



Current Issues in Consumer Law

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5/2009 Theme: Credit & Money

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[From the Editor]

Essential credit on adequate terms

In projects related to changes in essential services, we have repeatedly stated that services required by everyone should be priced fairly. Price determination may not be left to the market when there is sure to be plenty of demand. There have been discussions on how to ensure fair pricing in the market for electricity, telecommunications services and – most recently – motor vehicle inspections. It is surprising how difficult it has been for some to let go of their belief in the market's ability to set prices at a level that is fair to consumers. Why would companies voluntarily set low prices for products or services that everyone has to buy?

Credit is, and has been for some time now, another product that is practically essential to consumers; the credit society is here to stay. This being the case, markets have responded with an increased supply of credit. The fairness of prices, however, leaves a lot to be desired. Serious thought must be given to how fair prices can be ensured for those consumers who are not targeted by several competing providers, who are not able to put up collateral but who still need credit due to intermittent employment or the need to make necessary purchases. Financial institutions should therefore work to improve the supply of small, low-interest credit. This need is also reflected in recent OECD recommendations. Efforts must also be made to improve the supply of social credit and ensure that those with low incomes don't always end up paying too much.

The changes planned for payment services, which are also becoming necessary to everyone, will bring about a number of new service options which are often portrayed in marketing communications as a necessary evil for consumers: you must begin using e-invoices, you must change your debit card to a credit card and you can no longer get a hard copy of your bank statement. But is that really the case? Direct debit options should continue to include other alternatives to e-invoices, there are international debit cards and a printed bank statement can still be delivered to the home address, hopefully at no extra charge. These older service alternatives, which make life easier for many consumers, are just no longer marketed and the consumer has to put in an extra effort to keep using them. Competition, for its part, appears to once again fail to ensure a broad selection of services to choose from.

The European Commission is arranging a consultation on responsible lending in early September. There has been a significant step forward from earlier discussions where the focus was always on how to educate consumers. Before the financial crisis, the responsible nature of financial institutions was taken for granted and rarely questioned. In Finland we went through our own recession in the early 90s, which for its part created a solid tradition of taking the debtor's position into account. In Finland several appropriate measures have been developed to ensure that debtors don't suffer from exclusion and that credit terms are fair to begin with.

On August 31st 2009

Anja Peltonen
Director

Financial crisis improves the monitoring of credit around the world

The supervision of the financial industry is being reorganised in several countries and consumer authorities are increasingly participating in the process. There are also legislative projects aimed at improving the position of debtors.

In Finland the supervisory responsibility in finance and credit matters has for several decades been shared by the Consumer Ombudsman and the Financial Supervisory Authority (formerly the Financial Supervision Authority). The Consumer Ombudsman's mandate is based on a broad general authority regarding all consumer trade, including financial services, to monitor compliance with the Consumer Protection Act. This broad-based approach helps ensure that the key principles of regulating consumer trade are followed consistently in all industries, such as in the case of electric supply and telecommunications markets.

The Financial Supervisory Authority and the Consumer Ombudsman have concurrent authority and a legal responsibility to cooperate. The Consumer Agency finds this Finnish model to be flexible and considers the roles of the two agencies to complement each other through their respective areas of expertise and different points of view. The Consumer Ombudsman's starting point is specifically the consumer's position, while the Financial Supervisory Authority concerns itself with the customer's position, even when the customer is a business, as well as monitoring the solvency of actors in the industry.

The financial crisis has spurred various international forums to begin calling for strengthening the role of consumer authorities in supervising the financial sector and to approach questions pertaining to the need for regulation specifically from the consumer's viewpoint. Fortunately, in Finland the situation has been different. This is reflected, amongst other things, in the content of credit terms. In several countries financial supervision is focused on monitoring solvency, which has resulted in less attention being paid to supervising practices related to marketing and contract terms. In some cases, these two aspects of supervision have even been in conflict with one another.

New regulation and authorities in North America

In the United States, the government proposed in June to establish a new consumer agency, the Consumer Financial Protection Agency (CFPA), which would be charged with protecting consumers in the context of credit, deposit and payment transaction markets. The key values promoted by the agency would be transparency, clarity, fairness, responsibility and availability. Establishing the agency is part of President Obama's wider Financial Regulation Plan. Also pending is the establishment of a new cooperative body known as the Financial Services Oversight Council. It would be tasked with coordinating regulation and the settlement of disputes as well as identifying signs of potential new risks.

Canada, for its part, has had a separate consumer agency for the financial industry (FCAC, the Financial Consumer Agency of Canada) in operation since 2001. Its tasks include monitoring compliance with consumer protection legislation in the financial industry and producing commercially independent and easily understandable information for consumers regarding financial services.

In response to the financial crisis, Canada is taking action to reform credit legislation. The objective is to restrict practices which are unfavourable to consumers. One of the legal provisions designed to promote responsible lending prohibits creditors from raising customers' credit limits without their express approval. Fees for exceeding the account limit may not be collected if exceeding the limit is a result of pre-authorisation charges made by companies rather than actual use of credit. Consumers must also be provided advance information on upcoming changes to interest rates on a monthly basis to help them make decisions pertaining to their finances. Consumers must also be informed, with examples, of how long it will take them to pay off their credit by making minimum monthly instalments. Few people realise that, for instance, paying off EUR 1,000 of credit in minimum instalments at 18% interest takes 10 years. Minimum instalments are profitable to the creditor but unfavourable to the consumer. If the consumer can afford it, he should pay off the loan faster. In the future, creditors should draw the customer's attention to matters such as these.

International organisations taking an active role

Questions of consumer protection in the financial industry have also been a focal point of the OECD this past spring. In June, the OECD issued recommendations on how to increase the financial awareness of consumers. Analysing the financial crisis has led the OECD to determine that questions of financial literacy and consumer protection have thus far been given insufficient attention in the supervision and regulation of the financial industry. The OECD recommendations are covered in more detail elsewhere in this issue.

The EU is also taking steps to reform its system of financial supervision. In May the European Commission issued a Communication on the matter and arranged a public consultation, which ended in July. The European Consumers' Organisation BEUC has criticised the Commission's plan for not giving enough consideration to the viewpoint of consumer protection.

In early September the Commission will hear various parties on responsible lending, which is important in that it recognises the need for responsibility on the behalf of companies. Thus far the emphasis has been more on the irresponsibility of consumers.

