

CPC Newsletter

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Introduction

It was a pleasure for me to meet the CPC Network at its February meeting and I welcome and applaud the efforts for getting this Network up and running.

Back in 2007, the CPC Network created an unprecedented opportunity for national authorities to take consumer enforcement to another level – a pan-European level.

Even in these times of financial austerity, consumer policy remains one of the key areas on which to focus with a view towards meeting the Europe 2020 objective of a smart, sustainable and inclusive economy. We need to work together and to step up our efforts to make sure that we have protected, empowered and confident consumers.

Consumer Policy Strategy Review

The mid-term evaluation of the Consumer Policy Strategy 2007-2013 has just been finalised. The results are encouraging – however, there are a number of remaining and emerging challenges ahead. A key challenge is enforcement.

The evaluation concluded that cross-border enforcement has been strengthened through the CPC Network and its co-ordinated actions such as the "Sweeps". My objective is to increase this trend through reinforced co-ordination of the Network's operations and activities.

CPC Review

Part of my strategy is to make the best use of the existing resources and know-how, so that we can maximise the results without increasing the costs.

Building on the Commission's consumer enforcement package and the Belgian EU Presidency high level enforcement conference findings, a comprehensive assessment of whether the CPC regulatory and procedural framework is fit for purpose is underway. I invite you all to participate actively in this evaluation.

While pursuing the efforts to improve, we need to be mindful of constraints such as legal basis, powers and resources. Yet I believe that through our joint commitment we can significantly contribute to enhancing the enforcement of consumer legislation in Europe to the benefit of consumers and businesses alike.

Communication is another important element in making enforcement co-operation work. Your continued effectiveness relies on the communication between each other and with other Networks. I also would like to see the visibility of the achievements of the CPC Network enhanced.

Conclusions

The more I learn about the CPC Network and I see the results of its operation, the more I am convinced that it is time to continue investing in enhancing enforcement. I am confident that, if we put our resources to the most efficient use, we can successfully achieve our objectives to create in Europe an environment where consumers feel safe, knowing that their rights are protected, and where businesses can count on a level playing field.

John Dalli

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THE 2011 EUROPEAN CONSUMER SUMMIT

by the European Commission



“The aim of the workshop was to investigate alternative forms of enforcement in which consumer and/or business organisations are active players.”

The third European Consumer Summit took place in Brussels on 11-12 April 2011. The Summit was entitled "EU Consumer Policy: the way ahead" and is part of a broad consultation process launched by the Commission to prepare the European Consumer Policy Strategy and Programme after 2013.

In his opening remarks, Commissioner J. Dalli underlined the importance of all stakeholders' contributions to the new Strategy for the benefit of European consumers. Around 300 participants, representing consumers, governments, international organisations and business attended the event.

The reflection focused on six key aspects of consumer policy: the

evidence on consumers and markets needed for policy making, innovative forms of enforcement in particular participative enforcement, alternative dispute resolution mechanisms, capacity building in the consumer movement and new ways of informing and educating consumers. 6 workshops were organised to this effect.

The Workshop on participative enforcement looked in particular into new methods of enforcement where non-public actors have a role to play. This is of particular relevance in the context of budgetary constraints affecting Member States in which the resources available for the enforcement of consumer rights are limited.

The aim of the workshop was to investigate alternative forms of enforcement in which consumer and/or business organisations are active players. Based on concrete examples taken notably from the environmental, compe-

titution and consumer policy areas, the following universal categories of participative enforcement were identified: private legal actions, alerting mechanisms and cooperation schemes between business and either consumers or the state (or both). The workshop participants explored the conditions under which the identified categories could be applied in consumer policy areas. The conditions ranged from political support and incentives created for non-public actors, through stakeholders' (voluntary) commitment, to efficient monitoring and control mechanisms. The workshop concluded in a set of proposals for both national and European decision makers that could contribute to increase the use of participative enforcement techniques across the EU.

