading of the Act is expected in early autumn and the objective is to have the new regulations enter into force in the beginning of November.

Keeping bad credit records from haunting consumers

Bad credit records can make life substantially more difficult. The planned amendments to the Credit Information Act would facilitate wiping off bad credit records from credit registers, for example when a debt expires. This could open up an important opportunity to discuss the problem of bad credit records for young consumers who take quick loans.

A Ministry of Justice working group is reforming the Credit Information Act with the primary objective of helping those who fell into debt during the recession years return to being active members of society. The working group has proposed that the expiration of debt would automatically result in the removal of the associated bad credit record. Under current legislation a bad credit record may remain on a register for years, haunting the consumer after the debt itself has expired for good.

Changes are also sought in a few other aspects. Under the proposed new legislation, events such as loan arrangements becoming expired at the debtor's request would lead to removal of the bad credit record, which under present circumstances may remain on register for up to a couple of years after the arrangement has expired.

Bad credit record also for long-term payment problems

It is in the interest of the consumer applying for credit that the creditor assesses his financial standing correctly. Furthermore, it is only fair that credit losses are kept at a minimum as they are indirectly paid for by others through the higher price of credit. As such, it is logical that long-term debt recovery through e.g. deductions from the debtor's salary would result in a bad credit record as proposed by the working group. Previously bad credit record has only been created through finding the debtor insolvent in debt recovery proceedings.

However, care must be taken to ensure that temporary payment problems or short-term debt recovery do not result in a bad credit record. For example, outstanding payments for some public services, such as customer charges for certain health services, may be transferred to debt recovery proceedings without a payment reminder. Late payment of a bill hardly states the whole truth about a person's ability to pay.

Young customers of quick loan providers to get a clean slate faster?

A bad credit record can make getting a rental apartment, home insurance and a telephone subscription more difficult. Taking that into consideration, a bad credit record should not be created too lightly. After quick loans have become more common, the share of under 25-year-olds among those receiving their first bad credit record has increased and, according to a study by the National Research Institute of Legal Policy, they now form the majority. Based on the study it appears that for many, that first instance of a bad credit record is not followed by further ones later on.

As such, the duration of bad credit records caused by quick loans to young consumers should be evaluated and adopting faster expiration should be considered. The marketing and granting of quick loans has certain characteristics which are not in line with the principle of responsible lending and tend to result in more loan applications made on a whim. Young adults do not necessarily have experience of managing their own finances and a bad credit record may become an obstacle to getting a student loan or an apartment, which in turn may delay the start of independent life.

From the consumer's perspective it is important that a bad credit record doesn't have unreasonable consequences in terms of making life even more difficult. It is important to remember that a newly created bad credit record is not grounds for weakening the consumer's position in pre-existing credit relationships assuming that the consumer has not neglected his responsibilities with regards to them.

Quality and user rights also important in the Services Directive

The Services Directive must be implemented by the end of the year. The Consumer Agency has issued a statement on the general law related to the implementation of the Directive.

With the implementation of the Directive, expanding the operations of service businesses to cover the entire EU will be easier. Consumers' rights as users of services are also given emphasis in the Directive, the principal contents of which are being drafted into general legislation in Finland. In addition, the required amendments will be made to special legislation. A model and draft bill for the general law prepared by the Ministry of Employment and the Economy has been circulated for comment. The Consumer Agency finds the proposed solution justified and the draft bill for the general law clear.

The general law includes provisions on the right to engage in business, on actions and mutual co-operation by the authorities as well as regulations on what information a business must provide regarding itself and its services to the recipients of said services. The objective of the law, however, is expressed more concisely. The legislative proposal states that the purpose of the law is to promote freedom of service provision. As the Directive – and Sections 5-7 and 11 of the legislative proposal – also aim to strengthen the rights of service recipients and improve service quality, these objectives should be included in the law. On the whole, the new provisions promote trade in services in two ways – by making it easier to establish a service business and by strengthening consumer trust.

The legislation should also indicate that licence procedures should not be discontinued where their purpose is, for example, consumer protection.

A boost needed for dealing with complaints

The regulations on information provision could have also included a provision on the service provider's obligation to respond to complaints as quickly as possible and to pursue an amicable settlement as stipulated in Article 27 of the Directive. While the exact wording of the Directive – unlike the Commission's Handbook on implementation of the Directive – does not call for a specific legal provision on the matter, it would be in the interest of the parties involved to include it in legislation. Chapter 2 of the Consumer Protection Act now also covers the customer relationship, and failure to respond to complaints is considered an inappropriate practice.

In practice, a particular obstacle to consumers pursuing their rights is inadequate customer service by service providers: contact information may be unclear or missing altogether, complaints may go unanswered and settlements are few and far between. For these reasons it is important that further work in preparing the new legislation covers this essential aspect of consumer protection in detail. It should also be mentioned that in the United Kingdom and Sweden the inclusion of the obligation to respond to complaints in legislation has been proposed. It is also obvious that consumer trust in cross-border business activity is subject to receiving responses to complaints.

New tasks for the Consumer Agency?

The legislative proposal and interim report propose entirely new tasks for the Consumer Agency/Ombudsman. These would include, among others, functioning as an administrative contact point, supervision tasks related to the Services Directive, managing a warning system and providing advice to service recipients. In practice, the Consumer Agency would also be charged with maintaining and activating the network of information producing authorities through the centralised contact point.

Responsibility remains with the municipality even when debt collection is outsourced

A municipality may outsource the practical measures associated with the collection of certain receivables, but it may not neglect to supervise these measures. A Consumer Agency project examined whether citizens' basic rights are sufficiently protected when municipalities collect their receivables.