BEUC has also taken a stance regarding recovery from the financial crisis and measures in response to it, including the need for improving consumer protection in the context of financial services. BEUC has summarised its key suggestions for development in its priorities for the Swedish Presidency.

Read BEUC's suggestions

European Consumers' Organization's (BEUC) suggestions for responding to the financial crisis

1. Supervision and regulation must be enhanced
 - More powerful and independent national supervisors are needed everywhere in the EU.

- These supervisory bodies should pay particular attention to monitoring advertising, the content of financial information, unfair practices and take charge of so-called early warning systems directed at consumers.
 - Sector-specific supervisory authorities charged with monitoring banking, insurance and investment products need to be merged in response to integration in the way financial institutions operate and offer combinations of products to consumers. Cooperation between national supervisors and regulators must be strengthened.
 - There is also a need for a supervision authority in charge of control of financial institutions operating at cross-border level. Regulations on deposit guarantees must be harmonised and valid even when deposits are offered to citizens of other countries.
 - Binding rules at EU level are necessary, as recommendations and self-regulation have shown their limits especially in the case of financial services – regulatory gaps must be closed.
2. Quality of information must be improved
- Consumers must be provided with information well in time before the contractual decision and the information needs to be short, understandable, structured and relevant.
 - A risk indicator must be created for investment products to convey key characteristics such as whether the invested capital is guaranteed.
 - Financial services should be more standardised to facilitate comparisons of key features between products.
 - Stricter rules on marketing and advertising for investment products must be introduced.
3. Financial advice must be increased
- Consumers need independent advice, which is not directly related to the context of selling financial services. At present, consumers tend to get advice mainly from banks and other businesses selling financial services. There is a lack of organisations offering independent advice everywhere in Europe.
 - Consumers must be provided information on the reliability of both investors and those offering advisory services.
4. Greater focus on responsible lending
- Risks associated with variable interest rate loans need to be alleviated, e.g. by capping variable interest rates, prohibiting promotional rates used initially to attract customers and striving for improvement in the quality of information on loans in general.
 - The creditor should be liable for the consequences of irresponsible credit decisions, as in e.g. Belgian legislation, rather than having the consumer bear the costs.
 - Crediting activities that seriously endanger the solvency of consumers (foreign currency credit, credit secured with mutual funds and credit card products) must be regulated from the viewpoint of consumer protection.
 - The implementation of the Consumer Credit Directive must be evaluated with a focus on the level of consumer protection.
5. Legislation on financial intermediaries must be harmonised
6. Payment services must be made simpler and easier

- Monitor the implementation of the Payment Services Directive to ensure that its objectives are reached – domestic and cross-border payments should be practical, reasonably priced and secure.

OECD calls for financial literacy and strong consumer protection

In June the OECD issued recommendations to increase the financial awareness of consumers. Analysing the financial crisis has led to the conclusion that questions of financial literacy and consumer protection have not been given sufficient attention in the supervision and regulation of the financial sector.

The OECD has put together a list of good practices to promote financial education and awareness relating to credit and the strengthening of consumer protection. They are part of a broader project of consumer education and supplement the recommendation on principles and good practices for financial education and awareness issued in 2005.

Reforms needed in practices in financial markets

Financial institutions and intermediaries have an important role in promoting clarity of information, which should become part of good governance and responsible operating practices in the industry. Credit market players are liable for ensuring that any staff involved in the provision of loans or credit products to consumers are suitably trained and qualified to assist them in their credit decisions. Financial institutions and intermediaries should ensure that consumers understand the concepts used and the meaning of credit terms. The OECD also recommends the use of standardised forms to facilitate better understanding of the credit product being offered. Credit institutions are also encouraged to post on their Internet sites complete information on their credit products, including their characteristics and a fee table. Consumers should also be offered information and campaigns to promote financial literacy, but such information should be kept separate from other marketing materials and advertising.

Financial institutions should be encouraged to develop short-term credit products and tailored distribution channels in response to the demand for small quick loans at fair prices, particularly for disadvantaged consumer groups. The granting of such credit could involve guidance to improve financial literacy and advice on repaying the loan.

Mortgages are for many consumers the most important debt they will take on in their lifetime. The recommendation calls for legislative measures to ensure that credit institutions assess the consumer's financial position before making the credit decision.

The significance of financial literacy

It is important to recognise the significance of financial literacy and it should be promoted both as part of a wider financial education effort and through distinct projects. This calls for cooperation between all stakeholders and financial education should be conducted as early as possible in a person's life. Financial education work should take into account individuals' key teachable moments throughout their life, e.g. entry into the workforce, buying a house, birth of a child, etc. The objective is to help people to

- develop the knowledge, understanding and skills needed to adequately appraise and understand their rights and responsibilities as credit holders and the various credit options available to them
- know where to look for reliable information and help

- know how to protect themselves and their relatives and to make thoroughly considered and responsible decisions on the credit markets
- develop their abilities of financial planning, taking into account possible future income and life cycle changes
- understand the consequences of bad credit choices and negligence in managing their debt.

The reliability, transparency, and effectiveness of and competition in markets are promoted through monitoring solvency, supervising practices employed in the market and through consumer protection. In the future, education regarding credit should be perceived as an important complementary aspect to the above activities to promote the functioning of markets. It's important to note that education can't replace supervision, but it can complement the effects of supervision.

Research data is needed

The effectiveness of financial education is difficult to develop without research data. There is much demand for research in at least the following areas:

- the effects of bad credit decisions on consumers and their families should be surveyed more systematically, with special focus on analysing the risks encountered by disadvantaged consumer groups.
- research should also focus on the effect of consumers' financial literacy and own initiative on their credit decisions and exposure to bad credit decisions
- the educational needs of the population should be surveyed and assessed – what differences are there between consumer groups and what are the reasons behind the lack of information in certain areas
- the success of financial education programmes should be evaluated systematically.

More information:

Financial Literacy and Consumer Protection: Overlooked Aspects of the Crisis - Release of OECD's Recommendation on Good Practices on Financial Education and Awareness Relating to Credit

http://www.oecd.org/document/39/0,3343,en_2649_15251491_43269479_1_1_1_37467,00.html

Help sought for debt problems brought about by the recession

In late April, the Ministry of Justice working group pondered legislative measures to ease debt problems. Methods of implementing the government's insolvency guidelines were also sought. The Consumer Agency raised questions of how to improve the position of debt-ridden consumers.

