Current Issues in Consumer Law

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The consumer’s power is dependent on legislation

The discussion on consumer politics often emphasises the consumer’s responsibility. As consumers use their power, markets function better and welfare on the whole increases.

For example, Finland’s consumer political programme for 2008-2011 states that consumers themselves have a responsibility of ensuring their own welfare. According to the programme, the opportunities for consumers becoming more involved and exercising their power have yet to be fully utilised. Consumer choices also guide the development of products and services, thereby resulting in gains in innovation and efficiency. The goal of the programme is to ensure that consumers are sufficiently well informed and have the capability to act on quickly developing markets and have a role of influence as consumers in society.

Consumers can’t, however, exercise their power without adequate legislative support. Legislation must guarantee that consumers receive clear information and their rights are enforced. In addition, irresponsible actors must be eliminated from markets. Well-functioning legislation and effective monitoring are specified in the programme as tools for improving consumer trust and give them the tools they need to exercise their power.

Being informed gives better results?

Traditionally consumers are seen as acting rationally. Rational decision making is improved by making the actors better informed. This view was the basis for the marketing regulations of the Consumer Protection Act in the 1977 government proposal (HE 8/1977). As long as all factors influencing the decision making process are disclosed, a rational decision will automatically follow.

Similarly, the 1987 Directive on Consumer Credit (87/101/EEC) took the view that simply disclosing actual annual interest rates would make consumers better informed and facilitate comparisons. However, no attention was paid to how the actual annual interest rate is disclosed.

When the Finnish legislation on guarantees and pledges for third party debt was drafted in 1998 (Government Proposal 189/1998), the focus was strictly on information disclosure rather than considering whether the recipients had the ability to understand and adopt this information. The legal provisions on guarantees and pledges (Act on guarantees and pledges for third party debt 361/99) state that guarantors must be given plenty of information. For guarantors to form an accurate general view of their liability, the creditor must not only go over the terms and conditions written on the guarantee document, but also explain the key provisions of legislation on guarantees and pledges. In practice, this has led to a need for lengthy explanations in banks.

Providing the legally required information to consumers is not enough in itself unless attention is given to how that information can be effectively communicated. Otherwise there is a very real danger of consumer fatigue due to the large amount of information.
From the obligation to inform towards an effective manner of presentation

Lately it is increasingly acknowledged that the consumer may not always be a rational actor. Certain human behavioural patterns tend to be repeated and sometimes hinder the process of rational decision making. For instance in matters related to energy provision (Ofcom, UK 17 Nov 2006) it may be seen that the more choices and detailed information are made available to consumers, the more likely it is that the choices made do not serve consumer interest. In these so-called confusopolies, the process of comparison does not serve its intended function.

Consumers having active roles in the markets should not be based - and is not based - on the presumption that once information is disclosed, the responsibility is transferred to the consumers. With this in mind, the regulations on providing information to consumers put increasing emphasis on the usefulness of information.

Several EU consumer directives specify that information must be provided in a "logical" and "coherent" manner. As these directives have been implemented, the concepts have been included in the Finnish Consumer Protection Act in the regulations on distance selling and warranties, for example. The Government decree on information to be supplied in respect of consumer products and services (613/2004) also requires that the instructions for use, as all other information supplied in respect of consumer products, must be provided in a logical and coherent manner and using a clear type font and a type size that is sufficiently large.

The Unfair Commercial Practices Directive (2005/9/EC), on the other hand, refers to the concept of the average consumer. It is probably safe to assume that the average consumer does not read advertisements with computer-like accuracy. The European Commission brochure “The Unfair Commercial Practices Directive, New laws to stop unfair behaviour towards consumers” states that information must be presented clearly: failing to present information clearly is practically as bad as failing to present it at all.

The way this policy change extends businesses’ obligation to inform to the actual usefulness of that information is a sign of the modernisation of consumer law.

It is also interesting to note that the directive on services (2006/123/EC) – which also pertains to B2B marketing and which hasn’t been seen as a consumer directive per se – makes a point of emphasising the ease, clarity and unambiguity of receiving information. The directive on services thereby complements the obligations for information provision included in consumer protection directives.

Article 22 of the directive on services states that Member States must ensure that the information which a provider must supply is made available or communicated in a clear and unambiguous manner, and in good time before conclusion of the contract or, where there is no written contract, before the service is provided.

In light of this, it can be said that legislation on consumer affairs provides that consumers must receive the necessary information for their disposal in a clear, easy to read and convenient form. Consumer Affairs Commissioner Meglena Kuneva recently delivered a speech on the Lisbon strategy (The Lisbon Council 2007 Growth and Jobs Summit Brussels, 2007) underlining the fact that consumers must be provided with appropriate market conditions where rational and well-informed choices can be made. Consumers must be given the necessary tools for this.
The latest step in this direction is the new directive on credit agreements for consumers (2008/48/EC), which specifically states that standard information in marketing must be presented in a clear, succinct and easily visible manner with a representative example, and that the information provided before the conclusion of agreements must be supplied using a standard form. Further, the aim is to ensure that consumers can assess the meaning of the credit agreement when necessary by explaining relevant information in a personalised manner with due consideration of the circumstances, the consumer and the type of credit. This increases transparency and facilitates making comparisons. Perhaps in the future the requirement for unit prices will be extended to cover other types of services as well. This would facilitate the easier comparison of services other than consumer credit. At the same time, this would promote fair competition.

**Contractual terms must also be clear**

Clarity in presenting contractual terms can be compared to the presentation of marketing information. The latest consumer directives, much as the directive on services, underline that contractual terms must be communicated in good time before conclusion of the contract. As far back as in 1993, the directive on unfair terms in consumer contracts (93/13/EEC) states that in the case of contracts where all of certain terms offered to the consumer are in writing, these terms must always be drafted in plain and intelligible language. This Article was not included in the Consumer Protection Act in the implementation of the directive. Instead, Chapter 4 of the Consumer Protection Act includes Section 3, which stipulates that unclearly drafted contractual terms are interpreted in favour of the consumer.

The Market Court took this requirement of clarity in contractual terms into consideration in a recent decision (Market Court decision 31:4) and found the unclearly drafted contractual terms unfair. According to the Market Court contractual terms which had not communicated the consumer’s obligations with regards to interest payments and other charges in a clear and unambiguous manner were unfair to the consumer and thereby in breach of Section 1 of Chapter 3 of the Consumer Protection Act.

Another central issue in terms of contractual terms is whether consumers are aware of their rights and whether they have an opportunity to exercise these rights. Contractual terms must state the rights and obligations of each party. Contractual terms may not be one-sided in providing for obligations on one party only, nor can they merely be restatement of legal regulations.

The same principle is evident in the handbook on the implementation of the directive on services created by the Internal Market and Services Directorate General, which states that the requirement for Member States to provide information to businesses described in Article 21 can’t be met simply by requesting that businesses familiarise themselves with legal texts.

For example, if the regulations in the Communications Market Act are recorded in a consumer contract as is, or the contract references said legislation, the consumer will not form an appropriate understanding of their legal position as a party to that specific contract.

In Canada, the country’s supervisory body The Canadian Radio Television and telecommunications Commission (the CRTC) has prepared and distributed a summary of consumers’ basic rights as users of teleservices. The guide describes,
amongst other things, what consumers can expect in terms of the clarity of billing. This seems like an appropriate and effective way of ensuring that consumers are aware of their rights and that they have an interest in the contents of contracts they enter into. This gives consumers a real opportunity to be active in exercising their rights.

Consumer guides such as the one used in Canada are good potential solutions provided that the rights and obligations of the parties are specified in the relevant legislation. In Finland this has already been done for several sectors. However, one of the most essential sectors - banking - still does not have such legislation in place.

**Right of cancellation needed for special circumstances**

In terms of consumers exercising their power in their daily lives, it isn’t always enough that they are provided with clearly presented basic information and then enter into a binding contract. If the circumstances of decision making or the product has certain special characteristics, only the right of cancellation gives consumers a genuine chance to decide and act. Thus far legislation has introduced the right of cancellation for circumstances where the consumer makes the purchase decision without having the opportunity to make comparisons, such as distance selling or sales of holiday apartments.

