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## Moderation in everything

The fees charged for essential services should be reasonable. The underpinning idea is that the pricing of services that companies are asked to provide, but which are essential to everyone, cannot be driven by market forces. In order for society to function it is important that the services can be accessed on reasonable terms; the nature of the services means there will be sufficient demand.

There are varied approaches taken in different laws to the demand for moderation in pricing. At the moment, the Finnish parliament is considering laws relating to motor vehicle roadworthiness inspections and waste processing. With regard to roadworthiness inspections, we have stated that access to roadworthiness inspection services at a moderate price should be guaranteed by law such that the inspection fees would include a maximum of a moderate return on the capital employed by companies carrying out such inspections. This model is not included in the proposal before parliament. The proposal decided to simply monitor the prices of roadworthiness inspections by utilising the register of inspection companies. On the other hand, the approach to laws on waste has fortunately been different. In the proposal before parliament it is stated that a municipal waste handling charge may include a maximum of a moderate return on the capital that the municipality has had to invest to meet its legal obligations for waste handling.

The transparency of pricing and cost structures is important in all services. When the Ministry of Finance's Sustainable Well-being report was quietly published on its website, one condition was a voluntary, long-aged pension. It is a single payment pension to be paid when retiring which can be taken from the age of 80. The model is based on the expectation that life expectancy will increase. A condition for the model to work in practice is not only postponing retirement, but also clarification of the principle of moderation and the principles of the division of benefits. At present it is not very easy to understand how the surplus over technical provisions is divided between shareholders and policyholders. The targets relating to this are also not very consistent. In this area too, the well-being report offers some interesting comparative data from other countries.

The limits of moderation are also being sought again in the discussion concerning alcohol advertising which seems to be heating up.

Anja Peltonen  
Director

## **No change to the focus in monitoring**

**In monitoring consumer law, the consumer policy programme, now in its last year is followed. The Finnish Consumer Agency tries also to forecast issues that are topical and significant for the consumer.**

The consumer rights monitoring work of the Finnish Consumer Agency can be broadly divided into three parts: basic monitoring, project work with a specific focus and dealing with unforeseen topical matters. The final year of the consumer policy programme is just beginning. As for the previous year, the focus areas specified in the programme have directed the work of the Agency. The areas of emphasis are: Communications services, consumer questions in credit markets, customer services and environmental marketing.

Consumer questions in credit markets are recorded more broadly in the consumer law working plan under financial services. In financial services, the focus is on such things as problems with instant credit and the related collections as well as legal reforms. The marketing of consumer credit is also outlined and questions related to the application of laws on payment services are also dealt with.

Problems with mobile content services, sales of subscription sales processes as well as pay TV and TV issues continue to come to the fore in communications services. Broadband speeds are also considered.

In environmental marketing, the regulations in section 2 of the Consumer Protection Act are being consolidated through individual monitoring activities. In the customer service area, particular attention is being paid to the effectiveness of large companies' customer service processes and how they keep people informed regarding incidents.

### **New target group brings a change of perspective**

Activity regarding consumer law is also influenced by considerations of the target groups. As far as prioritising activities are concerned, the critical interest groups are children and the elderly. The terms and conditions for serviced accommodation for the elderly are being looked at and attempts are being made to influence the position of children through topical approaches as well as through current legislative projects.

### **Lots of other projects alongside the areas of emphasis**

In basic monitoring, broader topic areas such as travel, the marketing of electricity, terms and conditions regarding private parking monitoring and collections are all covered. The revised paragraph on promotional games also requires action.

The objective for all the operating areas is to make the OECD Toolkit for Consumer Policy report known. In particular it highlights the starting point for a new kind of picture of consumers which is a critical offering of behavioural economics to ensure the functioning of the markets.