Debt collection agencies have engaged in widespread customer acquisition in the municipal sector. Several municipalities have seized this opportunity to choose from competing providers of various service packages. The Consumer Agency project examined the procedures related to debt collection for public services and reported to the Association of Finnish Local and Regional Authorities on the problems observed.

The Parliamentary Ombudsman has highlighted in several cases that municipalities handing debt collection over to a collection agency must keep in mind that a professional debt collector is not under public liability. Therefore, municipalities must supervise the actions of the debt collection agency and ensure that e.g. payment reminders contain the information required by law.

Good debt collection practices must also be followed by municipalities

From the perspective of good debt collection practices, the problems identified in the Consumer Agency's project on debt collection by the public administration are largely similar to those observed in debt collection at large. However, in debt collection related to public services there are certain highlighted responsibilities, such as ensuring that the debt collection letter includes contact information for the municipal representative whom the debtor may contact regarding the matter. The municipality must also process all such reports from debtors, e.g. those related to a social obstacle to payment. Reports received by the Agency indicate that municipalities may sometimes transfer the processing of debtors' reports to a collection agency and that contact information may be missing or incorrect.

Electronic bulk processing often leads to mistakes: collection letters may be sent to the wrong address or dated earlier than they are actually sent out. From the viewpoint of social responsibility it would be justified that municipalities give consideration to the total burden of costs on the debtor before taking measures that increase those costs. As things stand, debt collection costs are often automatically set at the statutory maximum levels and the collection of even minor penalty interest at the amount of a few cents is transferred to collection agencies, thereby resulting in maximum expenses for the debtor.

All debt collection may not be outsourced

Municipalities may transfer certain debt collection operations to collection agencies. Such payments within the scope of application of the Debt Collection Act include customer charges for social and healthcare services, payments for care for the elderly and for fees for certain educational institutions. Certain other payments such as parking fines, public transportation penalty fares and TV licence fees, however, must be collected by the municipality itself. In addition these, there are payments that are not within the scope of the Debt Collection Act, such as taxes and fines, which may not be collected through agents based on provisions in other legislation. For payments for which outsourcing collection operations is restricted, even outsourcing the task of sending payment reminders to a debt collection agency is not permitted. *KUV/10077/41/2008*

More information:

Good practice in consumer debt collection (Consumer Ombudsman's guidelines)

'The cheapest food basket' is a complicated marketing claim

Using research data in marketing calls for accuracy. Food basket comparisons made by the Consumer Agency and State Provincial Offices are primarily meant to increase price awareness among consumers. A company with a high ranking in these comparisons may make use of the results, but only under the condition of openness.

National price control was discontinued in Finland in the late 1980s. Around the same time, the Finnish Competition Authority was established and the first Price Indication Decree issued. The concrete effects of the change were felt in consumers' lives when the price of milk suddenly varied from one shop to another. In particular for foodstuffs, price became a key factor in the competition between businesses.

To improve price awareness among citizens, the Consumer Agency began to undertake so-called food basket comparisons. At first the food baskets were put together at the national level. This was followed by a gradual move to local comparisons made in co-operation with State Provincial Offices. Price awareness among consumers has increased, and they now have access to a number of other comparisons as well.

One swallow does not make a summer

A company that scores a high ranking in food basket comparisons receives attention and often wants to build on that further. At times, however, exploitation of the results of food basket comparisons is almost too goal oriented. The supermarket chain Lidl campaigns on its attractive prices by highlighting its success in e.g. food basket comparisons. The campaign in question gave the impression that Lidl is the cheapest place to make purchases. In fact, the company had picked out only those categories where it had been most successful and then compared those results with the most expensive competitor. For example the claim that "Lidl's prices for the same products 10 % lower than the competitor's" was based on the most expensive competitor included in the study, and the price differential to the rest was less than five percent. Even if information provided in marketing is, as such, correct, it may not be used if it conveys a misleading overall impression.

Using food basket comparisons in marketing is challenging, as the adverts concerned must convey an accurate overall impression of the results of the study. To do this, the company should also mention that while they were ranked among the cheapest in certain product groups, a competitor was ranked cheaper in others. If an advert neglects to mention a competitor's success in the same study, the overall impression conveyed regarding the results of the study is misleading and the company gains a distorted competitive advantage. *KUV/10329/41/2008*

Discount prices gatecrash the opening party

Competing on prices is an important means for companies to set themselves apart and promote sales. Konebox Oy, however, took this too far in the excitement of opening the business and ended up having to put its marketing in check.

The home appliance and electronics retailer Konebox launched its business with a marketing campaign. The campaign highlighted the company's cheap prices and showed discount prices along with a higher, crossed-out price. The crossed-out prices caused bemusement, as the discounts could not have been based on an earlier price when the shop was opened on the same day as the opening campaign advert was published.

Discount prices must always be based on a price that has previously been charged for the same price in the same store. Discount prices may also not be based on recommended retail prices or the general price level. The marketing was found misleading and inappropriate, as it could easily convey a false impression regarding the attractiveness of the product prices. In practice, a discount sale campaign can't coincide with the opening of a business.

The company also advertised its products as being cheaper than those of its competitors with the slogan "best price every hour". The use of various general marketing claims is often considered an aspect of normal boasting by retailers. The more detailed a claim, the more evidence it needs to be backed up by. The company felt that they were able to compare their prices to those of competitors in almost real time, but admitted that the products on their shelves weren't always priced the cheapest. The Consumer Agency's finding was that the claim was not accurate enough to be used appropriately in marketing. The company rectified its marketing. *12100/41/2008*



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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