



# Current Issues in Consumer Law

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## From the Editor

Social responsibility is also responsibility for the consumer..... 2

## Articles

Credit can be a lifeline in temporary financial crisis .....	3
Voucher users to be protected by the Consumer Protection Act .....	4
Small construction firms unaware of their responsibilities.....	6
We must keep an eye on the factors which restrict competition .....	8
Restrictions to the fluctuation of internet connection speed.....	9
The total price of the solar system is left in the shadows.....	10
In search of a common classification system for the consumer complaints in Europe .....	11
Consumer Agency's basic supervision believes in the power of repetition and co-operation	12
The cost of satisfaction and price guarantees is a worry .....	13
News in brief .....	14

## **Social responsibility also responsibility for the consumer**

Recently OECD organised a seminar in Paris on the social responsibility for businesses, where the consumer played a leading role. During the meeting Meglena Kuneva, EC Commissioner for Consumer Protection, stated that the most important task for all economic operators is to regain the consumer trust. Kuneva wished that businesses would concentrate more on price and quality instead of sophisticated marketing strategies. That's not a bad idea.

It's important to hang on to existing customers, and easier to find new ones with clear facts and accessible terms of contract. Consumers must be able to make their own choices – pre-ticked boxes don't give the consumer real freedom of choice. Samuel Ochieng, the President of Consumers International, reminded us at the same meeting, that the right to choose is but one of the consumers' rights, such as the right to be informed and the right to be heard. The president stressed that companies should be accountable to workers, to consumers and to all those within their sphere of influence.

The speeches repeated delightfully often the view that consumer education and consumers overall should not be saddled with the whole responsibility for functioning markets, but that legislation and consumer protection must also play a central role.

Consumer protection must work on a practical level and there both large and small businesses have their work cut out. From our part we are, together with other organisations, making companies' working day easier with the toolbar on our website, which consists of ever increasing information pages and helpful tools for practical situations. We have developed only a few of these practical tools so far, but there has been great demand for all of them: pocket size e-business and credit card business checklists for vendors, the Discount Campaign Assistant to guarantee a successful campaign, and the latest, the Warranty Assistant, to help with the trade in domestic appliances. And a special thank you to those open minded organisations that have helped us to adapt information especially for business needs. Suggestions for new tools are always welcome!

18th June 2009

Anja Peltonen  
Director

## **Credit can be a lifeline in temporary financial difficulties**

**Bad credit record does not always mean inability to pay. The customer's bad credit record alone does not give other lenders the right to close financial taps or to cancel a credit which has been managed in a businesslike manner.**

As a result of the EU Directive on Payment Services a new Act regarding payment services is being processed. The Consumer Agency has been taking part in preparations for the Act in the Ministry of Justice working group.

The Payment Services Act will also touch the consumers' financial difficulties and a company's right to close down a customer's payment instrument. According to the proposed bill a company could, for instance, close a customer's credit card, if the risk of customer's inability to pay has notably increased.

Bad credit record has been regarded as a sign of the consumer's bad budgeting. According to the Consumer Protection Act a bad credit record obtained from somewhere else is not a sufficient reason to cancel other credits if the customer has been managing them impeccably. A bad credit record indicates that a customer was in financial difficulties at the time when the record was made – which is not necessarily the current situation. On the other hand, when applying for new credit, a bad credit will usually influence the lender's decision.

The most common reasons for financial crisis are sudden life changes. For instance, as a consequence of a divorce or unemployment the consumer's budget can momentarily become so burdened that he/she is unable to pay all bills on time. This is where credit can help in balancing sudden expenses and it can compensate for sudden decrease of income. Without credit the consumer can be caught up in even worse financial difficulties. However, the condition for obtaining credit, even in these situations, requires that the consumer has an ability to pay.

The parliamentary reading of the Act is expected in early autumn and the objective is to have the new regulations enter into force at the beginning of November.

### **More information**

The Consumer Agency's statement to the Ministry of Justice.