## Too good a picture given of dongle's maximum speed

**A television advertisement for a dongle failed to give important information about the limits to its baud rate. Maximum speed is a term interpreted in many ways.**

Sonera's dongle was advertised on television as being fair. In the advertisement a woman's voice says that "the dongle is always at maximum speed, satisfaction guaranteed, the same price for the whole of the contract period and the price is really fair." Maximum speed and other properties were also highlighted visually in the advertisement with a red arrow. At the end of the advertisement a box appeared on the screen which promised: "Mobile broadband from €9.90 per month at maximum speed, 24 month contract". Other terms and conditions relating to the offer were displayed small letters, but even these did not make any mention of the limits to the maximum speed advertised.

In fact the connection had a usage limit of 1 Gb per month after which the speed fell considerably to a low 64 Kb per second. The maximum speed in the dongle was not thus "always" available as the voice in the advertisement had promised. In addition, 64 Kb/second is a very low data transfer speed.

The advertisement produced an overall impression that was contrary to the truth because its central and visually most prominent elements gave the image of unlimited maximum speed. In addition the significant restrictions on the speed were not explained in their entirety, nor sufficiently clearly, nor with sufficient emphasis anywhere at all.

### What is understood by maximum speed?

What an advertisement that communicates only the maximum speed as its main message is telling the consumer is a problem area all on its own. Is it a question of the maximum speed that is generally available on the market or rather the theoretical maximum speed of the connection? And how can that be promised to a mobile internet user whose broadband connection works on different networks at different times?

The maximum speed claimed by the network providers in their marketing up until now, has typically meant the theoretical maximum speed. According to the mobile phone companies, this approach is well established and familiar to consumers.

There has been a change to the Communications Market Act which requires that the range be quoted. This is trying to address precisely those practical problems which are a consequence of the fact that the connection speed is defined either as a theoretical maximum or so openly that there is no clear understanding of what kind of speed has been agreed. The advertisement for this dongle had elements of both problems.

The "maximum speed" that the advertisement enthused about was understood in relation to the 6 Mb/second maximum. Even though the advertisement did mention a range of 0.4 to 3 Mb/second, it was not sufficiently clear that in this case the maximum speed really did depend on where the dongle was being used. For mobile broadband the loading on the network at a given location affects the speed so it is sensible to indicate the range. The lowest speed indicated, 0.4 Mb/second, however differed from the top speed available by so much that the tagline "always at maximum speed" did not match the expectations raised.

Because the dongle's maximum speed cannot be continuously achieved in practice, and the normal range given in the advertisement of 0.4 to 3 Mb/second differed to an unreasonable

extent from the 6M/bit maximum speed that could be achieved, the advertisement gave a misleading overall impression in this respect too.

### **The company undertook to trim its marketing**

The Finnish Consumer Agency required the company to give an undertaking that in its future marketing it would not give a false and misleading impression of the data transfer speeds of its service. The company undertook to do this and that in the future it would communicate to the consumer the information that was relevant to making the buying decision with sufficient prominence and with sufficient accuracy so as to give a truthful impression of the service and the real capability of the network.

## **Telephone sales prevention service in the news again**

**The Finnish Consumer Agency had to tell companies that provide a call prevention service once again to make their terms and conditions clearer and to observe good collection practice.**

The Finnish Consumer Agency negotiated at the end of 2009 with Suomen Markkinointiturva Oy concerning the marketing and terms and conditions of the call prevention service (cf issue 3/2010). Even though the company announced that it was changing its terms and conditions and even its service offer, consumers contacted us about ambiguity of terms and conditions and about marketing.

Uncertainty among consumers had been caused by the nature of the contract among other things. The terms and conditions said that the contract would take effect once the invoice was paid and also required a cancellation if the contract was not acceptable. It is unambiguously stated in the Consumer Protection Act that the party that draws up an ambiguous contractual condition is always to be regarded as disadvantaged in unclear situations, i.e. the conditions are to be interpreted to the advantage of the consumer.

The Finnish Consumer Agency required the company to clarify its contractual conditions so that consumers understood what they had to do to cancel the contract. At the same time it was emphasised that contractual conditions, invoices or brochures should not be sent to consumers if the receiver was expected to take some form of action afterwards. The company changed its contractual conditions so that leaving an invoice unpaid was interpreted as cancellation.