One of the objectives set by the government in its mid-term policy discussions was to encourage businesses and individuals to seek out assistance at an early stage. In addition, debt-ridden and bankrupt entrepreneurs should be given a second chance and their return to entrepreneurial activity should be speeded up by reassessing bad credit policy and loan adjustment processes. The broad-based discussions in April focused on finding practical ways to reach these objectives.

The Consumer Agency believes that these goals can be reached by, among other things, speeding up the commencement of loan adjustment, taking into consideration the aggressive marketing of credit as a factor promoting indebtedness, shortening the time bad credit stays on record, implementing social credit on a wider scale and making concerted efforts to develop financial and debt advisory services.

Debt adjustment must be started faster

Grounds for preventing debt adjustment may give rise to a situation where the start of debt adjustment is postponed unnecessarily. If unemployment or studying are considered to be factors that contribute to a weaker financial standing on a temporary basis only, debt adjustment can't be entered into. According to general practice, unemployment needs to have continued for about one year before debt adjustment can be started. This waiting time may lead to debtors losing their home if they are unable to make their mortgage payments. On average, a mortgage can be terminated and the collateral realised in less than a year under current provisions of the Consumer Protection Act. In addition to factors preventing debt adjustment, consideration should be given to a debtor's chances of keeping their home when e.g. unexpected unemployment causes problems in paying off debt, but the person is not excessively indebted.

A lack of resources in debt advisory services also plays a part in slowing down advisory processes and the start of debt adjustment. Consumer awareness of debt advisory services should be increased, for instance by disseminating information through the labour authorities and at workplaces when industrial co-operation proceedings lead to layoffs.

Consumer not always solely responsible for frivolous borrowing

Frivolous borrowing should only be viewed as a factor preventing debt adjustment when the debtor, aware of not being able to pay back the debts, still takes on more. We live in a credit society where financing purchases by credit is commonplace. Marketing urges people to take credit in many ways. Marketing efforts are focused on offering – and pushing – card-based credit to consumers everywhere, such as in home appliance and furniture stores.

A new phenomenon in the marketing of credit cards is the introduction of branded credit cards. In addition to banks, many retail chains offer credit cards whose use often entails supplementary benefits. The marketing of these benefits involves that they are only available to those paying on credit or taking on new credit. As a result, consumers are increasingly holding several credit cards, which in itself adds to the risk of excessive debt.

Due to the introduction of the Single Euro Payments Area, domestic bank and combination cards are changed to international SEPA cards. Consumers aren't always clearly informed of the possibility to change their domestic debit card to an international Visa Debit card, and instead they are usually offered a combination card with a credit facility as a replacement for their debit card. Quick loans are aggressively marketed on television, in magazines and on the Internet.

When the consumer has financial difficulties, the question of whether indebtedness is frivolous should be assessed with consideration of the aggressive marketing of credit. A consumer's financial difficulties can't be perceived as solely his own responsibility and the loaning deemed frivolous if he has simply acted according to what credit institutions urge him to do in their marketing. Especially where young consumers are concerned, quick loans are often not so much a case of frivolous indebtedness as a case of incomplete understanding due to a lack of experience. The responsibility for young consumers' indebtedness as a result of quick loans should also be assigned to credit institutions. In addition, legislation should include provisions calling for particular moderation in the marketing of credit and prohibiting the practice of granting discounts or other immediate benefits only to those who pay by credit.

Attention must also be paid to the duration of bad credit records and social credit

A bad credit record exacerbates the risk of exclusion. A bad credit record makes life more difficult in many ways and may prevent the person from getting, among other things, a student loan or a job. Because of this, the duration of bad credit records should be shortened for those individuals who do not have further instances of bad credit within a certain period of time. Bad credit records may be the consequence of short-term circumstances that are temporary and surprising in nature, such as unexpected unemployment. Young adults whose bad credit record is their first and who do not have further instances of bad credit, should also have their credit records cleared sooner. At present, the duration of a bad credit record may be reduced from three years to two by paying off the debt.

There is increasing demand for social credit offered by municipalities. These days social credit is primarily used for debt adjustment. Some municipalities do not use social credit at all. The use of social credit could be extended to the financing of purchases and balancing out irregular income streams. The markets don't necessarily offer reasonably priced credit to consumers with a bad credit record or irregular income. At present, consumers with irregular and low income have to resort to quick loans when they need credit.

Financial and debt advisory services must be developed

A report commissioned by the Ministry of Employment and the Economy regarding the development needs of financial and debt advisory services has been circulated for comment. The Consumer Agency places high priority on allocating more resources to advisory services, as the quick availability of such services is of crucial importance in debt problems. The time spent waiting for advisory services can often lead to a rapid exacerbation of the problem. The

nationalisation of consumer advisory services has proved to be an effective way of improving service availability and consistency between regions.

Financial and debt advisory services play a key role in protecting the consumer's position. In the Consumer Agency's work, the consumer's position as a debtor has always been the focal point. In order to achieve good results going forward, the Agency must continue to be informed of problems observed in the field by the advisors despite the fact that management of advisory services is transferred to the Ministry of Justice. It would be unreasonable to expect that debtors in financial difficulties would have the energy or presence of mind to take an active role in reporting unfair practices in the markets.

The Consumer Agency also supervises the terms of voluntary debt settlement under the Act on Debt Collection. According to the preparatory work for the Act, the Agency's jurisdiction is extended to determining the opportunities for debt settlement as well as collection practices during court proceedings and payment plans.

More information:

Current Issues in Consumer Law 2/2009, Rapporteur: More money for financial and debt advisory services, service provision through legal aid offices

<http://www.kuluttajavirasto.fi/fi-FI/060209/>

Changing the reference rate of a housing loan not as easy as advertised

Banks' operating practices have proved to be highly variable in situations where consumers have wanted to change the reference rate of their housing loan. The Consumer Agency has reminded banks of the relevant provisions in the Consumer Protection Act.