New legislation to straighten out payment services, Current Issues in Consumer Law, 2/2009

## **Voucher users to be protected by the Consumer Protection Act**

**Service voucher users will in future be in a customer relationship with the service provider and Consumer Protection Act will be applied in error situations.**

The parliament has recently accepted a bill on a social and healthcare voucher. The bill will bring many changes to councils' potential to provide basic services. The Consumer Agency has been concerned about the legal rights of a voucher user under the previous legislation. It used to be possible for a person paying, for instance, for care services with their own money to be able to complain about the poor quality of service to the Consumer Disputes Board, while those paying with vouchers could not.

The new Act which comes into force in August stipulates that a customer is, in fact, in a civil law agreement with the service provider despite the fact that the payment instrument used is partly a voucher. Thus, in an error situation, the customer has equal rights to the independent service buyer: the right or refuse to pay, to demand that the error is corrected or the treatment renewed, the right to price deduction and damage compensation as well as the right to cancel the contract. The rights in delay situation have also been written into the law. Applying the Consumer Rights principles will give additional protection to the voucher user, but it does not solve the problem of too many cooks.

### **Two masters is a challenge**

When a customer uses a council voucher to buy services, the overall picture is still partly quite unclear. Although the customer is using the service as a genuine consumer, the council's responsibility must also be acknowledged. In error situations the council's responsibility can be based, for example, on the fact that the council has, when accepting the service provider on its lists, neglected to confirm the service provider's liability insurance, thus causing harm to the customer. The failed service is therefore a three-way deal: the customer, the company providing the service and the council. There are still many unsolved issues about this three-way connection.

The council's potential to offer basic services with vouchers enables the council to offer services for example in several languages, and even reduce queues to those services the council itself provides. The council wishes that introducing vouchers will increase the amount of service providers and encourage competition. At the same time this reform will load the council with a heavy responsibility: the authorities must be able to ensure that the services for even those in the weakest position are secured and implemented individually for everyone according to their needs. This will mean an increased obligation to provide information. Customers must be informed very clearly about their rights to, for instance, refuse the voucher as well as about different alternatives.

Especially in a situation where the voucher's excess exceeds the visitation cost to the health centre, the customer will have to be able to genuinely choose whether to use the voucher or not. Councils will still have to carry on providing their own services because the real possibility to use them has been written in law.

### **Supervision is also multilateral**

Supervision of the service voucher use is divided between many authorities. Supervision of private social and health services falls to the local council of the operative unit, to the County Administrative Board and to the Licensing and Supervisory Authority for Welfare and Health. Therefore a customer or a patient will still have the same opportunity as they currently have to complain to the supervisory authorities about the pertinence of the service provider's operations. In addition to this the Consumer Agency monitors the advertising and the fairness of the contract terms, and the Consumer Disputes Board can take part in negotiating any disputes.

In addition to the councils, companies and authorities Sitra is also interested in the voucher system. They want to contribute to the introduction of service vouchers by financing implementation projects. Transparency of costs has been one concern which is already being sorted out with Sitra in charge. Sitra has, as part of its own council programme, started a project which supports councils with, amongst other things, invoicing the payments for customers. The aim is to ensure that the invoice the customer receives will include both the cost of the service to the council and the customer's payment. There are also plans to introduce an electronic voucher and a national register of service providers.

## **Small construction firms unaware of their responsibilities**

**There has been an increase in notifications to the Consumer Agency by building inspection authorities about the lack of insolvency securities. Small building firms still seem to be surprised to learn that they have to prepare an insolvency security to protect the consumer before they can start marketing their product.**

Insolvency security is used to safeguard the situations when for example hidden defects are found in a building. Without such a security, the residents may be left in an intolerable situation if the builder becomes insolvent.

Current legislation demands that an insolvency security must be supplied at the latest when the final inspection of a building is conducted, before starting to sell homes to consumers. However, in practice homes are being marketed to consumers before the building work is completed. The security should also be ready at this time. However, sometimes the building inspector's demand for an insolvency security during the final inspection may come as surprise to the builder.

Most of the larger building firms supply an insolvency security long time before they start to market the homes to consumers. It is advisable that smaller firms also adapt this procedure. Also, on legal level it would be advisable to plan how to time the inclusion of supervision and the accompanying information into the building projects. Supervisory experiences show us that supplying the insolvency security during the final inspection may, in many cases, be too late.