Detailed reports and conclusions from the participative enforcement and other workshops can be found on the European Consumer Summit website: www.european-consumer-summit.eu

CPC VISIBILITY PROJECT - WORKSHOP 2

by the Direction General for Consumers of Portugal

After the launching workshop in Paris of this common-action, the second workshop took place in Lisbon on the 3th and 4th of March. Besides Portugal (co-leader and organizer), this meeting was attended by France (leader), Austria, Cyprus, Finland, Italy, Latvia, Lithuania, Malta and Slovakia.

The main objective was to discuss the need and possibility of creating a CPC specific website with two valences: internal and external. The discussion was centered on evaluating the needs, the kind of information that is unavailable and must be disseminated, the possibility of upgrading existing tools and, generally, what is missing when promoting the CPC network and its activities.

As for the internal (intranet) site, it was decided that the public targeted is the CPC/CPN members, the SLOs

and the CAs. Here, a possibility of a link to the UK joint action that is also undergoing, dedicated to the creation of an intranet for investigators, was discussed, as the two actions can be complementary.

The external site is focused on the creation of communication tools for the "general public", and will contain two parts: tools aimed at making the CPC known and tools aimed at educating the public (information addressed to consumer rights, trader's duties, and other issues).

A deep discussion took place on the pros and cons of using the existing tools: modification of the CPC site on CIRCA, modification of the CPCS site, creation on the DG Sanco site of an access to a private site dedicated to the CPC activities and the possible link to the UK action.

Two experts talked during the meeting, on accessing the technical problems of creating a web page: the first gave an example how to design and manage a simple site dedicated to consumer affairs – with all the information and links that were asked by the participants, intranet and public access – explaining the case of the Portuguese Consumer Directorate-General (www.consumidor.pt). The second addressed a more cost/efficient approach related to the location of the sites, and gave examples of some already existing with different security levels on the intranet and public layout.

The common action will go on with the Workshop n.º 3, next 28th of June in Brussels.

CHILDREN – A PROFITABLE AIM OF DIRECT EXHORTATION TO PURCHASE?

by the Consumer Protection Directorate of Austria



Children increasingly become a profitable target group of intensive advertisement. Direct exhortations aimed at children reach at least two target groups: on the one hand the young children and on the other hand their parents or any adult who are induced to buy the advertised product.

A leading supermarket-chain solicits animal-stickers and invites to purchase by using slogans such as „I set an animalistic record! Do

you want to know which one? Go hunting for the record and take the sticker at the cash-desk! Stickersafari of an animalistic record – per € 10,-- purchase you get a sticker-parcel for free“.

It is possible to buy stickers as well or to get them for free extra to the purchase. This kind of advertisement is directly aimed at minors.

Another supermarket-chain solicits a stickeralbum called „Stickermania“ and also uses advertising slogans like „Take the album at the sensational price“. This is regarded as a direct exhortation too.

According to the black list of the UCP-Directive (no. 28), direct exhortations which are aimed at children to buy a product or at their parents or other adults to buy advertised products for them,

are banned if they are included in advertisement. Children should to be seen as a vulnerable group which can be easily manipulated.

The above mentioned advertisements should in our view be subsumed under the black list and regarded as banned in all circumstances.

Although parents should be able to resist persuasion by their children in one way or another, a kind of direct exhortation which seems to be a rather intrusive visual invitation to purchase should be included in the black list.

The Austrian Consumer Organisation (VKI) took action for injunction against both supermarket-chains. These actions will show, whether getting the stickers for free extra to a purchase that exceeds 10 Euros is also included in the black list.

THE SWEDISH CONSUMER OMBUDSMAN VS L'ORÉAL

by the Swedish Consumer Agency



In 2009, the Swedish Consumer Ombudsman sued the cosmetics company L'Oréal.

The legal question hinged on the standard of evidence required of cosmetics traders when they make marketing statements (text or pictures) to the effect that their face creams reduce wrinkles. The Swedish Consumer Ombudsman's opinion is that the required standard of evidence is more stringent when using marketing claims for products such as anti-wrinkle creams which are of a medical

nature or if the claims are virtually or close to being of a medical nature.