The content of a credit relationship must reflect the promises made in marketing

In the past decade banks have marketed consumer credit with an emphasis on the flexibility of changing the reference rate. Consumers have been taken aback by increases to the fees charged for changing the reference rate and changes to the margin. In discussions leading up to the loan agreement, consumers have often been told how easy it is to change the reference rate at any time and how there will be no fees, or at most very minimal fees, charged for this.

When a consumer requests to have the reference rate changed, the creditor must take into consideration the information previously provided to the consumer regarding the credit relationship, its terms and the fee table. For instance, if a housing loan has been marketed as having flexible terms and changing the reference rate has been advertised to be easily done at any time, or if the fee for changing the reference rate has been included in the fee table, consumers are entitled to assume that the creditor will act according to the information provided.

Prices and terms must be clearly expressed

Many banks have, in practice, been eager to allow changes to reference rates and have priced the service in a transparent manner. Even when a specific fee is listed for it, the fee table may include conditions on when the reference rate may be changed or what reference rates are available to the consumer to choose from. Such restrictions are permitted as long as they are clearly indicated in the fee table.

Some banks have required that changes requested by consumers result in other changes to interest rate terms and costs of credit as well. For example, banks may have such a condition for implementing changes to reference rates that the bank's margin specified in the credit terms is increased or that the bank is compensated for the negative interest rate differential resulting from the change.

In certain circumstances the consumer does, however, have the right to expect that the change in the reference rate is implemented without changing other aspects of the agreement or increasing the margin. This is the case when the bank's fee table indicates the fee charged for changing the reference rate, the loan has been marketed to the consumer with an emphasis on the ease of changing the reference rate, or reference rates have in practice been implemented in a certain standard manner. The consumer may also not be required to approve an increase to the margin when he wishes to utilise a previously marketed no-cost option of only paying interest on the loan for a given time period.

When the above circumstances do not apply, the bank may refuse the consumer's request to change the reference rate or determine reasonable costs to charge the consumer for the change and propose, for its part, other changes to the agreement as part of normal contract negotiations.

Creditors must disclose the consequences of changes

The creditor must explain to the consumer in a clear and understandable manner what the consequences of changing credit terms are regarding the credit relationship. In particular, the debtor must be informed if a change to the reference rate results in replacing the existing credit agreement with an entirely new agreement. The consumer's attention must specifically be drawn to contract terms if new standard terms are applied to the agreement. New terms may, for example, include a provision that gives the bank the right to increase the loan's interest rate when the bank's solvency is at risk. In such cases the consumers must be given sufficient time to become familiar with the contract terms.

Any consequences the changes may have on taxes and insurance must also be reviewed. If a consumer credit has guarantors or third-party pledges, their position must also be considered in changing the reference rate. A bank must act responsibly in a credit relationship and strive to take the customer's financial security into consideration.

Credit card contract terms caused confusion

When the contract terms of a credit card are changed, customers must be provided with clear and accurate information regarding the changes. Contract terms may not include statements which are not realised in practice.

Nordea bank sent its customers a letter informing them of changes to the billing period and due date applied to Visa cards. However, based on reports received by the Consumer Agency, the letter was not unambiguous enough. Instead of informing the customers, it created confusion regarding what the changes meant in practice and what their implications would be.

The letter stated that the card will function as before if the customer accepts 100% instalments, i.e. always pays off the entire credit in one instalment. The letter also stated that customers get, on average, 30 days interest-free to pay for their purchases.

In reality, however, the card did not function as it had before. Before the changes, the interest-free period for making payments had averaged 45 days and the due date had been the last day of each month. The change effectively made the interest-free period shorter.

In negotiations between the Consumer Agency and Nordea, the bank informed the Agency that it had prepared for problems potentially arising from changing cards. Among other things, Nordea offered customers the opportunity to increase their credit limit on a temporary basis. The bank also sent out another letter, which explained the changes in more detail. Information regarding the changes was also posted on the bank's website and online banking service.

Contract terms on paper, never enforced

The Consumer Agency also received reports regarding a contract term pertaining to the use of Nordea's visa card in making online purchases. According to the contract terms, the card may only be used to pay for purchases in online stores displaying the Verified by Visa logo. Astounded customers had only noticed the contract term after having used the card for some time.

According to the customers, they had contacted Nordea and been told that the restriction did not need to be taken literally. The card could be used to pay for purchases made at online stores even when they did not display the Verified by Visa logo.

The Consumer Agency also highlighted a contract term according to which the card may be frozen if the customer has other delays in making payments or a public bad credit record. The Agency pointed out to the bank that a customer's card may not be frozen if he has managed his credit relationship faultlessly.

Nordea responded by stating that it had never applied the contract terms pertaining to online purchases or payment delays in practice. Both terms will be amended to better reflect the reality of the situation in conjunction with the Payment Services Directive taking effect in November 2009.

Quo vadis, quick credit?

Consumer credit applied for via text messages or Internet websites has been offered in Finland for several years now. This new form of credit is still finding its place and the legal and regulatory boundaries for it are currently being sought.

The Consumer Agency, which supervises companies offering quick credit from the viewpoint of consumer protection, has for long had concerns regarding the business practices of companies offering credit via text messages. The Agency has issued guidelines specifically for companies offering SMS credit, negotiated with the market players and taken a case to the Market Court 2007 to set a precedent. A decision on the case was handed down in spring 2009.

Legislation pertaining to quick credit is currently being amended and a government proposal on quick credit has recently been handed to the parliament. The proposal is being circulated and is set to be discussed by the Commerce Committee next.

Market Court lays down rules for quick loans

The Market Court handed down its decision in May 2009 regarding a case brought by the Consumer Agency. According to the court's decision, Oy Atlas Invest Ab, which offers credit via text messages, must cease to offer credit around the clock and refrain from concluding credit agreements before submitting contract terms and other necessary information to the customer personally and given the customer time to become familiar with them. The company may also no longer market quick loans by using advertising messages emphasising speed.

Highlighting the speed of granting a loan and the around-the-clock nature of the service is in conflict with the principle that credit applications should require careful deliberation. Marketing which increases rash loan decisions and, as a result, excess indebtedness is inappropriate for a credit institution.

According to the Market Court, a consumer about to take a quick loan must have sufficient time to read the preliminary information and terms of contract prior to concluding an agreement. As such, there should be a sufficient time period between applying for the loan and receiving the funds. The Market Court stated that the company may not transfer funds for loans applied for at night before seven in the morning and, further, that the company must not market the loans with advertising messages emphasising speed.