### **Banks or insurance companies should be included at the initial stage**

Insolvency security is 25 percent from building expenses, which means that scratching together the funds in an unexpected situation when the project is in its final stage might prove insurmountable. Builders should start creating the insolvency security at the start of the project, if they wish to get some help from an insurance company, for example. An insurance company will probably be happier to become a partner if they can have their own supervisor included in the project from the initial stage.

Due to the weak economical situation small building firms have found it more difficult to obtain securities from banks, a fact, which probably has also created problems with insolvency securities.

### **Repair building has more than its fair share of interpretation problems**

Impressive loft-homes from an industrial hall or an office building – is insolvency security required?

This is a difficult question, because the law is not very clear on this. Sometimes the question is about such a massive renovation that the project can be compared to house building. At other times only smaller repair work is required, without the need for work on the basic structure of the building, thus avoiding costly installation of water pipes and electricity cables.

Proof of an insolvency security is supplied to the building inspection authority. The Consumer Agency supervises insolvency securities and the building inspector will inform the Agency if the security has not been supplied.

**More information:**

[Builder and creating an insolvency security](#), consumer rights policy

## **We must keep an eye on the factors which restrict competition**

**Currently the Act on Competition Restrictions is being replaced by a new Competition Act. To get the best out of the new Act we must not be too narrow-minded when trying to understand those factors which restrict competition.**

Competition between businesses in the markets, whether that competition works or not, also reflects to a consumer's everyday life. The new Competition Act greatly improves consumers' position by giving them an opportunity to seek damages for breach of competition rules.

Competition would also be made more flexible if factors restricting competition were to be specified as widely as possible. Previously the Act on Competition restrictions included a section where damages could be claimed separately for "other harmful restriction of competition" as well as in certain situations. According to that section restricting competition can have harmful consequences if it reduces business performance in an unacceptable way as far as healthy and economical competition is concerned, or otherwise hinders or impedes somebody's ability to carry on with their business.

The new Competition Act should also include a similar general definition which would include many obstructions to competition in different markets. Typical examples are fixed-term linked contracts and the banks' loan protection insurance which is tied to the loan. The customer who is tied to a fixed-term contract cannot change service provider, such as an operator, without additional expense. The loan protection customer on the other hand could perhaps transfer the loan to another bank, but without the insurance. Even children's health insurance has been packaged into the domestic insurance so tightly that one cannot be separated from the other.

What is common to these practises is that businesses have, in advance, restricted both the room for manoeuvre and different options on offer for the consumer to benefit the businesses themselves. Consumers cannot move around and make their own choices as they please – thus they also cannot maintain healthy competition.

## **Restrictions to the fluctuation of internet connection speed**

**Internet subscription is often priced according to the connection speed on offer. The range within which the offered speed can fluctuate is currently being considered in the Ministry of Transport and Communications.**

The regulation regarding the minimum speed of a practical public service internet-speed is currently in circulation of a proposal for comment. The aim is to determine a reasonably priced connection speed for everybody and the exceptions allowed in it. The definition is needed because citizens must have an access to adequate and reliable connections. In future alongside with e-mail and web browsing more and more services, such as health care and security services, will require different efficiency from the internet connection.

### **Maximum range to be 25 per cent**

When justifying the Communications Market Act the parliament considers that in future it would be reasonable to set a minimum speed for internet connections. In this case a temporary reduction of average speed, not over 25 percent, would be acceptable. The draft regulation states, however, that within a short time range, such as during the rush hour, it would be sufficient to have a speed range of as much as 50 per cent. The Consumer Agency does not support deviations from the 25 per cent recorded in the legislative history.

For consumers it's essential that the service quality does not substantially and repeatedly differ from what has been agreed. Telecom companies sell internet subscriptions at different prices depending on the connection speed. It is not reasonable to expect consumers to pay for a faster connection speed than that which the subscription actually makes possible. Even a temporary drop in speed from 1 megabyte to, for example 512 kilobytes, significantly limits the advantages of the available services.

### **Speed is marketed using approximate numbers**

When connection speed is marketed and sold, the factors limiting the connection speed are not always highlighted. For instance, mobile network customers are sold only a certain theoretical maximum speed, such as 1 megabyte, which works in 3G-area. The consumer then gets a misleading impression that if he/she buys the 1 megabyte subscription it will work at the specified speed everywhere.