### **On the trail of good practice in consumer debt collection**

The payment reminders sent by the company threatened that non-payment of invoices would lead to collections. However, according to the company's explanation invoices were not put out to collection after payment reminders but were credited. However in collections one cannot give incorrect or misleading information about the consequences of neglecting to pay an invoice.

The company was required to change the text of the payment reminder so that it corresponded to the truth. The Finnish Consumer Agency called on the company to brush up its customer service too, because consumers said that complaints could not be made

because it was impossible to contact the company properly. The company said that it had corrected the text of the payment reminders and invested in its customer service.

## **Medical expense insurance was an unsuitable promotional game prize**

**Sales of a healthy yoghurt drink were promoted using a promotional game for medical expenses insurance. The Finnish Consumer Agency considered that the campaign was unsuitable.**

Danone Oy advertised its healthy Actimel yoghurt drink using a promotional game in which the main prize was medical expenses insurance from the Local Insurance Mutual Company. The prize was described on the sales packaging as well as on the product's campaign pages on the Internet. Actimel products are marketed on the company's web pages as having a general health effect for all ages including the elderly. However, from the promotional game rules, it became clear that the prize could only be won by someone below the age of 59 who passed the insurance company's health examination.

The rules of the promotional game on the sales packaging were placed so they would not easily be noticed. The Finnish Consumer Agency regarded as inappropriate, a campaign where the consumer would not necessarily have any idea that the possibility of winning depended on their personal condition before they made the decision to buy. Therefore the consumer may make a buying decision based on the marketing, which s/he would not have made if s/he had known that in fact winning the prize was not a possibility.

The company undertook in future to take account of the Agency's view and to observe the law and marketing guidelines more strictly in future campaigns.

## **Higher protection coefficient in solarium marketing**

**In the future solariums may be prohibited for under-18 year olds. A simple age limit however will not protect consumers if marketing brushes the health risks of the service to one side.**

Regulations are being added to the Radiation Act which will prohibit those below the age of 18 being exposed to a solarium's ultraviolet radiation. The Finnish Consumer Agency supports the age limit. There are safety risks associated with solarium services which are greater the younger people start to use them.

In Parliament's proposal, it is planned that there should be people responsible at places where solariums are used. Their role would be to advise customers as necessary on the use of the solarium and provide relevant information about ultraviolet radiation. In addition, the person responsible would check that underage people would not be allowed to use the solarium.

### **Promises are too bright**

However, the age limit and a responsible person are not sufficient if the dangers of solarium use are not explained at all in their marketing.

The advertising messages about solariums are generally just in support. The consumer is encouraged to use a solarium to get a base tan before the summer or holiday abroad and thus to make sure that their skin does not burn straight away in the sun. The advertising also emphasises the health promoting effects of solariums. The solarium promises to brighten up the dark period of the year and to increase the production of vitamin D.

If marketing does not give necessary information with regard to the consumer's health and safety, then it is inappropriate. The Finnish Consumer Agency can, if necessary, take a stance on the marketing of solarium services and remind the service providers of their legal obligations.

**Read more:**

The Finnish Consumer Agency's statement to the Ministry of Social Affairs and Health.

## **The division of life insurance benefits raises questions**

**The principle of fairness contained in the Insurance Companies Act aims to uphold the rights of the policyholder in the division of the company's surplus. In practice, interpretation of the legislation has raised lots of questions and left the consumer in a shaky position.**

The consumer is promised certain life insurance policies that give guarantees such as pension insurance, fixed interest and other possible benefits. The insurance companies have to distribute extra bonuses following the principle of fairness from the surplus arising from the company's income. In practice, it is impossible for the consumer who has taken out insurance to know what they can expect from additional bonuses and how large a share of the surplus will be grabbed by the shareholders.