With regards to contract terms, according to the Market Court it is not sufficient that the company states that information is available on e.g. their website. Instead, the relevant information must be delivered to the consumer by email, for example, prior to concluding the loan agreement. This helps ensure that the customer has his own copy of the agreement, which he can refer to in case a dispute arises.

A significant target group for quick loans is constituted by young adults below 30 years of age, who tend to have relatively little experience of managing their own finances and debts.

Because of this, the inappropriateness of marketing was assessed particularly from the viewpoint of young adults.

It is the Consumer Agency's view that the principles reflected in the precedent set by the Market Court's decision apply to other quick loan companies as well. The Agency expects all quick loan providers to take the Market Court's decision into consideration in how they do business.

Legislative changes on the way

The Parliament is presently discussing a legislative proposal which would have a broad impact on the supply of credit. The legislative proposal pertains to quick loans, which are typically quick consumer credits with short payment periods and no collateral requirements. Loans are granted based on applications made online or via text message. The legislative proposal touches on aspects such as indicating actual annual interest and identifying the credit applicant. Legal provisions pertaining to usury and the determination of penalty interest are also re-evaluated in the proposal.

According to the legislative proposal, the marketing of small and short-term loans must disclose the actual annual interest of credit. At present, there is no such requirement and comparing different credits has been difficult. A time frame for granting loans, as mentioned in the Market Court's decision, will also be included in the new legislation.

Usury or not?

The legislative proposal also calls for the penal code's legal provisions on usury to be updated. The business practices of quick loan companies have not been considered usury as referred to in the penal code, which would lead to criminal investigation. Under the existing provisions in the penal code, interest rates applied to quick loans would be compared to interest rates used by financial institutions for similar credit products. As financial institutions have not offered credit products similar to quick loans, the possibility of applying existing legal provisions to quick loans has been unclear. According to the legislative proposal, the punishability of usury would be subject to the interest rate or other financial benefit to the creditor being clearly disproportionate to the service performed by the creditor.

It is not possible to set a specific maximum annual interest rate to judge whether a case meets the definition of usury, as the situation needs to be evaluated on the whole based on the criteria specified in the legal provision. In the context of small and short-term loans the actual annual interest of credit may be considerably high without being deemed usury. With such credit products, certain costs independent of the loan amount, such as fees charged for services that are considered part of appropriate lending practices, affect the actual annual interest rate of credit to a greater extent than in the context of larger and longer-term credit. Then again, this means that larger and longer-term credit may meet the definition of usury even if the actual annual interest for credit is lower, as the aforementioned costs have a relatively more minor effect on the actual annual interest rate.

Change in penalty interest has no effect on the quick loan market

Restrictions on creditors' right to charge customers interest higher than the statutory penalty interest are in the works. The legislative reform would apply to all consumer credit and have considerable significance to consumers. If the original interest rate for a loan is higher than

the statutory penalty interest, the higher interest could only be charged for a maximum of six months from the debt falling due. The reform would give consumers with difficulties making payments a better chance of managing their debt.

Penalty interest has not, however, been a problem in the context of quick loans, as they generally feature processing and service charges rather than interest. While these costs, when expressed as an actual annual interest rate, are very high figures, debtors who are late in making payments may not be charged penalty interest at a rate equal to the actual annual interest rate. The collection of such processing and service charges may not carry over to the period of delayed payment. Instead, the statutory maximum rates for debt collection as specified in the Act on Debt Collection will apply.

Regulation, but also responsibility in lending

Not all of the problems observed in the supply of quick loans can be remedied through legislative means. The Parliamentary Legal Affairs Committee's comments on the legislative reform state that the prevention of debt problems calls for improved readiness among consumers, particularly the young, to understand the management of one's finances and increasing attention to the availability of social credit. Sufficient resources for financial and debt advisory services must also be ensured.

In terms of business law, offering quick loans is not subject to registration or licensing and quick loan companies do not fall within the jurisdiction of the Financial Supervision Authority or other authorities. One problem observed in the quick loan market is that businesses come and go at a rapid rate. The Parliamentary Legal Affairs Committee's consultation document calls for urgent legislative amendments to govern registration and responsible lending as well as moves to make supervision by the relevant authorities broader and more effective.

More information:

[Bulletin on the Market Court's decision](#)

New alternatives for long term savings

Consumers are urged to engage in voluntary long term saving by expanding tax deduction rights. The Consumer Agency supports these plans for improving competition and facilitating easier comparisons between savings products. According to the Agency, consideration should be given to extending the right to use such savings from retiring from working life to also cover situations of serious illness. Easing the condition regarding unemployment, which currently requires that unemployment has lasted for one year, should also be considered.

According to the Ministry of Finance's proposal, tax incentives for long-term savings would be extended to cover not only pension insurance, but also other savings products. Individual pension insurance products are currently an expensive alternative for consumers looking for savings options due to the high fees charged by insurance companies.

Competition between insurance companies has been minor, as costs are high across the board and changing the service provider during the savings term is not possible. The proposal includes the right to make that change. The Consumer Agency supports the proposal, as it would increase competition and thereby be likely to improve the quality of savings services and decrease the prices charged for them. Reducing the costs of managing savings would increase the amount of money the consumer saves every month and, as such, significantly improve the level of future pension security due to the long savings terms and resulting high multiplier effects associated with such schemes.

The Consumer Agency finds it necessary to draft a general legislative framework to govern long-term savings. Among other things, this would help prepare for situations where, parallel to pension savings, there might be a reason to consider directing tax incentives to other fixed long-term savings such as those for illness or treatment expenses. A general legislative framework would facilitate the technical implementation of these reforms and make the rules of long-term savings more familiar to savers as well.

Tax deductions also for savings linked to securities, mutual funds or an account

According to the proposal, savings under tax incentives could in the future also be invested in shares and mutual fund units. This would facilitate effective diversification of savings and varied investment strategies with high potential returns. Due to the higher risk associated with shares, savings could only be invested the shares of companies which are continuously traded in public markets and on whose financial standing there is sufficient information available as required by law. Long-term savings on a traditional bank account could also be supported by allowing tax deductions in the future.