The Swedish Market Court published its verdict on 1 December 2010. On the facts, the court reached the conclusion that L'Oréal's claims in the face cream advertisements were of a medical nature as the claims referred to test results in connection with far-reaching claims such that creams rebuild the skin, or reduce or repair wrinkles. This being the case, the claims required a high standard of evidence. The evidence that L'Oréal referred to consisted of in-vitro tests, self assessments, evaluations of dermatologists and measurements of skin tonicity with technical instruments. The court held that L'Oréal did not

successfully prove that its claims were true according to these high standards. The marketing claims in text and pictures were therefore misleading and improper according to Articles 4 and 6 b) of Directive 2005/29/EC (Unfair Commercial Practices Directive) and L'Oréal was prohibited from further using the claims subject to a conditional fine of 1 million Swedish crowns.

An English language translation of the case can be found here: <http://www.konsumentverket.se/Lag-ratt/Rattsinformation/Domar/LOreal-Sverige-AB/>

DATA PROTECTION

by the French consumer authority (the DGCCRF)

The specific breaches of law at issue include:

- ✓ unfair and illegal data collection
- ✓ lack of proportionality of the data collected
- ✓ collection of sensitive data
- ✓ the failure to duly inform consumers about the use of the personal data collected
- ✓ lack of security rules

Beginning of 2011, Frederic LeFebvre, Secretary of State responsible for consumer affairs, Nathalie Homobono, Director-General of the French consumer authority (the DGCCRF), and Alex Turk, President of the French Data Protection authority (the CNIL), signed a cooperation agreement related to data protection aspects in e-commerce which aims at strengthening the protection of consumers.

The agreement foresees in particular the exchange of information between the DGCCRF and the CNIL about breaches to the law "Computing and civil liberties" adopted the 6th January 1978. The agreement will allow the CNIL to use some of the information detected by the investigators of the National Office of Inquiries (which is part of the DGCCRF). Investigators of the National Office of Inquiries will now

be able to inform the CNIL of potential breaches to the law of 1978 which they detect during their regular inquiries on the internet. The CNIL will then be able to follow-up on this information as appropriate.

The specific breaches of law at issue include: unfair and illegal data collection (i.e. collection of data from minors without seeking the prior parental consent); lack of proportionality of the data collected (i.e. data on environmental issues without link with the product or the service purchased); collection of sensitive data (i.e.: data on political or sexual preferences without the buyer's prior consent); lack of security rules (i.e. give an easy access to personal data); the failure to duly inform consumers about the use of the personal data collected.

IN THE SPOTLIGHT

by the Slovak Trade Inspection



The Slovak Trade Inspection (STI) is general authority in the area of consumer protection of non-food products other than cosmetics, tobacco products, and products intended to come into contact with foodstuffs and medical devices on the internal market.

The STI is a market surveillance authority, independent in its inspection and decision-making activities. The STI is also the Competent Authority under Regulation 2006/2004 on Consumer Protection Cooperation. It is a state administration body, a non-profit making organization, fully funded from the state budget. The STI has extensive powers as a market surveillance authority, under

which it may impose binding instructions to correct deficiencies, restrictive measures, as well as fines. Fines are part of the state budget revenue. The STI has actually 251 employees, and carried out approximately 22 230 investigations (4 164 investigations were based on consumers' complaints) in the year 2010, and for the year 2010 imposed the fines of 2 285 177, - EUR.

The STI is entitled to:

- Make binding proposals for elimination of ascertained shortcomings.
- Require necessary information and documentation of inspected persons.
- Require that products be labeled by a suitable warning of any risk resulting from their usage.
- Ban the supply and sales of products or provision of services.
- Order of withdrawal and recall of the products, destruction at the expense of the inspected persons, publication of hazard warnings.

The STI cooperates:

- With public administrative bodies and consumer protection associations. If it reveals a breach of duties related to sales of foodstuffs, i.e. if they are harmful to health or evidently of poor quality. The STI can ban the sales of foodstuffs and inform the state veterinary and foodstuffs administration bodies about it without delay.
- With health protection bodies, to which it notifies serious infringements (product poses a danger to health or life).
- With customs authorities if goods infringe intellectual property rights.
- With territorial self-administration bodies and managers of market places.
- With associations for consumer protection.