With consumer credit products the new directive will extend the right of cancellation to circumstances where the consumer is making a decision that significantly affects their future consumption patterns. A Market Court decision made in June (Market Court Decision 256/08) finds that in certain cases it is necessary to ensure the rational decision making of consumers by giving them the opportunity to consider their decision after conclusion of the contract and, if necessary, to unilaterally cancel the purchase. The matter in question was the selling of shares entitling the holder to car rental related benefits when these shares were sold in an event for presenting and selling shares. The Market Court found that considering the sums of money involved and the circumstances in which the contract was concluded, the purchase contract - which does not include a provision on the buyer’s right of cancellation - must be deemed unfair to the consumer.

Recently there has also been a lot of discussion on whether the sales of telecommunications services on the streets should include a provision on the right of cancellation. The Swedish consumer ombudsman has called for such legislation to be drafted.

**Are consumers really able to exercise their rights?**

The world is neither complete nor perfect. Legislation must ensure that consumer rights are protected in defect cases. Consumers must get their money’s worth when making purchases. The Consumer Protection Act and other specific legislation includes numerous provisions on defects. If the business fails to respond to the customer’s attempts to contact it, the complaint is not processed in an appropriate manner and the consumer is denied of his legal rights. Consumers may often put more value on their time than on seeing the process through and just accept the loss.

With this in mind, it is positive to see that both the directive on unfair practices and the directive on services emphasise the importance of good customer
service. The directive on services specifically requires that businesses must not only supply their contact details, but also respond to complaints in the shortest possible time and make their best efforts to find a satisfactory solution (Article 27). The handbook on the implementation of the directive on services states that Member States must include this requirement on service providers in their national legislation.

The requirement that businesses respond to complaints received through customer service in a timely fashion may often be taken for granted. However, the consumer complaints we receive indicate that more consideration should be given to this particular requirement and the consequences of breaching it. Appropriate and timely responses to complaints help settle disputes without the involvement of authorities.

**The role of supervision**

Legislation alone is not always enough to maintain consumer trust in the proper functioning of markets. What is needed is effective and credible supervision by the authorities to intervene in illegal activity with good results. Finland’s consumer policy emphasises the importance of effective supervision.

However, there are obvious deficiencies in the tools - and resources - available for consumer protection authorities. The latest example of this surfaced in a report by the Economy Committee (TaV 11/2008). Several other OECD countries have the necessary means at their disposal to quickly intervene in persistent breaches of established rules. The Norwegian parliament, for example, is currently working on a proposal regarding the implementation of the directive on unfair commercial practices which would introduce a special market defect penalty applicable to cases which undermine the credibility and results of this supervisory work (Om lov om kontroll med markedsføring og avtalevilkår mv Ot.prp.nr 55 2007-2008).

The role of the supervising body these days is largely that of providing information and tools which make it easier to comply with legislation. The supervision of consumer law in Finland has involved - and continues to involve - the preparation of pocket-sized reminders and web-based decision trees for businesses and complaint templates for consumers. In addition to information and cooperative projects, the supervisory body also needs a range of measures that can be used with fast effect. The credibility of supervision may in the future be aided by effective regional and local administration.

**Is empowerment a privilege limited to those who are doing well?**

The discussion on the influence of active consumers often fails to consider consumers who are excluded or in danger of being excluded. A consumer who is continuously going through debt collection processes has no ability to influence the level of expenses charged by collection agencies or to ensure that the interest rates applied to quick credit arrangements are fair. Consumers in economic hardship are not able to influence contractual terms by seeking offers from competing providers. These cases require legislative action to ensure not only the availability, but also the fairness of such services.

Legislation in Finland and at the EU level emphasise the importance of ensuring availability and fairness of certain services. Kuneva’s Lisbon speech highlighted the goal of reaching a low number of excluded consumers in European economy. Otherwise reaching the aim of free markets will be compromised.
The EC report on Financial Services Provision and Prevention of Financial Exclusion (manuscript completed in March 2008) discusses the effects of various measures to ensure the availability of financial services and the prevention of exclusion. The conclusions of the report mention the role of effective consumer law. If exclusion is prevented through, for example, ensuring the availability of financial services by legal means, consumers’ opportunities to make choices are improved.

**Legislation is not always enough**

Consumers’ opportunities to be active in exercising their influence are primarily ensured by legal requirements for the minimum amount and clarity of information supplied. Based on sufficient and coherent information, consumers can affect the markets with their own choices. This does not, however, apply to all circumstances.

Legislation does not require advertisers to disclose whether the product is more harmful to the environment than other products in the category. The situation is somewhat reversed: businesses who actually have something they wish to disclose regarding their environmental agenda may advertise their product based on environmental arguments. Consumers can’t, however, trust that businesses which don’t make environment-related claims would even be average in terms of environmental friendliness. This is different from considerations of product safety, where the starting point is consumer trust in the fact that products on the market are not hazardous to health. Businesses may not promote their products based on the notion that they don’t pose a hazard to consumer health - instead, there is a set minimum safety requirement which applies to all products.

Regulations on supplying information also fail to give consumers the opportunity to influence the extension of the life span of products. Consumers must acquire this information through warranty and maintenance systems. The opportunities of influencing markets to extend product life spans are minimal if none of the products on the market aim to differentiate themselves based on a longer life span.

In matters related to the environment and product life spans, in the absence of legislative support consumers need comparative tests and a cohesive consumer movement. Fortunately, the directive on services aims to help consumers exercise their influence in this regard as well. Member States are obligated to ensure that information on the significance of and criteria for applying quality marks can be easily accessed by providers and recipients (Article 26). The Article also states that there should be more comparative information available regarding the quality of services. It will be interesting to see whether the Article on the policy on quality of services of the directive on services will genuinely result in new ways of improving service quality.

**Effective legislation ensures the existence of an active consumer movement**

Discussions on how to improve the presentation and communication of information are not limited to just the European level. At the OECD level, the documents approved at the Seoul summit clearly highlight the responsibility of businesses to empower consumers by communicating information. The report on "Protecting and Empowering Consumers in Communication Services” encourages businesses to supply clear and unambiguous information to consumers regarding services, contractual terms and charges.
Consumer marketing must therefore go beyond merely communicating legally required information, as the legality of their actions is assessed based on clarity and unambiguity. Businesses must be innovative in developing new ways of communicating information to serve consumers better. The Internet offers businesses a wealth of opportunities to develop new ways of meeting the requirements for supplying information instead of traditional one size fits all approaches.

The work started by the OECD Committee on Consumer Policy is a good example of the development of legislation which has spurred several countries to improve their legislation. A notable accomplishment is the English handbook for lawmakers titled "Warning! Regulated information for policy-makers".

Future legislation can be expected to be based more on research on consumer behaviour to find effective ways of improving consumers’ opportunities to take a more active role.

When legislation supports consumer action and consumption decisions in daily life can be made confidently, consumers will have greater opportunities to exercise their influence through consumer movement on matters where legislation fails to produce the desired results.

Anja Peltonen
The development of the consumer’s legal position in light of the legislation on essential services and public services

As a result of changes in society in the early 1990s, it emerged that there was a group of services which were no longer provided by public organisations. However, these services possessed certain special characteristics which set them apart from other consumer services. The period was characterised by freer competition, deregulation and the privatisation of traditionally public organisations. A number of services - including telecommunications, water and electricity - were suddenly within the realm of the free market. At the Consumer Ombudsman’s initiative, public discussion and decision-making began to refer to such services as essential services.

These services had previously been generally provided by monopolies. Others, such as telephone services, were based on a cooperative association model whereby consumers had to become members of the cooperative to use the services in question. From the introduction of the Consumer Protection Act until the 1990s, these services were generally provided by the telephone company, electricity company or water company of the municipality where the consumer resided. As the provision of these essential services was comparable to the work of local authorities, there were occasional questions of how the Consumer Protection Act should be applied to them. The services were provided to all of the residents of the municipality and the effective rates for them were usually set by local authorities.

Occasionally, deregulation and the introduction of competition led to companies understandably making efforts to focus on more profitable customers in the name of contractual freedom. Consumers with credit problems or poor liquidity were in some cases not offered these services at all, or could only purchase said services under advance payment or collateral arrangements.

Societal change affects the provision of essential services

The development of society is reflected in the contents of essential services. The crucial factor is the significance of the service to the consumer. Essential services are defined as services without which consumers would not be able to get by in modern society. Originally this included water, electricity and telephone services. The concept has since expanded to include basic banking services, certain services related to living in an information society as well as home insurance. These services differ from basic, tax-funded public services in that they are categorised as business activity.