A broad selection of products available for investing savings would facilitate the offering of varied alternatives for the varied needs of different savers. There is also demand for low-risk, simple products, which may have lower expected returns. Opening up competition as proposed is likely to ensure that markets will in fact offer appropriate investment products for all types of needs.

Savings put to use in case of unemployment or illness?

Reforming the taxation on long-term saving is closely linked to pension savings: as a rule, savings could only be withdrawn when the individual reaches retirement age as specified in

the Employment Pension Act and withdrawing them prior to that time would only be possible in the same exceptional circumstances as stipulated by current legislation. The Consumer Agency proposes that the preconditions for early withdrawal of savings would be re-evaluated in terms of the condition pertaining to unemployment. Particularly in these times of economic recession, many pension insurance savers who have lost their jobs have found it unreasonable that they can't access their savings until they have been unemployed for one year. The ability to use one's savings after a shorter period of unemployment could help these individuals cope with problems brought about by the recession and would be equally justified as the need to use savings to provide for additional income during one's retirement years.

The Consumer Agency further proposes that falling seriously ill would be deemed acceptable grounds for withdrawing long term savings in a similar fashion as reaching retirement age. The ability to use one's savings to get treatment for a serious illness would be in line with the legislative proposal's basic principle that tax incentives should be increasingly directed at savings which serve the saver's personal needs. The ability to have a serious illness treated with the help of funds from long term savings even before reaching retirement age could have the effect of pushing back the saver's actual retirement age and, as such, would be consistent with the general objectives of pension policy.

Poor financial awareness among consumers calls for responsibility in marketing

Along with several other agencies and actors, the Consumer Agency is concerned about the fact that consumers have insufficient knowledge and awareness regarding finances in general and the financial products and services offered to them. This tends to make decision-making regarding these types of matters too random. Choices and decisions are often made purely on the basis of information and marketing materials received from service providers, despite the fact that many consumers do not have an actual ability to critically evaluate them and compare the various products offered in an objective manner. The problems that have surfaced are equally prevalent in the context of private pension insurance schemes and other savings and investment products. Responsibility in marketing should be called for even more than at present.

Fixed long-term savings are just one of the many savings and investment alternatives offered to consumers. Consumers also have needs for shorter-term savings. Due to this varied demand, markets are likely to continue featuring a multitude of savings and investment instruments, the choice between which is often quite challenging to consumers. If the selection of long-term savings products with tax incentives were restricted, the consumer would face the same challenges in making other savings decisions. The rules should be as similar as possible regardless of whether the consumer chooses a fixed long-term savings product or a shorter-term product.

Putting extensive restrictions on investment options available for long term-savings products could create new problems, for example, in the sense that permitted investment products might be perceived as somehow more secure from the saver's viewpoint and as having lower risk than other forms of saving. If, for instance, currently offered investment-linked pension insurance schemes would continue to fall within the sphere of tax incentives, this assumption of security would be unfounded.

As consumers generally lack the kind of awareness and knowledge that purchasers of modern savings and investment products should possess, the problem should be approached with broad-based solutions rather than single restrictions. This matter has recently garnered

attention in several different forums and new methods for improving the situation are being developed, among other things, through international cooperation.

Costs and key information to be expressed more clearly

One of the most significant problems with current pension insurance agreements is that cost comparisons are difficult. The proposals for legislation on long-term savings regarding cost-related information and the ways in which information is communicated are seen by the Consumer Agency as being well justified and likely to have the effect of making the cost structure of savings products more open and transparent.

The Consumer Agency considers it important that the legislation governing long-term savings includes a separate provision, as proposed, on the marketer's contractual liability for information given in marketing in a similar fashion to what was done for insurance products in the Insurance Contracts Act. The basis of liability must be clear and similar across different savings products.

The proposal still requires further work. For instance, the capital adequacy requirements on businesses offering savings services with tax incentives are not covered at all in the proposal, despite the fact that the matter is significant and raises a lot of questions. The legal requirements regarding obligations to disclose information should be as consistent as possible across the various forms of long-term savings products. The law should clearly specify these obligations to disclose information based on the model applied in drafting the Insurance Contracts Act.

The government is presently preparing a proposal, which is expected to be handed to the Parliament in the early autumn. The intention is to have the new legislation in force from the beginning of next year.

Consumer Agency's comments on Ministry of Finance proposals 4201/48/2009 and 4207/48/2009

Changes to payment services - what will happen to the account statement?

The new Payment Services Act, which is presently undergoing preparatory work at the Ministry of Justice, will eventually bring about several changes that improve the consumer's position. However, the draft bill for the new Payment Services Act also raises certain concerns. Among other things, the fate of the free of charge account statement appears to hang in the balance.

The draft which was circulated for comment last spring would make it possible that consumers might only be able to get a free of charge account statement via online banking. Hard copies of account statements would then be subject to charges. The information might only be available in the online banking service for a period of one year, which clearly is not long enough. The government's final proposal for the Payment Services Act will be handed to the Parliament in the beginning of September. The objective is to have the legislation in force in the beginning of November.

According to the draft bill for the Payment Services Act, the consumer and the payment service provider, e.g. a bank, may agree that account statements are only provided on a data network. In practice, the data network would refer to e.g. an online banking service. Information should be made available to the payer for a period of at least one year and the payer must be able to store and reproduce the information from the online bank. Collecting a fee for account statements available in an online bank would not be permitted. However, a consumer who wishes to have an account statement stretching for a period of more than one year, or who wants a hard copy of his account statement, could be charged a fee.

When the matter at hand is one that broadly affects all consumers, it should be considered that not everyone has their own computer and printer. Certainly there are computers available in places such as libraries, but how far from the consumer are they located, are they sufficient in number and can everyone use them well enough to manage their bank affairs?

Move towards electronic account statements calls for incentives

A bank account is a consumer's basic right, which is defined in the Act on Credit Institutions. An integral part of using an account is the account statement, which must be available to all consumers. The proposed broad freedom of contract does not take the position of disadvantaged consumers as users of essential services sufficiently into consideration. Because of this, the consumer must continue to have the right to a free of charge printed account statement if he so chooses.

Consumers' move to use an electronic account statement can be encouraged with a carrot, but not with a stick. Those choosing to use an electronic account statement can, for instance, be given discounts on service fees.