Life insurance should be priced so that the insurance premiums and investment returns are sufficient for the commitments the company anticipates. Safe pricing generally results in a surplus and when distributing it the company has to follow the principle of fairness and take the policyholders into account. On the other hand, an insurance company has to perform so that additional bonuses can be paid even though there are fluctuations in the company's earnings. This continuity principle is important to the customer, because when insurance is being sold a picture is given of the estimated returns on the insurance in the future. Equally important is that the company providing the insurance remains solvent. The company's board of directors decide on extra bonuses to be paid annually.

### **Additional bonuses are explained unclearly**

The Financial Supervisory Authority investigated the life insurance companies' interpretation of fairness over a two year period ( 2008, 2009). The focus of the investigation was precisely the life insurance products whose terms and conditions give rights to additional bonuses. In the reform of the Insurance Companies Act, companies are obliged to give more detailed information than previously about their application of the principle of fairness in practice. The Financial Supervisory Authority's task was to check that these obligations had been fulfilled.

From the results it became clear that the operations of the life insurance companies implemented the principle of continuity and the companies followed the principles of distribution of additional bonuses that they had established. In addition it seemed that the

distribution of additional bonuses among different kinds of policyholders was made equally following the principle of fairness. The distribution principles with regard to different types of policy were also explained quite openly. However, there did seem to be a dark cover resting over the question as to whether the companies distributed their profits fairly between policyholders and shareholders.

There should be clearer explanation of additional bonuses as part of the product information. The Financial Supervisory Authority regarded the quality of information directed towards consumers as a major problem. According to the law, a company must define its target level of additional bonuses or the level of its overall return from technical interest and additional bonuses. Information about additional bonuses could be communicated more clearly when it is being marketed to those taking out insurance. Short statement that the company gives “fair” or “competitive” additional bonuses are not sufficiently concrete to tell the consumer what kinds of bonus are at issue. The distribution principles for surpluses are different in different countries. In some countries for example, the surplus to be distributed is shown as a percentage of the insurance company’s profit.

In addition the company has to report annually as to whether it paid additional bonuses in line with its targets. According to the Financial Supervisory Authority's investigation, the targets are communicated, but not always so clearly that the ordinary consumer would be able to benefit from the information. In some cases the information is only found in the notes to the financial statements. In addition the companies said very little about achieving their targets let alone about the reasons for success or failure.

#### **Additional bonus can be conditional**

In the insurance terms and conditions, there can be limits to additional bonuses. For example conditions relating to additional benefits may say that they are not paid if the customer surrenders the policy or switches to another service provider. Conditional additional benefits are thus not included if you later want to transfer the insurance to another insurance company or to a long term savings account.

## **Wood pellets marketed with great environmental promises**

**Wood pellets were said to “prevent climate change” and to be an environmentally friendly choice for heating. The Finnish Consumer Agency considered the promises to be too imprecise.**

Vapo Oy marketed its wood pellets emphasising the environmental perspective in part misleadingly. It was claimed, among other things, that the pellets “prevented climate change” and were an environmentally friendly choice for heating.

The Finnish Consumer Agency’s general policy with regard to environmental marketing is based on the Market Court’s solution that, for example, the term “environmentally friendly” can only be used with regard to products that place less of a load on the environment during their lifetime than other products in that groups. The company was not able to give a watertight demonstration that wood pellets were a more environmentally friendly option than all other heating systems.

#### **Slowing climate change was too strong a claim**

The Agency considers that it is misleading in principle to market wood pellets using the general claim that it is a heating option that slows climate change if production of the pellets produces carbon dioxide emissions. Pellets are produced in part in factories where peat is used to produce the energy needed to make them.

Even though the product itself, i.e. the pellet, is carbon neutral, the environmental impact of the product is also affected by its production process. If the production of pellets uses peat or other substances about whose carbon dioxide or other emissions to the atmosphere there are contradictory and controversial results, then pellets cannot be marketed using general, unspecified claims about the atmosphere or environment.

### **Highlight achievements using precise wording**

The Agency recommended that the company should make more specific claims in the future. The marketing can, for example, present the claim that overall the carbon dioxide emissions from wood pellets are lower than for fossil fuels, if the claim is based on measurable facts. In addition, the pellets' carbon dioxide emissions can be talked about in terms of the carbon dioxide balance based on consideration of the pellets' lifecycle.