Essential services are consumer services and thereby under the Consumer Protection Act. However, they differ from normal consumer services in that the consumer may not be able to freely choose the service provider in all cases.

The provision of services must nevertheless be ensured for all consumers at a reasonable price regardless of their location and financial position. Companies in these industries are obligated to offer their services even to those who are not perceived by the company as the most profitable customers. The obligation to provide services to all interested customers can be seen as part of a company’s social responsibility.
Universal service obligation to ensure service availability at the EU level

In the EU, the introduction of competition has necessitated the repealment of earlier legislation. However, it soon became clear that protecting consumer rights, as competition is introduced to essential service provision, is not achieved merely by repealing old legislation, but instead the protection of the various parties’ rights under circumstances of competition requires new kinds of legislation.

The EU has introduced the idea of setting a so-called universal service obligation for businesses providing essential services to ensure that all consumers are able to purchase these services at a fair price. The question of which services should be covered by the universal service obligation often depends on the internal conditions of each member state and the related definitions are therefore left for each member state to determine for themselves.

Legislative work in the EU is increasingly focused on the consumers’ position as the electrical, gas, postal and communication markets become more and more free. The same goes for the transport sector, including air transport and other personal transport services. It is understood that the efficient functioning of the internal market is not achieved automatically through removing obstacles to competition; what is needed is consumers who are able and willing to operate in competitive markets.

This requires consumer trust in the fairness of markets and the fact that their legal position is sufficiently protected. Furthermore, it’s necessary to ensure that essential services are available to all consumers and that so-called weak consumer groups or special groups are not excluded. According to the EU strategy on consumer policy, the availability of essential services at a fair price is crucial to a modern and flexible economy also from the perspective of social inclusion.

The principles of the Consumer Protection Act are far-reaching

The nature of essential consumer services has changed during the time the Consumer Protection Act has been in force. In the last fifteen years in Finland, there has been a progression from defining the concept of essential services to standardising it and including its basic principles in legislation.

In consumer relations the legal position of the consumer is based on the Consumer Protection Act and the principles therein. The consumer’s legal position is also regulated by industry-specific legislation such as the Electricity Market Act, Communications Market Act, the Act on Water Services and the Act on Credit Institutions. At present the provisions on the legal position of the user of the service in many types of industry-specific legislation are in line with the principles of consumer law. The availability of services is ensured by legislation and the consumer’s rights in cases of service defects and delays have been taken into consideration.

From the consumer’s viewpoint, the problems with contractual terms related to essential services are similar regardless of the type of service in question. The consumer doesn’t always have the ability to choose which service provider to use. In some cases, there may be only one service provider in the area. As a result, the consumer is unable to terminate the service contract and purchase the service elsewhere in the event that the service is not delivered as promised or the consumer is otherwise dissatisfied with it.
While the Consumer Protection Act does not include provisions directly related to essential services, its preparative work states that “the consequences of breach of agreement specified in Chapters 5, 8 and 9 of the Consumer Protection Act peremptive for the benefit of the consumer. While these provisions do not apply to all consumer agreements, their principles can often be applied to types of agreements other than those specified in the chapters”.

**Long-term contracts and the electronisation of services pose challenges**

Contracts for essential services are generally valid indefinitely. It is likely that changes will happen during a long contractual relationship, but the provisions should not change in a material or one-sided manner considering the nature of the service. The consumer’s personal circumstances may also change during a long contractual relationship due to factors such as divorce, unemployment or illness. Where such changes affect the consumer’s solvency, the consumer must have the right to appeal to social reasons for inability to pay, and immediate termination of service delivery is deemed unreasonable.

Service providers categorise their customers based on factors such as solvency. Customers with bad credit are often required to put up collateral or make advance payments before entering into a service contract. Before requiring collateral or advance payment, the underlying reasons for bad credit should be examined. The gravity of prior payment disruptions should be taken into consideration. If the payment disruption is the result of, for example, an unpaid magazine subscription, it should not lead to denial of provision of an essential service.

In cases of service defects and delays, the consumer should have the right to a price adjustment and compensation for damages. In practice, problems are often related to the functionality of the technical system used in service provision, the responsibility for which lies with the business. The effects of technical malfunctions on the consumer are magnified as service provision becomes increasingly electronic or automatic.

There are fewer and fewer traditional alternatives to electronic use of the service. It should cause concern if the customer of a bank is not compensated for defects in the bank’s information system. The question is not whether or not the customer suffers concrete financial damage from the defect, as the customer is paying the bank for having the service at his disposal when he needs it.

**Consumer protection in public service provision must be re-examined**

As a result of social changes there is a new challenge following that of standardising the rules pertaining to essential services: developing consumer protection in the field of public service provision. Changes in legislation have made it possible for local authorities to offer social and health services along with their own services in the form of services offered in exchange for money or service vouchers. There is an increasing number of home and personal care services offered, which amongst other things calls for clarification of questions of responsibility between municipal and private services.

The Consumer Agency has prepared a report on the applicability of the Consumer Protection Act on public services and essential services (Ministry of Trade and Industry publications 24/2005) and the report “The legal position of social welfare
and health service customers - comparison between private services and services arranged by local authorities” (Consumer Agency publications 9/2006).

The matter was chosen as a point of focus as it was obvious that the various actors were very uncertain of their own roles and the rights and obligations related to them. As customers have more choices at their disposal, the line between private business and public service provision is becoming blurred. The same company may operate on both public and private markets and it may have two kinds of customers at the same time. On the customer side, it is important that they enjoy an equal legal position regardless of whether they receive the service from a public or private provider. The relationship between the local authorities and the service provider may also be unclear.

There are important considerations related to, amongst other things, ensuring the availability and continuity of service provision, definition of quality and content, providing sufficient information and fair and appropriate marketing, changing contractual terms and questions of redress and compensation in cases of service defects.

It is crucial that consumers have an equal position regardless of whether they use services provided by the private or public sector. Accomplishing this is likely to require legislative solutions. According to the consumer policy programme, a working group is established to determine by the end of 2010 how to ensure the realisation of the principles of consumer law in the realm of public services.

Päivi Seppälä
Prices must be indicated for singularised products

The Helsingin Sanomat newspaper was marketed with a 40-second television advertisement. The high-tempo advert depicted a man quickly moving one situation to another. With him, the man had the day’s newspaper which gave him information on upcoming events. The last seconds of the advert focused on the weekly supplement “Nyt” which the man first held in his hand and then laid down on a table. The advert ended with the text “Nyt weekly supplement - published every Friday. Helsingin Sanomat.” The advert did not mention the subscription or unit price of Helsingin Sanomat.

The advert featured the Helsingin Sanomat newspaper and its Nyt weekly supplement, which were both specified by name. Further, the advert featured a story which depicted the contents of the Nyt weekly supplement: by reading the supplement, one can get information on weekly events. In the view of the Consumer Ombudsman, Helsingin Sanomat was singularised both verbally and in the imagery.

Price quotation is one of the most important obligations related to information provision by businesses in the Consumer Protection Act. While purchase decisions by consumers are the sum of several factors, the price of a good is one of the most fundamental pieces of information for consumer purchasing behaviour and decision-making. Marketing is deemed to be for a singularised good when it presents a particular good in such a way that the consumer perceives the advertisement to be for a singular product or service. No exception for the requirement to quote a purchase price has been set, nor is the price quotation requirement applied to only advertisements which directly invite the audience to make a purchase.

Price quotation is only seemingly unambiguous

The so-called Price Indication Decree (1359/1999), which is based on the Consumer Protection Act, includes more detailed provisions on indicating prices for consumer goods. The Price Indication Decree was developed with the framework of Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products offered to consumers. The purpose of the Directive is to regulate the indication of prices of products offered by businesses to consumers to improve consumer information and to facilitate price comparisons. The starting point for the Directive is that a general obligation to indicate both the selling price and the unit price for all products is the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and hence to make informed choices on the basis of simple comparisons. The Directive is a so-called minimum Directive, which does not prevent EU member states from introducing or maintaining legislation which promotes consumer information and facilitates price comparisons more effectively.

Despite the fact that price and the indication of price may be viewed from a juristic standpoint as almost uninteresting, it has been one of the most frequent reasons for market court cases petitioned by the Consumer Ombudsman since the turn of the century. It is also worth noting that matters relating to price indication have been heard in the Supreme Court a total of three times. This shows that despite the seemingly unambiguous legislation on price indication, there have
been several cases where intervention by the courts has been needed in matters central to the indication of prices. Additional specification by the courts has been needed, for instance, on when a product is deemed to be singularised, what is meant by final selling price, what level of clarity can be required in the indication of price information and who has the responsibility for indicating prices. While the existing decisions already handed down by the Market Court and the Supreme Court are unlikely to remain as the only decisions on price indication made in courts, they offer a wealth of useful information for businesses planning their marketing efforts.