Account statements need to be available for at least three years

The proposed one year minimum for the availability of account statements online is not sufficient. Consumers need account statements for a much longer time. A business' receivables from a consumer generally expire in three years, and it is not unusual for a faulty

invoicing system to send the same invoice twice. Naturally, consumers must be able to confirm whether such invoices from some years back have been received and paid or not. If the relevant information is only available online for a period of one year, the meticulous consumer must print or otherwise store information in his own records for a period of at least three years. However, it's completely reasonable to ask why would this information not be maintained online for a period that is sufficiently long to meet the consumer's needs.

A mere notification is not enough when account statement practices are changed

The draft bill of the Payment Services Act does not require that banks change their current practices regarding account statements. Therefore, changes to account statement practices may not be implemented unless they are separately agreed on with the client.

The necessary changes required by the Payment Services Directive, on the other hand, can be implemented by a so-called simplified procedure, i.e. notifying the customer of the changes at least one month before they take effect. Changes are then implemented unless the customer specifically objects to them. In practice, a customer's objection in such cases of legislative change leads to a termination of the account.

Slogans used in marketing credit should be toned down

Credit should not be marketed as easy solutions, as ways to balance one's finances or use other similar expressions which, in fact, compromise the consumer's ability to make sensible credit decisions regarding their own finances. Businesses offering credit have an obligation to ensure that advertising does not attract the consumer to excessive indebtedness. Therefore, advertisers need to be extra careful in choosing what expressions to use to market credit products.

Praising speed often encourages rash decisions

Responsible lending and good credit issuing practices require that the consumer has plenty of time to consider credit decisions and become familiar with the key credit terms. It is inappropriate to urge consumers to take loans on a whim, for instance by promising lightning fast service. Expressions used in advertising such as "Send in an application at the Hakaniemi subway station and you'll have the funds in your account by the time you reach Rautatientori central station" or "money in your account super fast – even within five minutes" were deemed inappropriate.

Inexperience of young consumers must be taken into consideration

Consumer credit is, regardless of the type of credit, the kind of product whose marketing is assessed more strictly than that of other consumer products. Assessment is particularly strict when marketing is targeted at young people. Young consumers' financial management skills and life experience are undeveloped and part of responsible lending is taking that fact into consideration. Lenders must avoid practices which tend to cause payment difficulties and excessive indebtedness.

For instance, a campaign which appealed to young consumers by announcing a raffle for two three-day tickets to a rock festival for those who take quick loans was deemed inappropriate. As a rule, it is not considered appropriate to attract consumers to credit relationships through discounts or other forms of compensation. What made the case particularly reprehensible was the focus on attracting young consumers, which clearly was the intention considering the prize of festival tickets.

Another example featured the following advertising copy: "Going out tonight? Here's 100-1000 euros on your account, seize the moment!" The advertising message was deemed to appeal to young consumers and inappropriately urge them to take out a loan.

Another advertisement stating "the more loans you take out and pay off, the better your chances are of winning an iPod or other prizes". This type of marketing is inappropriate, as the special offer distracts the consumer's attention from the loan itself by focusing on the chance of winning a prize. Another aspect considered in the assessment of the advertisement in question was its target group, which for quick loan products tends to be young adults. They are more prone to take out a loan in the hope of winning a prize due to their lack of financial management skills and life experience.

Debt may not be used to urge consumers to gamble

Playing poker and other forms of gambling involve certain risks. If the player is unable to get compulsive gambling behaviour under control, he may gradually become addicted to it. There is widespread concern in society regarding gambling addiction and the problems caused by it. Compulsive players may gamble away money intended for rent, food and debt repayment, causing various social problems.

Recently there was a television advert featuring a young man at a poker table, running out of chips. The man took out his phone and quickly received a pile of chips. The flag of a quick loan company was then displayed on screen along with a male character saying that the company could "throw more chips your way".

The advert clearly appealed to compulsive gaming and guided the consumer's behaviour towards financing gambling with debt once he runs out of his own money. A responsible lender does not, however, urge customers to gamble on borrowed money. The advert was deemed contrary to good marketing practices.

Internet purchase insurance for a credit card yielded no actual benefits

An insurance advertised as improving safety for online purchases creates an expectation that the insured can make purchases with increased peace of mind. In reality, the insurance product in question provides only marginal added value over the rights guaranteed to all consumers by the Consumer Protection Act.

Nordea Bank offered an Internet purchase insurance for its credit card customers. The insurance was advertised as giving added security for online purchases. The insurance would compensate for defects in items worth at least 40 euros or damages resulting from delayed delivery. It would also compensate for the cost of repairing the item or for the purchase price where repair costs would exceed the price or if repairs were not feasible.

The problem with the Internet purchase insurance is that, in practice, it does not give the policyholder any real benefit which he would not already have on the basis of the Consumer Protection Act. A consumer is always entitled to demand that a seller rectifies defects – whether he has an Internet purchase insurance or not.

The terms of the Internet purchase insurance also included provisions, which actually reduced the consumer's rights as specified in the Consumer Protection Act. The terms of the insurance, for instance, set a maximum annual compensation amount of 3000 euros.

The Consumer Agency notified Nordea that their claims of additional security provided by the Internet purchase insurance, as well as the name of the product itself, were misleading. The Agency asked Nordea to discontinue using the words "safe purchases" in the name of the insurance product along with any other expressions which could make the customer think that they are receiving an added benefit over their statutory protection. The bank was also told to refrain from using expressions such as "added protection" in their marketing.

Lenders may not avoid their obligations

The terms of the Internet purchase insurance also blurred the creditor's statutory obligations. The terms stated that the consumer would not receive compensation unless he had, at first, contacted the seller in writing requesting that the defect be rectified or the damage compensated for.

In reality, a customer who is entitled to refrain from making payment or has the right to a refund, compensation for damages or other payment from the seller can, in addition to contacting the seller, direct his demands to the creditor who financed the sale. The Consumer Agency informed Nordea that, going forward, it must also disclose its own liability for defects and delays in online transactions.

Genuine benefits to those paying by debit card

An Internet purchase insurance provides genuine security only when purchases are paid for by a Visa Debit card. As purchases made by a debit card are not made on credit, cardholders may

not turn to the creditor when problems arise. What the consumer can do, however, is to appeal to the insurer in addition to their statutory protection.