The marketing must also talk about the particulate emissions that result from burning pellets if the product's impact on the environment or climate is to be brought up.

The principles of environmental marketing were discussed with the company and a negotiated solution to the issue was reached.

## **Commerce Committee behind strong supervision of promotional games**

**The Commerce Committee of the Finnish Parliament has weighed up a change in the law regarding promotional games. In its statement the Committee considered it important that the Finnish Consumer Agency monitors the observance of the revised regulations carefully.**

In future the reformed law will only allow promotional games used to market a product to be organised for people who buy the product, i.e. there will be no longer any need to provide a free option. At the moment it is possible to participate in a promotional game in other ways than by buying the product, for example by filling in a coupon.

The background to the change in the law is a judgement of the Court of Justice of the European Communities according to which the requirement for a free option is contrary to the Directive on unfair commercial practices.

However, additional benefits should not be allowed to dominate the overall effect of marketing in the future either. At the same time it is important to ensure that promotional games and gambling that require licensing do not start to avoid the requirement through promotional games.

The Committee considers that the Finnish Consumer Agency must take a strong role in monitoring promotional games. The Agency is currently reviewing its policy regarding promotional games. The work will include listening to interest groups and putting a draft up on the Agency's website for comments. The proposed law is currently being considered by Parliament.

## **Kitchen price tags appropriate**

**The ways of communicating the price of kitchen furniture have been overhauled in cooperation with the sector by revising Consumer Rights policy regarding the subject. In addition, the Confederation of Finnish Construction Industries RT (CFCI) has developed a price calculator to help consumers.**

The Finnish Consumer Agency and CFCI have renewed their policy on kitchen equipment. The policy lays down the principles for communicating price in the sales and marketing of kitchen equipment. The policy for example provides a reminder that the seller's duty to communicate the price is not removed by linking the web pages to the importer's or manufacturer's pages where prices are not given.

While reviewing the policy, consideration has also been given to the particular features of selling in a shop and attention has been paid to making pricing in shops clear. The communication of prices for doors, draws, work surfaces, facias and ancillary products has not been entirely clear, but now a common approach to communicating them has been established.

To help communicate the prices of furniture there is a price calculator on the internet, for example, that CFCI has developed for its members. Previously the consumer had difficulty in knowing the total price for a model kitchen. Now with the calculator you can get a picture of the price of a kitchen by selecting the kitchen furniture, doors and draws for typical model kitchens.

### **You had to search for the price when buying a kitchen**

The pricing policy was originally drawn up in 2008. The situation before the policy was bad. Consumers had really no possibility to compare the prices of different furniture before making an individual kitchen design. Last year's intense monitoring showed that the majority of the kitchen firms did not communicate prices in spite of the policy or did not give them in full. The companies have received at least a warning from the regional government inspector.

Even though an individual kitchen design is generally produced for the customer, s/he should be able to get information about the prices of the kitchen models, and also draws and other extras, before that. The obligation to communicate prices for consumer goods applies to all retail shops irrespective of the sector.

## **The Finnish Consumer Agency spars over observance of committees' decisions**

**Sometimes, observing the decisions of dispute resolution bodies requires intervention by the Finnish Consumer Agency.**

The Finnish Consumer Agency can help consumers in court, for example in situations where the opposing party is a company that has not observed the recommendations of a dispute resolution body that is not part of the courts system. In practice it is most often a question of

the Consumer Disputes Board recommendations, but the Agency has also been contacted regarding the recommendations of the fairly new Finnish Securities Complaints Board.

In many cases a collections letter to the company will result in the company making the compensation payment to the consumer as recommended by the Board. For example, at the end of last year Delta-Auto Oy were urged to pay compensation recommended by the Consumer Disputes Board to a consumer. In this case the consumer thought he was buying a 2009 model new car, but it later became clear that the car had been imported two years previously and had stood in the importer's warehouse. The Board recommended compensation which the company, after contact with the Finnish Consumer Agency, paid to the consumer.