**Ajatar decision fails to shed further light**

Up until the spring of 2007 there was a great deal of discussion on where to draw the line between so-called image advertising and singularised product advertising. The Consumer Agency had undergone negotiations with several businesses regarding their advertising. In the end, the Market Court was petitioned to assess the marketing efforts of Ajatar Oy and Helsingin Sanomat. The Market Court decision on Ajatar’s marketing, handed down in January 2005, was a difficult one for the authorities in charge of marketing supervision, despite the fact that some considered the decision to define a policy that could be applied to future cases. The decision failed to produce a clear definition of policy, as it was largely tied to the matter at hand and therefore not easily generalisable. The decision also fails to work well as a legal precedent. Instead of providing much needed clarification, it further blurred the line of when a product is deemed to have been singularised and when can it be said that a product is singularised based on the advertisement’s visual imagery alone. As the Finnish Consumer Agency was denied right of appeal in the matter, attention turned to the case of Helsingin Sanomat.

**Supreme Court draws the line for image advertising**

The preliminary ruling handed down by the Supreme Court in the spring of 2007 in the case of Helsingin Sanomat was seen to clearly define a policy for future decisions. The Supreme Court decided not to overturn the Market Court’s condemnatory verdict, in which the company was found to have engaged in marketing that was in breach of the Consumer Protection Act by not indicating a price for the newspaper being advertised.

In addition to the verdict itself, there are several significant elements in the decision. In their appeal to the Supreme Court, Helsingin Sanomat appealed for the Market Court decision to be overturned based on, amongst other things, the fact that a condemnatory verdict would mean that the company could not continue to engage in practically any image advertising at all without having to indicate prices. At the same time, the verdict would deny an entire industry the right to image marketing, which according to the appellant is an integral part of contemporary marketing strategy.

The Supreme Court based its decision on the EU Directive which preceded the Price Indication Decree, finding that the Directive should not be interpreted in borderline cases to the detriment of consumer protection for the benefit of the business. As such, the need of the business to engage in so-called image advertising could not be assigned the meaning purported by the company in assessing the requirement to indicate a price. According to the Supreme Court the matter was settled on the basis of whether a consumer, having seen the TV advert, would perceive it as advertising a particular newspaper. Thus the perception of
whether the advert depicted a singularised product, rather than the primary goal of the marketing efforts of the business, was assigned vital importance - although the Supreme Court did state that the company’s advert could be perceived as so-called image advertising of one element of the newspaper product.

The Supreme Court added to the Market Court’s verdict in the same case by specifying how exactly the product had been singularised in the advert. While the Market Court merely found that the product had been singularised in the advert, the Supreme Court’s decision specified that the product being advertised was clearly singularised by both images and text. This nuance is significant because it implies that a product could also be singularised in an advert through the use of images alone.

Also worth noting in the case is that neither court deemed it significant that the TV spot didn’t advertise the newspaper’s single issues or a particular subscription type. In terms of the price indication obligation, it was therefore not seen significant that the newspaper can be subscribed for different time periods or at different prices or that it can be bought as a single issue at a newsstand. This means that the manner in which the product can be subscribed or purchased or the payment types available for it do not influence assessment of the obligation to indicate price. It is therefore insignificant with regards to whether the price needs to be indicated. It is, however, significant with regards to which price needs to be indicated.

**Legislation does not define image marketing**

According to Section 5 of the Decree on the Indication of Prices, a retailer, other business acting as a retailer or a service business that advertises or otherwise markets a singularised consumer good to the consumer must also indicate the price of that good.

A definition of a singularised consumer good is not included in the Price Indication Decree currently in force or its presentation memorandum. A definition is, however, found in the presentation memorandum for the previous decree (9/89) in the detailed preamble for Section 3 of the decree. According to the preamble, a singularised consumer good refers to a product or service defined verbally or with a picture in such a way that the consumer specifically perceives that a particular product is being advertised.

Further, the preamble for Section 3 of the decree states that image marketing whose purpose clearly is to build the product or corporate image of the business should be excluded from the price indication requirement, even when such marketing features images of the product or products.

The Decree on Price Indication or consumer protection legislation in general do not define image marketing. However, legislation does define the concept of a singularised product. It is obvious that in individual cases the line between advertising that falls under the price indication obligation and image advertising that does not is blurred.

**The consumer’s perception as the guiding line**

In the Helsingin Sanomat case the greatest relevance was assigned to whether the consumer had formed the perception that the advert was for a particular newspaper.

The legislation on price indication does not specify a minimum time or percentage share of an advert that should be seen as sufficient for perception of a singularised
product. Therefore, the principle reflected in the Supreme Court’s decision, that the fact that the product was only singularised in the last few seconds of the advert did not influence the overall assessment of the case, was very welcome and helped define the policy for future decisions. The only truly essential factor in the overall assessment was therefore whether the consumer had perceived that the advert was for a particular product.

The explicit primary objective of the marketing regulations in the Consumer Protection Act is the protection of consumers. Therefore, the starting point for assessing the legality of a single company’s marketing efforts can’t be the company’s own objective for the marketing or its own perception of the legality of its actions. Equally insignificant in the assessment of the legislation enforced by the Consumer Ombudsman is the issue of whether the action under review is customary in the industry or whether the order to cease the activity in question incurs costs to the company.

The Supreme Court decision appropriately highlights the fact that advertising can, at the same time, be both so-called image advertising and the type of advertising that falls under the price indication obligation. The Supreme Court found that the company’s TV advert can be perceived, as suggested by the company, as so-called image advertising for the Nyt weekly supplement. In spite of that fact, the advert clearly singularised the Helsingin Sanomat newspaper and therefore should have included an indication of the price of the product. As such, there might not necessarily be any distinction between image advertising and advertising that requires the indication of prices.

Mika Hakamäki
Payers’ role in the markets is changing

Payment transactions are almost a daily chore in modern society, but they are generally given a fairly minor role in the process of buying goods or services. Paying should therefore be as convenient as possible. On the other hand, payment transactions are a significant aspect of consumers’ finances and an area where security plays an important role. The costs of payment transactions have, as of late, been given less consideration except for the fees charged for cash payments made at banks’ branches.

Consumer payments and payment transactions are, however, now attracting attention in a new way. Consumers are seen as users of payment services who have a significant role as active participants in the market, playing their part in healthy and effective competition. Public discussion has been sought on the costs of paying and the cost differences between various payment methods. The EU in particular has aimed to promote the use of more effective and affordable payment methods. This calls for both payers and payees to pay greater attention to payment transactions and, in particular, the choice of payment methods used.

EU active in consumer payments

The European Commission has, as part of its common market policy, taken action to transfer the benefits of integrated financial markets to consumers. According to the Commission, cross-border retail financial services have not developed in line with integration in financial services generally, which leaves untapped potential in this area. In its green paper (COM 007/226) published last year, the Commission noted that competition particularly in the area of payments and retail banking appears insufficient, which means that consumers do not receive the full range of benefits of the single market.

This is not to suggest that the EU has thus far been idle in this area. One of its central projects related to payments is the creation of the Single Euro Payments Area or SEPA. The practical implementation phase of SEPA began in January 2008 and member states are currently implementing the legislative framework of the project, the Payment Services Directive (2007/64/EC). Finland, for its part, is preparing a new Payment Services Act to regulate payment procedures, which have thus far been largely based on banks’ own practices.

National differences within the EU are still quite considerable when it comes to payment-related services. This issue has surfaced in a very concrete manner in the SEPA project. The changes aiming for harmonisation which will, for some member states, mean improvement in consumer services will for other member states mean a clear deterioration in services inasmuch national deviations will no longer be allowed. For example, a harmonised bank transfer will - after the transitional period - make cross-border payments faster, but otherwise the requirements set for SEPA bank transfers are lacking in comparison to currently effective bank transfer practices in Finland.