Nordea responded by stating that in the future it will pay more attention to how it communicates the features of its insurance products and the security benefits they have. However, even after being reprimanded, the bank continued to market the Internet purchase insurance by using the exact same expressions as before. When queried on the matter by the Consumer Agency, the bank responded by saying that they will continue to offer the insurance as an added feature of their card products, but it will no longer be marketed.

KUV/10899/41/2008

Chasing after bonuses, even at the risk of indebtedness

Additional benefits tied to credit tend to compromise the consumer's chances of making deliberate and well thought out decisions. At the same time, they increase the risk of excess debt.

In a recent television advert, OP-Keskus urged its bonus customers to pay for all their purchases on credit, as this would help them accrue bonus points. The advertisement directed viewers to a website which stated that since you're making purchases anyway, you might as well pay for them by Visa. Bonuses would not accrue for purchases paid in cash or by debit card.

Credit is not a routine everyday purchase. It has a long-term effect on one's finances. As such, consumers must be given the time to make credit decisions without being distracted by inappropriate persuasive messages.

According to the Consumer Agency, it is irresponsible to e.g. artificially try to make credit more attractive by linking it with various benefits and compensation schemes. Such additional benefits may soften up the consumer in such a way as to make them forget the need to carefully consider the necessity of credit or their ability to pay back the loan.

Most recently, the Agency raised this issue in conjunction with the preparatory work for the Payment Services Act. In its statement, it emphasised the fact that a seller may not offer discounts that are restricted to those customers paying by credit.

Paying for a carton of milk by credit card?

Favouring credit customers is also inappropriate as part of customer loyalty programs. Customers may not be urged to pay by credit by offering credit customers superior customer loyalty benefits compared to cash customers. In practice, this would reward loyal customers for taking on debt. This is contrary to prevailing social objectives.

The Consumer Agency notified OP-Keskus that by urging customers to pay for even the most common purchases by credit instead of cash, it promoted indebtedness. Compared to using cash, making purchases on credit tends to make people spend money without noticing it.

The advertisement also failed to mention the fact that while paying by credit might have resulted in more bonuses accrued, it would also entail additional costs in the form of interest and annual fees.

The Agency informed OP-Keskus that its marketing was contrary to the marketing provisions contained in the Consumer Protection Act. The company agreed to change its marketing according to legal requirements.

Costs of buying money should be transparent

When a consumer buys money for their disposal, they must be informed of the price of their purchase as well as the relevant conditions of sale and repayment. In this regard, consumer credit is no different than other consumer goods. For the consumer, however, taking on credit on the basis of ambiguous information or at unreasonable terms often poses a greater risk than the purchase of some other good. As such, the business practices of credit companies should be particularly responsible.

A basic legal requirement for marketing is that relevant calculations and other information are presented in a realistic, clear and unambiguous manner. If, for instance, credit is marketed only to a specific target group, such conditions must be readily apparent from the advert.

The general requirement of fairness in contract terms also applies to credit terms. The terms related to the price of a good – which in the case of credit is the interest rate – can be assessed in the framework of the Consumer Protection Act. Interest may vary depending on the loan principal, the loan period and the risk taken on by the lender. Processing fees, however, generally do not vary according to the amount of money borrowed.

Why do the costs of a text message loan increase as the loan principal increases?

The Consumer Agency has initiated discussions regarding the considerable costs of text message loans. Such costs have been charged by lenders on top of the interest rate and in relation to the borrowed amount. The Agency has, for instance, received reports of quick loans of 300 euros with processing fees of over 200 euros.

The interest applied to a loan is the price of money. It is the compensation the lender receives for not having the funds in question at their own disposal. The interest rate is determined by the risk of the loan arrangement. The greater the risk, the higher the interest rate. Lenders are quite free to price their credit by setting the interest rate, as long as the rate is not deemed usurious.

The costs of a text message loan, on the other hand, are constituted by the costs of acquiring credit information, the origination fees, the fees charged for opening an account, instalment surcharges, account management and processing fees and invoicing fees. These are standard amounts or standard procedures, which has raised questions regarding, among other things, the basis on which the amounts charged for these costs increase in proportion to the amount of credit granted.

The origination fee of a quick loan must be recognised as such

The Consumer Agency clarified the rules of collecting credit costs to Handelsbanken Finance. Some years ago, the company launched a campaign price for its credit.

The offer gave the consumer the option of paying some tens of euros extra on top of the usual credit costs and interest in exchange for credit at a campaign price.

The Handelsbanken credit agreement is based on an overdraft facility. According to the company, campaign credit for its part is one-off financing paid for by the consumer using the overdraft facility.

Campaign financing is marketed to the company's business partners. They get to decide whether the campaign fees are charged to consumers or paid for by the business itself.

The consumer's debt in this type of framework is composed of several different campaign purchases on account as well as basic purchases on account. All credit purchases are invoiced to the consumer on one invoice.

According to the Consumer Protection Act, the cost of credit in a consumer credit relationship consists of the interest rate payable by the consumer and the total amount of other fees directly linked to the credit. Credit costs may not be used to cover the lender's administrative and operating costs. Credit costs must be clearly delineated as costs arising from managing the credit relationships. The price of credit may not be artificially chopped up in several parts in the form of various fees, as this makes comparisons of credit prices more difficult.

The company explained that the campaign fee was actually the origination fee of a one-off credit offer. The company was asked to change the misleading name they had used for the fee. *KUV/3615/41/2008*

Credit only offered to those who concentrate their purchases

Last year, Osuuspankki changed its policy for granting a flexible credit product. The credit was only offered to consumers who concentrated their financial affairs on the bank. This fact was not, however, disclosed in marketing the credit product in question.

The bank's expression "As a customer of Osuuspankki you are in a privileged position" would be adequate, if it was used in marketing financing products in a general sense. When a specific product, such as Flexible Credit, is marketed, this expression is no longer adequate. Marketing must clearly indicate the terms under which the offer is valid, which in this case would include the customer concentrating his banking with the company in question. *KUV/13979/41/2008*

Getting rid of the small print

Luottotalo Fenno advertised a loan product in a news magazine. The information pertaining to the actual annual interest rate was printed at the bottom of the advert in a font size too small to be legible. The company rectified the situation after being contacted by the Consumer Agency. *KUV/4928/41/2008 (MS)*



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

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

Additional information: www.kuluttajavirasto.fi



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