In Sweden the bigger network operators have agreed to stop using theoretical maximum speeds during marketing. This is a step in the right direction. However, to ensure that marketing will not be misleading, it would be more important to explain the speed range or give examples about the average speed. In Finland the Consumer Agency has given guidelines on connection speed marketing.

### **Read also:**

[Even the wireless surfer deserves a quality connection \(3/2009\)](#)

## **The total price of the solar system is left in the shadows**

A 52-piece metallic model of the solar system was marketed as a collectable series. The parts were sold with the "Build your own solar system" magazine. However, the advertisements in the magazine cover, on the Internet and on television failed to display the total price of the model: collecting all parts actually cost over 600 Euros.

The single issue price of less than 15 Euros was displayed in marketing, but because the whole series was being marketed the total price should have been displayed. The consumer must know the price to enable him/her to decide whether or not to start collecting the series. It cannot be assumed that the consumer will calculate the amount and total price of the parts based on the single issue price.

The Consumer Agency intervened with the marketing and the trader Eaglemoss Publications Limited included the missing information in the product website and magazine covers.

*KUV/1086/41/2009*

### **Sections of law applied in this case:**

Consumer Protection Act, paragraph 2 clause 8 section 3

Decree on price notification of consumables in marketing, paragraph 2 clause 4 clause 1 and clause 5

Consumer Protection Act, clause 2:1

## **In search of a common classification system for the consumer complaints in Europe**

**The commission wishes that in future all EU countries would classify the consumer complaints in the same way.**

European Commission wants to obtain more detailed information on what kind of complaints consumers are making in each member state. To enable comparisons with situations in different countries they all should classify their consumer complaints in the same way. The Commission has already started to prepare a common system just for this purpose.

The classification system is voluntary. However, the aim is that, apart from individual businesses, as many consumer complaint facilities as possible would introduce it. The Consumer Agency took part in the Commission's working group and gave a statement on the draft of the classification system. The agency has also passed on information about the system to its reference groups and forwarded any comments from them to the Commission.

The Commission will inform about the development of the classification system in the next few months. System preparations will continue at least till the end of the year.

### **Classification is a part of a larger project**

A consumer complaint is one of the five indicators in the EU Consumer Markets Scoreboard. The aim of the Scoreboard is to act as a tool which recognises consumer problems and malfunctioning of markets.

The first Consumer Markets Scoreboard was published in January 2008 and the second in February 2009. The Consumer Agency has taken part in developing the indicators and gathering information for them. According to the latest Scoreboard, services are causing consumers more trouble than merchandise does. Emerging problem areas were energy, transport by bus and rail as well as communication services and banking services. Consumer complaints are an important indicator of the functionality of markets, but the Scoreboard should not be based solely on them. At least just as important is to listen carefully to the whole operational environment, i.e. impulses rising from business, the media and research institutions.

Consumer Markets Scoreboard is part of the larger The Single Market Scoreboard.

### **More information**

Get your money back – even across borders, AKU 1/2008 <http://www.kuluttajavirasto.fi/fi-FI/060108/>

First EU Consumer Scoreboard shows information is in short supply, AKU 2/2008 <http://www.kuluttajavirasto.fi/fi-FI/090208/>

## **Consumer Agency's basic supervision believes in the power of repetition and co-operation**

**Eternal problems with trade can be tackled most efficiently in different fields and subjects, together with industry and commerce.**

The consumer rights monitoring in the Consumer Agency are controlled by focus points which are determined annually. However, basic supervision is constantly grinding alongside. SAVA - carefully planned system of market surveillance- is responsible for this. SAVA handles about 40 % of all notifications received by the department of consumer law – over 3,000 notifications per year.

These issues are not handled one by one, but as wider entities in specific fields and subjects. Monitoring is concentrated in areas where the consumer rights policy has been standard for a long time, but which still experience problems. Typical subjects are direct marketing, special offers and discount marketing, price information and marketing extra benefits and lotteries. This year SAVA will concentrate especially on customer service, e-commerce and defects in warranty and error liability.