Bank services change, but national bank cards are still hanging on

The SEPA harmonisation efforts do not, at least for the time being, apply to all payment services. A significant proportion of services currently offered by Finnish banks under common basic concepts will not be included in the harmonisation. At the same time, however, the nationally uniform modes of operation of banks will cease to exist. Under the basic principles of free competition, each bank must
independently decide not only on setting prices, but also on the services they offer to their customers. Services which are not included in the harmonisation plans will become voluntary supplementary services which the banks will then offer under bank-specific terms. For instance, reference numbers which are commonly used in invoices in Finland will in the future be bank-specific supplementary services.

The harmonisation of payment cards included in the SEPA project looked for a while like it would signal the end for national bank cards. They were only going to be replaced by a couple of choices linked to international credit card companies regardless of which bank the customer would acquire the card through. This would likely have an adverse effect on consumers in terms of the pricing of debit cards. It’s positive that the Commission has began to reconsider the matter.

**Payers to become active participants in the market**

The lack of cross-border competition that the Commission is displeased with is likely to be partly due to the non-independent nature of the service. Consumers don’t always even perceive payment services as commercial activity, but rather as a part of society’s infrastructure which should operate conveniently without needing particular attention from the consumer. The very idea that making payments might be subject to charges may be foreign to consumers if they are used to being offered these services ostensibly for no charge, their cost hidden in the price of other products. This makes highlighting the actual costs of paying and the prices charged for making payments justified from the perspective of consumers’ financial interest.

With consumers now expected to become active, rational decision-makers in the payment markets, they should consider at least the following questions: Which types of cards and other payment instruments should I have at my disposal? Where do I acquire these cards: Ideally, consumers could choose from competing service providers from the entire EU internal market and perhaps get a debit card from one provider and a credit card from another. What kind of selection of different cards should I have at my disposal at any one time? Where do I keep cards and PIN codes which I don’t use on a daily basis? How many cards can I manage to use concurrently and still be sufficiently aware of my financial situation? Which card or method of payment is the most economical and secure in each situation?

A consumer acting in accordance with the EU ideal would not find it inconvenient to transact with several parties in choosing which cards and payment instruments to use. He would not, for example, simply choose from the selection of cards offered by the institution he has housing credit with. A further challenge is posed by new developments such as credit cards offered in conjunction with the purchase of a single product. These offers may involve a cheaper price when the product is purchased with a particular credit card. This, however, often results in consumers failing to become sufficiently acquainted with the card’s features and terms of use and they may quickly end up with several rarely used cards in their wallets.

**Fair competition more difficult with products that are hard to compare**

Finnish consumers have thus far tended to purchase regularly used payment services primarily from one service provider. Service providers, for their part, often offer payment services in the form of various packages. This complicates the making of comparisons, as the packages are structured differently. In addition,
customer loyalty programs directly aim to reduce competition by effectively tying customers to using one service provider exclusively.

As the most frequent arrangement is to debit amounts directly from a bank account, payment services are primarily purchased from the same service provider as the bank account. Consumer mobility, at least with regards to current accounts, is therefore strongly linked with increased competition in the field of basic payment services. Introducing transferability to account numbers would be likely to increase competition, at least within each member state, similarly to what has been seen in the mobile phone markets. Transferability does not, however, address the problems related to the difficulty of comparing payment services linked to the account, which tends to make changing account providers less attractive. Movement towards fully bank-specific service concepts makes comparisons even more difficult.

In highlighting the importance of fair competition and the active role of payers in the market we must remember that at least basic payment services are categorised as essential services needed by all consumers. Everyone does not, however, have real opportunities to secure payment services with fair conditions by choosing from competing service providers. In the area of payment services the fairness and availability of basic services must be ensured for all consumers. With this in mind, the protection of every citizen’s right to basic banking services included in Finnish legislation is important, even as the general intensifying of competition results in lower price levels on the whole.

**Separate charges for payment methods promote fair competition**

Accepting payments through different means and instruments creates various costs for companies, which then generally include these costs in the prices of their products in the form of overhead. It is not, however, prohibited by law to charge a separate fee for the use of a particular payment method or instrument. The Payment Services Directive states that the party offering the payment instrument may not deny the payee the right to charge such surcharges from the payer. Despite these developments, there are no plans to introduce a requirement to collect surcharges for using different means of payment.

While the introduction of more effective payment methods may, at least generally, lower the total costs of making payments, the convenience of paying still plays a significant role in the daily life of consumers. With that in mind, the idea that sellers would set different fees for various payment methods is not entirely without problems. A central principle of consumer law is that consumers must be aware of the total price of the product prior to making the purchase decision. This requirement is not fully met if consumers end up having to pay a separate surcharge at the check-out.

Consumers must always be offered at least one customary and generally accepted method of payment for which no surcharge is collected. Otherwise the previously indicated price can’t be considered accurate. In practice, price indications can’t include several different prices without the clarity of the marking being jeopardised. Having to indicate several prices would also increase costs, presumably cancelling out any gains there would otherwise be.

**Freedom of choice and basic services are important to consumers**

Payment services are a central part of people’s daily lives. Incomplete and sluggish integration in such a central area of economic life may appear unsatisfactory from
the viewpoint of implementing the single market. The problem may, however, be
greater in terms of the single market principle than the experience of consumers
themselves.

The Commission has stated that consumer behaviour and opinions may limit the
integration of markets. Despite increasing population mobility and cross-border
supply for example on the Internet, most consumers still choose products offered
locally through branch offices, subsidiaries or agents. This freedom of choice of
consumers must be preserved.

Legislative solutions should support the kind of development where markets offer
payment instruments catering to all consumer needs and there is real freedom of
choice. For example, credit cards are offered as practically mandatory parallel
payment instruments now that debit cards linked to bank accounts have been tied
to international credit card brands. Offers may even refer to potential problems
with debit-based electronic payments and indicate that any such problems are
conveniently avoided if the card features a credit facility.

While highlighting the issue of payment service pricing and promoting competition
among payment services is done in the interest of consumers, placing unreasonable
demands and expectations on consumers should be avoided. No one wants to
constantly take on the role of the payer and there are some who are completely
unable to assume this task of being new active participants in the market. The
single market should provide consumers with additional opportunities. On the
other hand, even consumers who are not qualified to be active participants in
payment markets should be protected by ensuring that they have essential payment
services at their disposal under reasonable terms.

*Outi Haunio-Rudanko*
Life as a consumer in the credit markets – how does the supply of credit look like from the consumer’s perspective?

Credit has become an everyday matter. Statistics show that household borrowing has increased rapidly after the turn of the century. Borrowing has become a normal part of life. Consumers need credit to balance our their disposable income and to finance large or unexpected purchases. The opportunity to receive credit when needed can even be seen as a necessity in daily life. Borrowing also contributes to demand and economic growth.

Then again, credit is a completely unique consumer good. The fact that credit must always be paid back at a later date, with interest, should not be underestimated. Financing purchases with credit should involve careful consideration. How expensive will the credit be? Will the consumer be able to repay the credit? How much of a safety margin is there for possible changes in the borrower’s situation? What responsibility does the consumer have as a borrower and what expectations are placed on a responsible creditor?

The actual price of credit should be clearly indicated in marketing

One of the central aspects for consumers in choosing credit is actual annual interest. It enables consumers to compare the prices of credit without being confused by different pricing structures.

While the Consumer Protection Act requires that actual annual interest is clearly indicated, the marketing of consumer credit rarely does so with sufficient clarity. The information is generally included in advertisements, but it is in very small print. With TV ads, the actual annual interest is often displayed in such a small text size that it can’t be read at all. Instead of the actual annual interest, the marketing messages tend to emphasise zero-interest periods lasting for a few months or the amount of the monthly instalments. This draws the consumer’s attention away from the most relevant factor in the choice of credit and results in sub-optimal competition between credit offers.

In a study by the Consumer Agency only 0 % of respondents were aware of the significance of actual annual interest in choosing credit. To remedy this problem, the Consumer Agency has updated its guidelines for the marketing of consumer credit and added examples of recommended ways to present the information. What is needed next is for creditors to assume responsibility for planning and designing their advertising and marketing to achieve a clearer presentation of the relevant information.

Additional benefits not well suited to credits

Additional benefits such as bonus systems and free gifts always make it harder to accurately assess the price of a product. A package including free gifts is difficult to compare to other packages. Bonus systems are often complicated and the amount of savings difficult to predict due to their progressive nature. Additional benefits are, however, basically permitted under the Consumer Protection Act provided that they do not dominate the marketing at the expense of the actual product or service itself.