For the further information visit Slovak Trade Inspection website www.soi.sk or contact Ms. Petra Pišová, petra.pisova@soi.sk



In the first issue of the CPC Newsletter, attention was devoted to dubious day trips combined with sales events that take place in Austria, Germany and Hungary. This phenomenon also occurs in the Netherlands. **The Netherlands Consumer Authority investigated such day trips** which resulted in imposing fines with a total of EUR 630,000 for misleading and aggressive commercial practices in April 2011.

Before the Unfair Commercial Practices Act entered into force in 2008, the Consumer Authority conducted a study into the nature, extent, target groups and victim groups of unfair commercial practices in the Netherlands. One of the conclusions of this study was that **misleading and aggressive selling during bus tours costs the Dutch society an estimated 103 million euro per year.**

Consumer complaints made the Netherlands Consumer Authority decide to launch an investigation into a business offering day trips under the trademark ITC Reisclub. Enforcement

COMMERCIAL BUS TRIPS

Officers anonymously took part in several day trips. They also interviewed participants and representatives of the companies involved. The investigation led to the following conclusions:

- In the invitations the day trips were presented as a touristic event. The fact that the day would mainly consist of sales demonstrations was not clearly mentioned. Also, consumers were falsely led to believe that they had won a prize and would receive all kinds of free goods which turned out not to be free. Infringements were found of article 6 (1)(c) and paragraph 20 and 31 of annex I of Directive 2005/29/EC.
- The average consumer targeted was an elderly person with a lower income and a limited social network.
- During the sales demonstrations, the sales representatives claimed that the expensive products being presented were beneficial to good health and they deliberately took advantage of the concerns that the elderly consumers present had about their health. Sales representatives untruthfully claimed that products were scarce and prices of products were kept unclear. Consumers were also put under pressure, causing them to make purchases that they would not otherwise have made. Infringements were found of article 6 (1)(b), article 7(4)(c) and article 8 of Directive 2005/29/EC.

Initially two German businesses were involved in the organization of the day trips. The sales demonstrations were performed by Dutch sales representatives. The Netherlands Consumer Authority filed two information requests concerning the German businesses involved to the German authorities through the CPCS. During the investigation, the German businesses discontinued their activities under the trademark ITC Reisclub in the Netherlands. The sales representatives then started working for a newly founded Dutch business that, under the trademark Pro Actief Plus, organized the same kind of day trips to more or less the same locations, and used similar unfair commercial practices. The Netherlands Consumer Authority decided to impose fines on the two German businesses as well as the Dutch business, each for its respective share in the infringements found. The three businesses recently lodged a notice of objection against the decisions by the Netherlands Consumer Authority.

In the meantime it became clear that other businesses offer similar false day trips in the Netherlands and presumably commit similar commercial practices. Remarkably, in most cases there **is a connection to businesses in Germany or other European countries.** Because of the international dimension, it seems opportune to consider action on an EU level.

UPCOMING EVENTS

In Year 2011 following events will take place in the field of consumer protection cooperation.

On 29 June Consumer Protection Cooperation (CPC) Committee Regulation (EC) No 2006/2004 meeting will take place in Brussels. This meeting will include discussions on data protection issues in the CPCS, presentation on European Contract Law (28th Regime), presentation on consultation on the application of the Injunctions Directive, report on the findings and next steps of e-commerce study, presentation of the new UCP Database, information on current common activities and update on the call for

proposals procedure, legal issues related to the CPC Regulation.

On 30 June workshop on "Unfair Commercial Practices Directive" (UCPD) will take place in Brussels. The workshop will include information on UCPD overview as well as discussions on understanding issues on the scope, concepts of UCPD and relationship with other legislation and understanding of issues relating to the application of general provisions (material distortion) of UCPD.

On 1 July workshop on Unfair Contract Terms will take place in Brussels. This workshop will be organised by Office of Fair Trading with the

support of the European Commission. The aim of this workshop is to improve understanding of the Directive on Unfair Contract Terms in Consumer Contracts by discussing difficulties and successes in practical enforcement, including the CPC context.

On 4 October CPC committee meeting. Main focus will be the discussion on the 2012 Enforcement Action Plan.

On 6 October CPN meeting at Deputy level and On 7 December CPN meeting at DG level.