### **Tools and seminars**

SAVA-monitoring pattern is simple: we repeat appropriate game rules to businesses over and over again as clearly as possible through different channels. Tools we use are for example briefings tailored for the business, seminars and educational functions.

To further assist businesses we have developed different practical tools. The latest are the guide to a successful discount campaign, The Discount Campaign Assistant, and the Warranty Assistant to make managing customer complaints easier.

However, SAVA-monitoring is not only monologue, but above all looking for a dialogical connection. Experience has shown that best results are achieved when defects and corrective methods are negotiated together with business organisations. The aim is to get organisations to commit to agreed game rules and to pass them on to their member organisations.

We keep contact through regular meetings. The most essential areas are met with once a year. Those areas where we receive fewer contacts, are met with every other year or every third year.

The notifications sent by consumers are a, essential indicator of how well different areas follow the rules given to them. If a certain business continues to bend the rules, the issue is transferred from SAVA and handled as an individual offence.

## **The cost of satisfaction and price guarantees is a worry**

### **Promises and guarantees used in marketing can be problematic promotional tools.**

”Try it for 14 days. If you're not satisfied you'll get your money back.” This is how Danone Oy advertised its healthy Activia yogurt. In connection with the impressive marketing there was a mention in very small print about the total refund being maximum 10 Euros. It was impossible to know the actual price for the two-week trial period, because shops price their products independently. The customer would have been surprised not to get the total refund if the product didn't work within the promised time and the cost of the trial had exceeded 10 Euros. The company was reprimanded that the Euro-definite restriction was in conflict with the main message of the advertisement.

### **Use of price guarantee is forbidden**

Active Nutrition International advertised a price guarantee on its nutritional website. The company promised to double the price difference if the customer could demonstrate that he/she could have bought the same product somewhere else at a lower price. The Consumer Agency interfered, because the Market Court has forbidden the use of price guarantee in its settlement procedure.

The term price guarantee gives consumers the impression that the company has, on behalf of the consumer, reliably found out that it is the cheapest place to purchase the product. Price guarantee is in itself a claim for greater affordability which should be proven with price comparison. The claim for greater affordability can greatly influence the demand for the product. Market Court has justified the ban on price guarantee by explaining that the company actually leaves the price comparison to the customer. *KUV/1205/41/2009, KUV 1933/41/2009*

## **News in brief**

### **The Market Court of Sweden: loan expenses cannot be a percentage of the loan**

Swedish Consumer Ombudsman took a bank named Bank2 to the Market Court because of the unreasonable terms of contract. In its terms and conditions the bank used a definition which charged a customer a percentage of the loan, determined in advance, as loan expenses. The Consumer Ombudsman declared that loan management expenses can be collected from the loan in addition to the interest, but they must be based on the actual administrative expenses of the said loan, such as determining the total value of collateral or opening the loan account. The Market Court agreed with the Consumer Ombudsman and judged the company practise to be unreasonable. The company was ordered, under a threat of 750,000 kroner fine not to use the said terms and conditions.

### **Wrinkle cream marketing claims to court in Sweden**

Sweden's Consumer Ombudsman has taken the cosmetic company L'Oreal Sverige AB to court for using misleading marketing claims. Different product advertisements have, for example, claimed to decrease wrinkles between 43 and 70 percent, i.e. "wrinkles will almost disappear". According to the Consumer Ombudsman the company has not been able to sufficiently prove the accuracy of the claims. The Consumer Ombudsman wants the Market Court to forbid this kind of advertising and to determine at the same time what kind of proof is needed to prove this type of claim.

### **Standardised information box for credit offers in Canada**

The government of Canada has taken action in the financial crisis and suggested reforms to credit regulations to improve consumers' position in the credit market. One suggested reform is a requirement for a standardised information box with all credit and credit card applications. When the necessary information about interests and expenses for example, has a standardised classification everywhere, a consumer would find it easier to compare different credits and credit cards.



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](http://www.kuluttajavirasto.fi)



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Our overview of current issues will keep you up-to-date on

- efforts to strengthen the position of consumers
- statements and decisions of the Consumer Agency/Ombudsman
- pending legislation
- international trends in consumer law