The purpose of additional benefits, of course, is to make the offer appear attractive to consumers. The requirement for sensibility and moderation in the marketing of
credits means that additional benefits should not be used to entice customers to indiscriminately enter into credit agreements or to use their existing credit limit in a careless fashion. Thus, practices such as favouring credit customers in customer loyalty programs by offering them preferential terms and benefits is not part of responsible lending. Unexpected or only briefly offered campaigns directed at credit customers may, in particular, induce careless borrowing.

**Moderation needed in the marketing of credit**

In advertisements for consumer credit there is nearly always a credit card behind promises of zero interest and monthly instalments. As such, the offer is not really for zero-interest payment periods or convenient monthly instalments in the form of one-time credit, but rather for a credit card that is valid indefinitely. After the first zero-interest purchase made during a campaign, customers may end up paying fairly high actual annual interest on other purchases. The credit card will thus end up in the consumer’s wallet without him ever having given due consideration to the actual annual interest paid on it.

One problem with the marketing of credit cards is that sellers have unexpectedly suggested that consumers use credit. Consumers may then enter into an agreement without really understanding that they just acquired a credit card. Offers related to the payment period, such as six months of zero-interest payments, may entice consumers to get a new credit card in addition to the one they already have.

Having several concurrent consumer credits with instalments falling due at different times can easily upset a consumer’s finances. The opportunity to use several credit cards concurrently may lead to debt problems. Holders of several credit cards may be more likely to make impulse purchases and even pay for credit with credit.

The marketing of credit should be sensible and moderate. Credit should not be marketed in an excessively aggressive manner, offering it to consumers who are not interested in it. The aggressive marketing of credit has particularly been a problem in special goods trade. To remedy this problem, a checklist for sellers offering credit arrangements has been prepared jointly with the business sector.

**Young adults constitute a risk group**

Young adults are a particularly sensitive target group for credit marketing. With young people, the availability of credit may lead to borrowing without giving the matter due consideration. Young adults are inexperienced in managing their finances and the legal opportunity to borrow money that opens up with reaching adulthood is seen as attractive by many. Creditors therefore have a particular responsibility to assess a young potential borrower’s ability to repay their credit.

Young people should also not be attracted to a credit arrangement for example by offering credit in unexpected circumstances and urging them to make a hasty decision. Another form of irresponsible lending is granting credit cards to young persons who may have some savings but no regular income to repay their credit. The Consumer Agency was contacted by a mother whose son had received an unsolicited credit card offer from a bank as soon as he reached the legal age. The son was granted a credit card based on the savings in his account - despite the fact that he had no income whatsoever. When he ran out of his savings, the son found himself in a debt problem.

Recent data on the payment problems experienced by young adults as a result
of quick credit indicates that even small amounts of credit may make young consumers suffer from financial difficulties. According to information from Suomen Asiakastieto, 40 percent of payment defaults recorded for small (less than 300 euro) consumer credits between January and June 2008 took place among the under-25 age group.

**Fair credit terms are the basis of a healthy credit society**

In addition to responsible marketing of credit, the financial security of consumers is promoted through fair credit terms. Fair credit terms are equitable and take the mutual benefit of both the creditor and the borrower into consideration.

In Finland the Consumer Protection Act provides that, for example, delayed payment of a single instalment may not automatically result in the entire loan falling due for premature repayment. This prevents consumers from ending up in unreasonably difficult circumstances and the pursuit of unjustifiable, predatory profits based on the borrower’s temporary financial difficulties. Fair credit terms are akin to rules of fair play that serve to increase consumer trust in credit markets. Effective markets should also feature the opportunity to choose from competing creditors and to change creditors when a more attractive offer comes around.

In Finland consumers enjoy a long-standing right, protected by the Consumer Protection Act, to repay loans before maturity at either no expense or at reasonable expense. Fortunately this right was preserved for the most part in the new directive on consumer credits. The next step should be to intervene in the marketing of package products which involve tying the credit into another financial product and thereby practically preventing repayment of the loan before maturity through contractual terms related to the other product in the package. This practice is already seen in Finland in loan security insurance tied to housing credit, which are prevented by contractual terms from being transferred to another loan.

*Riitta Kokko-Herrala*
Advertising changes, regulations don’t – an advertisement must always be recognisable as one

A basic requirement for marketing is that it can be immediately recognised as such. Marketing must clearly show its commercial purpose and on whose behalf marketing is implemented. This requirement for recognisability applies to all marketing, regardless of where and how it is implemented. However, the Internet and the new forms of electronic advertising it offers pose new challenges to this requirement.

The requirement for the recognisability of marketing is clearly stated in legislation. Recognisability was traditionally required based on the general clause in Section 1 of Chapter 2 of the Consumer Protection Act. In 2002, the requirement was specifically spelled out in Section 1a of Chapter 2. The preparative work on the legislation (Government Proposal 194/2001) states that commercial communications must be recognised as commercial and they must be easily discernible from, for example, editorial content. The requirement of recognisability applies to marketing in general, regardless of which media is used.

The Market Court has also handed down several verdicts pertaining to the recognisability and discernibility of advertising (1986:2, 1987:10, 1990:19, 1992:27 and 1994:17.)

The Privacy Protection Act for electronic communications, for its part, extends the requirement for recognisability to electronic direct marketing. E-mail messages, text messages, voicemail messages and multimedia messages must, upon receipt, be clearly and unambiguously recognisable as marketing.

The matter is topical due to the amendment to the TV Directive (2007/65/EC) that is presently being implemented. With the amendment’s entry into force, the requirement for recognisability and the ban on hidden advertising will apply to all audiovisual media services. The Directive also includes new regulations on product placement. The Directive is a minimum directive, thereby allowing member states to enforce more strict regulation if they wish. The ban on hidden advertising is presently specified in the Act on Television and Radio Operations.

Games and activities – and advertising?

One of the most prominent examples of the problem of recognisability are websites and online games featuring advertising, which are generally used by companies to target children. A typical way of attracting children to visit such sites is to mention them in TV adverts.

Immersed in online games and browsing web pages, a child may not necessarily notice that he is being targeted by commercial messages. According to the Consumer Ombudsman’s standard policy, games and other entertainment must be clearly discernible from advertising - also in the online realm. Marketing of products and brands aimed at children may not be dressed up as a game or other type of interactive web page. Marketing may also not be combined with games or interactive web pages in such a way as to render the advertising less recognisable. For example, advertising messages may not be embedded in games.

Miina Ojajärvi
Legal Adviser
Obviously, there is plenty of more unsuitable content for children’s eyes online than mere inappropriate advertising. Nevertheless, the matter is about parents’ right to decide how their children spend their time and what types of websites they visit - without having their child attracted to the world of advertising through the use of games and other entertainment. Parents should, for example, have the right to decide whether their child signs up for an online game or not.

The new Section 1 of Chapter 2 of the Consumer Protection Act, due for adoption soon, sums up the special position of underaged consumers well: “Marketing directed at underaged consumers or marketing that generally reaches underaged consumers shall be deemed unfair particularly if it exploits the inexperience or credulity of the underaged consumers, if it has a harmful effect on the balanced development of the underaged person or if it attempts to undermine or bypass the parents’ role in raising their child. The assessment of fairness shall take into account the age and level of development of the underaged consumers the marketing generally reaches as well as other relevant circumstances.”

**Opinion or paid advertisement?**

As social networking and participation have become increasingly dominating trends in online behaviour, online advertising has also acquired new characteristics which for their part blur the line between advertising and other material. Traditional banner ads are generally easy to recognise as advertising, as they are clearly set apart from editorial content. However, with online communities, blogs and other such channels, the situation may be more ambiguous.

A blogger, for instance, has a constitutional right to state what brand of yarn is the best for knitting, which chocolate gives superior results in baking or which shops have the best discount sales for fashion. The reader, on the other hand, can’t be certain whether the statement truly is the author’s own opinion, an advertisement paid for by the company, or a mix of the two.

The preparative work on the Consumer Protection Act states that recognisability requires openness. According to a Market Court decision (1994:17) an advertisement must be immediately recognisable as an advertisement without requiring further examination. Does this happen in a cooking blog which praises a particular farm at a particular location and the perfect cheeses produced by that farm, and includes a cooking recipe which uses the cheeses from that particular farm? Has the author made an advertising deal with the cheese producer, or is he genuinely enchanted by the place and their products?

If the blogger receives payment from the company for the lavish praise handed out, this must be clearly stated on the website. For example, in several English-language blogs the authors directly state that they receive payment for their reviews.