For its part the Finnish Securities Complaints Board recommended that Elina pankkiiriliike Oy repay a consumer's investment with interest as it considered that the consumer had not been sufficiently informed about the risks associated with the investment. This was the first time that a recommendation of the Finnish Securities Complaints Board had not been observed. Once there had been a discussion with the company, it undertook to pay part of the recommended compensation to the consumer. The Agency has not continued to help the consumer.

## **Policy opens competition and consumer rights position on guarantee**

**The consumer rights policy "Statutory liability for lack of conformity and guarantee in the sale of consumer goods" has been detailed in respect of guarantees for goods acquired from an EU country or for parallel imported goods. In competition legislation and in the Consumer Protection Act the guarantee in these cases is regarded from slightly different perspectives, so it is appropriate to shed light on the topic.**

The basic principle is that the manufacturer's guarantee given in one country must be valid under the same conditions in other EU countries too. Contrary to competition legislation, the situation can arise where a guarantee is denied on the grounds that the goods were acquired from another member state, bought there through an online shop or imported into Finland as a parallel import bypassing the official importer.

However, it should be noted that it does not follow from the competition legislation that the consumer has a direct right to receive a guarantee service from the Finnish importer. The Consumer Protection Act does not include rules as to the responsibility of the importer in cases where the goods have been acquired in another EU country and imported into Finland as a parallel import bypassing the authorised importer.

However the Finnish seller of parallel imported goods is legally responsible for faults and in addition the seller is also responsible for guarantees given earlier in the sales chain by the manufacturer for example, unless the seller has voided the guarantee responsibility by informing the buyer before the sale takes place.

Consumer rights policies include information and practice on applying the rules. They have taken into account the special features and problems of each area or sector.

Read the policy “**Statutory liability for lack of conformity and guarantee in the sale of consumer goods**”

## **The objective is an equal information society**

**In future communications policy the perspective of the user will be emphasised. This still does not guarantee that the consumer’s rights will really be upheld.**

The government presented a report to Parliament at the end of last year on the future of information and communication technology. This digital agenda runs through the measures which the communications policy intends to develop by 2020.

The agenda emphasises the perspective of the users of communications services. However, users are understood too simplistically as promoters of competition and the success of the internal market. This objective will not succeed unless users are protected by an effective system of consumer policy.

It is also necessary to give consumer protection a higher profile in the agenda because the consumer agencies receive a lot of complaints about information society services. The same message is seen in the Consumer Market Scoreboard published by the EU in the autumn of 2010. On the basis of that, Finnish consumers experience more problems with internet and mobile phone services than other EU citizens.

### **Farewell to the rational complainer**

The agenda’s objectives would do well to take note of the approach taken in the OECD’s Consumer Policy Toolkit, published in the summer of 2010. It is high time decision makers abandoned the image of consumers first collecting comprehensive data, weighing the different alternatives and then making thought through decisions. More often than bump into an ever wider and ever more complicated range of products and services and make decisions that seem to be random. One of the agenda’s objectives is to prevent exclusion and to take into account the needs of the various user groups. Among other groups, the elderly and under-age have their own characteristic features which have to be taken into account in the marketing of information society devices and services.

For example, elderly people have been sold products that do not correspond to their needs. They have also not been given enough guidance in the use of devices. Under-age children on the other hand have not always been identified as such and they have been able to enter into complex contracts without their parents’ or guardians’ consent and to watch content that is unsuitable for them.



The Consumer Agency safeguards and strengthens the position of the consumer in society. The Director of the Finnish Consumer Agency is also the Consumer Ombudsman and the Agency takes care of the Consumer Ombudsman's responsibilities.

The role of the Consumer Ombudsman is to monitor and develop the legal position of the consumer in the markets and ensure that the rules governing marketing and contractual conditions are observed. Issues relating to warranties and consumer collections are also included under the aegis of the Consumer Ombudsman. In addition the Consumer Ombudsman can assist consumers in the courts.

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