The requirement for transparency is further supported by a survey carried out last spring. According to the survey, readers of blogs perceive their favourite blogs as equally reliable as newspapers and online news sites (survey by Digitoday news service 28 April - 2 May 2008). Over half of the respondents stated that blogs have a great deal or a fair amount of influence on their real-life decisions. One might think that bloggers do not wish to undermine this trust and therefore try to avoid mixing up paid advertisements with their opinions.
The Consumer Protection Act is applied when a business markets consumer goods to consumers. It does not apply to communication between individuals. Friends are free to tell each other about good products and offers.

However, if an individual relays messages based on an advertiser’s ready-made template and is promised various benefits for relaying these messages, the situation is rather different. Companies must keep in mind the principles pertaining to electronic direct marketing and the policy definitions made by the authorities. According to them, consumers may not be used to relay company-prepared advertisements to each other on the company’s behalf. For example, “Tell A Friend”-type advertising may not be based on offering certain benefits to have individuals send messages whose content they do not even see themselves.

The requirements on marketing must be taken into consideration regardless of the media used. This includes campaigns launched on services such as Facebook, for example.

Product placement erodes recognisability

Product placement is another trend pushing the boundaries of the requirement for recognisability. According to the amended directive on audiovisual media services, product placement refers to all audiovisual commercial communications where the message or programme specifically includes a product, service, brand or a reference to such in exchange for payment or other compensation.

Hidden advertising remains banned under the new directive. Hidden advertising is defined as the manufacturer’s or service provider’s products, services, name, brand or activities presented verbally or through images in programmes or messages with the intent to advertise in such a way that the commercial purpose of the activity is not clearly shown. Hidden advertising is particularly intentional when it is done for payment or other compensation.

Product placement is specifically done in exchange for payment. However, the product may not be unjustifiably highlighted or its purchase exhorted directly. For advertising not to be deemed hidden, the commercial purpose of the activity may not remain unclear. Product placement must be mentioned to viewers in the beginning and end of the programme as well as after each commercial break.

The starting point of the entire directive is problematic. The standardised policy of the Consumer Protection Act states that product placement, which is specifically made in exchange for compensation, is always deemed to be advertising. This type of advertising should therefore abide by the requirements on advertising, for example regarding their placement.

With people increasingly watching their programmes recorded or on demand, advertisers are finding it necessary to place their message within the program itself to make sure they reach the viewers. This change puts the authorities in charge of marketing supervision in a difficult position. Should the existing policy guidelines regarding the recognisability of advertising be dismissed and the blending together of advertising and editorial content be allowed? According to the new directive, the requirements on product placement would not apply to accessories received without compensation and which are not of significant value. It is unclear at present how this will be assessed. What if Company X gives a TV show free drinking glasses to use on the air, and the glasses are not of significant monetary value, but they are clearly identifiable as the glasses of a particular company? If the commercial purpose of the activity is not clear, it
may not be deemed hidden advertising either.

TV shows must be allowed to feature products and services. For example, producing a TV show about books is difficult without having books on the show. Similarly, in a TV drama shot in the real world, the characters must be able to stop by at a coffee shop without having to cover up the logos for various brands seen at the shop. However, displaying a product must be based on the programme’s genuine editorial needs and decisions and it must have a natural fit with the editorial content.

It would make things clearer if the principles outlined in the Government Proposal for the current Act on Television and Radio Operations and the Consumer Ombudsman’s definition of policy were maintained. According to those principles goods and services may be shown in programmes only when the purpose is to distribute general information or when inclusion of the products or services is essential to the programme content. In the national implementation of the directive it should be noted that its regulations do not offer tools for the consistent practical assessment of the difference between product placement and hidden advertising and the legality of such actions.

**Product placement invading the world of children**

The directive’s new provisions on product placement fail to consider the special position of children. Children must also be able to recognise marketing. While advertisements are part of the daily life of children, the difference between advertising and other content must be made clear. Advertising may not exploit the inexperience or credulity of the underaged consumer.

Under the standard policy interpretation of the Consumer Protection Act, advertising which simply reaches children may be deemed as advertising that targets children. The Consumer Ombudsman assesses the inappropriateness of advertisements specifically based on their reach. As a result, inappropriate advertisements on television, for example, are banned from all shows, not only children’s shows. The soon to be introduced provision in Section 1 of Chapter 2 of the Consumer Protection Act addresses marketing that generally reaches underaged consumers.

While the directive bans product placement in children’s programmes, that ban alone is not enough. Children watch a wide variety of television shows besides actual children’s programming, for instance entertainment programmes shown in the early evenings. Product placement is commonplace particularly in these shows, which reach a large number of children.

In order to protect children’s legal position and to ensure consistent enforcement of the law, product placement should not be allowed at all in any programmes shown during times when children might be watching. The fact that product placement is identified in the beginning and end of the programme and after each commercial break does not make the advertising recognisable or appropriate for children. As such, it is deemed hidden advertising which is also in breach of the directive. The Parliamentary Committee for Education and Culture, for its part, released a statement (8/2006) finding that product placement can’t be allowed in programmes shown during times when children are watching and the recognisability of advertising must be ensured even when new methods of advertising placement are used.
If an advert is aired before 9 p.m. featuring the host of a familiar entertainment programme as seen on his show, praising a certain product, the Consumer Ombudsman can’t consider the advertisement recognisable and therefore must deem it inappropriate for children. Under the new regulations on product placement, however, things would be different if in an entertainment programme shown at the same time featured the same host visibly using the products of a certain company and children would not recognise that this was done as paid product placement. In this scenario, assuming that the implementation meets the criteria set for product placement, it would be allowed.

Waiting for a time of openness

The world of electronic marketing appears to be dominated by a kind of a wild west spirit. New forms of marketing take shape and spread in such a rapid manner that there isn’t always time to ensure that the basic requirements set by law are taken into consideration. Transparency and openness are but distant illusions.

The business sector often appeals to freedom of speech to defend actions which are in breach of regulations. But what happens to freedom of speech when programmes begin to include an ever larger number of products which must be shown as part of the programme?

Companies also complain that electronic marketing is treated more strictly than traditional marketing. Electronic direct marketing has indeed been given special treatment in legislation, but primarily the objective is still media neutrality as desired by the sector. Thus the legal provisions on the recognisability of advertising apply to all media equally.

Unfortunately the disregard for the rules on marketing seems to be spreading from electronic marketing to print media. For example when reading a women’s magazine one often comes across advertorials which appear exceedingly similar to the magazine’s editorial articles but are, in fact, paid advertisements.

Consumers tend to have a more positive attitude towards an interesting blog or entertainment programme than a traditional advertisement. This makes it attractive for companies to try and make their marketing more effective by embedding their messages in the preferred channels of their target groups. That, of course, is fine - as long as the consumer, whether an adult or a child, is always able to recognise when he is being targeted with commercial messages. 

Miina Ojajärvi
“My customer service”

This past spring I participated in a training course where companies were told, as if it was a new concept, that in the present and future world of business only those who understand the importance of the customer-focused approach will be successful. The focus must be on the customer, not the product. Every company is a service company. Customers must feel that they are cared for. These thoughts must permeate the entire organisation, from the cleaning lady to the managing director. Sounds great, doesn’t it? Let’s see how these concepts are being implemented in practice.

Focus on the customer?

In the past couple of years, the Consumer Agency has seen a sharp increase in the number of consumer complaints regarding customer service problems. The pile grows every week with tens of new reports. While the majority of the complaints are related to telephone operators, other industries are also well represented - online stores, home appliance stores and airlines to mention but a few.

The largest problem with the operators seems to be simply reaching the company. Getting through to a customer service person on the telephone within a reasonable time is starting to be seen as equally unlikely to winning the lottery. According to a report by the Finnish Communications Regulatory Authority, the trends seen in early 2008 in response times among operators continue to give cause for concern. The average response time of the largest operators is clearly in excess of the one minute limit defined for fair and well functioning customer service. On average, customers may spend ten times that long on the line. E-mails to customer service also tend to go unanswered according to complaints from consumers.

What makes the issue particularly worrying is that these customers are often trying to contact customer service to resolve problems related to e.g. billing or service disruptions, which are generally the result of the service provider’s other failings. In other cases, the customers simply want to terminate their contract after the operator has amended contract terms in a one-sided manner. Regardless of the problem, customers are finding that they need to set aside plenty of time to exercise their rights. Businesses are more than pleased to tie up the customer to the company with a fixed-term contract, but once the names are on the dotted line they would prefer that the customer does not make a nuisance of himself by actually trying to contact the company. Is this how those brand promises are kept?

From the frying pan into the fire – customer service to be subject to charges

The Consumer Agency has repeatedly brought up the issue of customer service in negotiations with operators and demanded practical measures to improve the situation. The matter has also been addressed by Communications Minister Suvi Linden. This past spring the Ministry requested clarification from the two largest operators on what concrete measures they intend to take during the year 2008 to improve customer service. It has to be seen as odd that ministerial intervention is required in a matter that was taught at the course as being a source of competitive advantage. Perhaps they did not refer to companies offering essential services such as a mobile phone subscription, as they will always have customers regardless of what level of customer service they offer.
Some operators have, however, taken action: they have made their customer service numbers subject to charges! Customers have been dismayed by this. The cost of resolving problems caused by the operators’ actions is now being shifted to the customers. And these problems are far from minor. According to consumer complaints, there is a variety of deficiencies seen: marketing, sales, contractual terms, billing, warranty repairs and most of all in the very element of customer service that is needed to resolve the problems. Making customers pay for the time spent on hold while queuing on the phone has been seen as particularly unfair.

Communications services by their very nature require a certain level of technical competence and they are also often essential to all consumers. Service disruptions or other problems with telephone or broadband connections tend to make the consumer’s daily life significantly more difficult. This makes the technical support for the service a very central aspect. The point of departure should be that basic guidance and support required for using such services are included in the price of the service and their cost should already be taken into account in pricing the service. It is not fair to the customer to charge extra for basic support needed to use the service.

How about other industries? Unfortunately, they aren’t doing much better. Customer complaints regarding online stores, for instance, repeatedly highlight the fact that the customer service capacity is insufficient in proportion to demand. There may be no answer at the telephone number given, nor will e-mails get replies despite repeated attempts. The customer generally pays for online purchases in advance and naturally has cause for concern if delivery of the product is excessively late in relation to what was agreed. Is it too much to ask that companies notify the customer of any delivery problems?

In the home appliance industry the area of customer service which receives complaints is related to warranty repairs. The customer is often bounced back and forth between the retailer and the importer for some time. Promises are made regarding the duration of repairs which then can’t be kept. Customers are told they will receive progress updates by phone, but never do. Holding on to one’s rights takes perseverance and patience.

**Good customer service is a source of competitive advantage for a company...**

We all know, without having to attend any courses, what good customer service is. It really boils down to something quite simple: the customer is able to easily reach the company, his concerns or complaints are received in a positive manner and the matter is processed within a reasonable time frame. An appropriate way to put it is that customer service should start from the moment the product or service is sold, not end there. However, too often it seems that businesses are only interested in their customer until the sale is closed. Maintaining the customer relationship from that point onwards is apparently not seen as profitable enough.

Research nevertheless shows that acquiring a new customer is significantly more costly to a company than retaining an existing one. Dissatisfied customers, for their part, are highly inclined to tell their friends and others of their bad experiences and change to a different provider. The fact that companies are too dismissive of the significance of customer dissatisfaction and fail to process complaints effectively enough causes loss of market share and deterioration in reputation. On the other hand, if customers perceive that their complaints are handled fairly and
efficiently, some 80% of them will continue their patronage. Businesses must surely know all this. Why, then, are they not acting accordingly?

According to some, Finland still doesn’t have enough competition and the market doesn’t punish companies with poor customer service severely enough. In addition, there is too much focus on the operative aspects of selling the products and services, which makes the adoption of a customer-focused corporate culture difficult. Businesses also tend to greatly underestimate the number of dissatisfied customers. They find it difficult to take criticism and fail to make use of customer feedback in improving their processes. They are happy to outsource customer service and let someone else worry about it. At the same time the gurus of the corporate world keep repeating that customer feedback is worth its weight in gold as a tool for improving customer satisfaction.

... and the consumer’s right

The question is not simply of what a company should do to achieve a competitive advantage, but first and foremost of what rights do consumers have in their customer relationships. A well functioning customer service is part of the product or service purchased by the consumer. It is an integral part of good consumer protection. If customer service fails to work properly, the consumer is prevented from exercising his rights such as rectifying billing mistakes or having warranty repairs done on a defective product. The company is, in every aspect of their operations, responsible for ensuring that consumers are able to exercise their basic rights effectively.

Customer service can’t be seen as separate from the rest of the operations, as something that is assigned lower priority and resources. Customer service must be seen as an integral part of every product or service. It should also be noted that, by law, the consumer may not incur costs from seeking rectification of defects. Consumers are not protected well enough if they have to separately seek compensation after making a complaint in order to recoup costs incurred, for example from queuing on a telephone service.

Openness and anticipation at the centre of customer service

Effective customer service starts from making the company easy to approach. Contact details should be convenient to find and customers treated courteously. Company staff should be familiar with the products and services they sell and be able to provide information that is useful to the customer. Companies should also express that they have a genuine interest in feedback and a desire to improve further. Customers may be provided a form for complaints and feedback. Response times should be reasonable. Customers should be informed of any problems and kept up to speed on how things progress. Could this be the good corporate spirit that is then reflected in customer satisfaction data?

Doing all this calls for companies to perceive customer service resources and integrated processes as a central aspect of their operations. The more sales they generate, the more customer contacts they will have, requiring a higher capacity for responding to them. When system changes are introduced, they should anticipate a greater number of calls and e-mails from customers. All customers, not only the VIP ones, should be seen as important. If the importance of customer service hasn’t been understood thus far, now is high time to do so as the matter will be covered by a soon to be introduced change in legislation.
New legislation urges companies to improve

Customer service is about to become governed by law. The marketing provisions of the Consumer Protection Act will be amended in line with the EU Directive. The scope of the provisions will be extended to cover e.g. how a customer relationship must be maintained. By law, inappropriate practices will not be allowed in customer relationships. The preparative work on the law gives a broad definition to the concept of customer relationship, including the provision of information regarding customer rights in the event of defects as well as complaint handling. It is interesting to see what companies will do to improve customer service response times and how they will provide information to customers in cases of defects or service disruptions.

It would be great to see companies beginning to take their responsibilities regarding customer service seriously and, as a result, noticeably fewer customer complaints received by the Consumer Agency. We are pleased to give information on what types of aspects of customer service are important to consumers and provide guidance on the new legal requirements. At the same time, companies must themselves be motivated to make a clear change in course. Preparing templates for complaints and handling customer complaints on behalf of companies can no longer be a job for the Consumer Agency.

The training course last spring emphasised the importance of managing the customer experience and thereby strengthening customer loyalty as competition intensifies and the customer base becomes increasingly fragmented. The individuality of each customer must be taken into consideration. Token ways of doing this are new tailor-made concepts such as “my operator”, “my holiday” and “my insurance”. At the same time, customers are conveniently and almost inconspicuously tied to a more durable customer relationship.

However, it might be a good idea to start by focusing on the essential – good customer service? The best customer experience is surely that of a company that is convenient and quick to deal with. This is surely the best source of sustainable competitive advantage as well. Which company will be the first to market “my customer service”, where the focus truly is on the customer?

Katri Väänänen
Consumer Protection Act
30th Anniversary

The Consumer Protection Act entered into force on 1 September 1978. This also marked the start of operations for the Consumer Ombudsman, the Consumer Complaint Board (now the Consumer Disputes Board), the first municipal consumer advisers, and the Market Court.

The most significant goals and values mandated by the legislation, which are meant to be protected through monitoring as well as promoted through communication and influence, include:

- Consumers’ financial security
- Smooth functioning of markets and competition, which requires market transparency
- Ensuring equitable contracts in consumer retail, where one party is a professional and the other is not

Implementation of these involve the following:

- The consumer’s right to receive all essential information in a clear format before making a purchase decision
- Recognizable marketing; the consumer’s right to know when an attempt is being made to influence him or her commercially
- Adherence to best marketing practices
- Fair and reasonable contract terms and business transactions at all stages

Naturally, consumer law develops as the times and markets change. Current Issues in Consumer Law is the Finnish Consumer Agency’s web magazine for those who are interested in consumer policy and developments in consumer law. The publication includes up-to-date information on:

- Promoting the position of consumers
- Statements and decisions of the Consumer Agency
- Plans for pending legislation
- International trends in consumer law