

AUSTRIA

Annual Report on Consumer Policy Developments 2001

1) Institutional Developments

Government has agreed on the amendment of the national legislation on competition in accordance with European developments which means that the institutional framework will change by introducing a Cartel Counsel within the federal Ministry of Justice and a Competition Authority within the Ministry of Labour and Commerce in charge of investigating cases and seizing the Cartel Court.

2) Protection of the Consumers' Legal Rights and/or Economic Interests

The European Directive on Injunctions (98/27) has been implemented by the Distant Selling Act amending among others the Consumer Protection Law which enables qualified Austrian and European (Union's) entities to seize courts. The Act is in force since January 1.

The European Directive on e-Commerce (2000/31) has been transposed by the so called "E-commerce Gesetz" which has come into force in January 2002. The authorities of the Länder are responsible for enforcement, administrative fines may reach the amount of 3000 EURO.

The law implementing the European Directive on the Sale of Goods and Associated Guarantees (1999/44) is in force since January 2002. Consumers will be granted much more rights than at present if the product or the service delivered does not comply with the contract. Furthermore it includes services and applies to B2B and C2C businesses.

The amended Electricity Market Law will among others enable consumers to choose their provider from October on.

Furthermore a regulation has been issued based on the Price Indication Law which regulates the price indication for services. It is especially welcome that fees for money change must be indicated.

A regulation on piercing is being negotiated which sets up rules for training and practice.

Negotiations are going on aiming at increasing the transparency of contracts concluded when entering a home for the elderly.

In autumn a quality sign may be assigned to non-profit, charitable and religious organisations receiving donations and fulfilling detailed criteria (especially concerning their relationship with consumers with respect to their rights of withdrawal and unsolicited advertising).

The Industrial Code is undergoing a major reform aiming at further liberalization.

3) Consumer Information and Education

The Consumer Protection Directorate General of the Ministry of Justice has issued one brochure on child safety, a Euro-folder and brochures on travelling and housing (rent and property) besides its quarterly. It has also been participating in the Euro-information campaign of the government.

Our office is organising a one-day forum with business and interested organisations once a year: the forum of March 2001 was dedicated to unit price, the forum of 2002 to guarantees.

4) Redress and Complaint procedures

The cases (flexible interest rates on credits, illness in tourist club) with which the courts have been seized in the framework of the new form of collective action (see last report) are still pending.

The Consumer Protection Association (VKI) will take over the tasks of the clearing house as laid down in the relevant European resolution from October on.

Since January 2002 the VKI is entitled to seize courts for misleading advertising on the basis of the Law on Unfair Trading and has started to do so.

3) Case Law

Court Actions taken by consumer protection associations against banks with regards to flexible interest rates on credits (collective action see above) and unfair contract terms are going on. The court has furthermore been seized in a case of unfair rounding off methods for credits with variable interests. Finally the High Court has decided in favour of consumers upon illegal and dishonest contract terms in connection with bank account conditions especially changing costs, time limit for complaints, data protection and bank secrecy. This decision could have great consequences for pending cases.

Legal Action has been taken against an enterprise sending unsolicited SMS-advertisements and the decision forces it to stop with it.

In the case of methods used by a slimming enterprise the court has decided (after having heard experts confirming that those could not have any physiological effect) the consumer has been misled and may therefore withdraw from the contract.

Based on §5 of the Consumer Protection Law (according to which winnings may be claimed since 1.10.99) profit games are subject to one decision (Cabrio promised in a to be delivered) while some cases are still pending: especially one pending before the European Court of Justice (conclusion of the General Advocate from October, Rechtssache Rudolf Gabriel C96/00) put forward by the Austrian courts concerning jurisdiction in case of claims in connection with cross-border misleading profit games.

The Supreme Court has decided in the case of holidays consumers tried to cancel because of terrorist acts (arrestation of Öcalan in Turkey) that no fees shall have been charged.

The Viennese Public Transports has had to pay money back to consumers who had paid their annual card by automatic monthly bank transfers based on a price which has been increased without special notice and deduced from the bank account in that period.

An enterprise is challenging a regulation of the Telecommunication Law referring to an opting in clause for advertising by telephone, fax and e-mail before the Constitutional Court.

4) Relation between Consumer Policy and other aspects of governmental policy

According to the European Directive on Injunction the Consumer Protection Association (VKI) may also claim for injunction in the field of misleading advertising (§14 of the Law on Unfair Trading) since January 1, 2001.

5) Other Matters of Interest

Internet Ombudsman and Internet Quality Label

The Internet Ombudsman (see last reports) delivers a label since the beginning of 2001 on the basis of criteria orientated to the OECD-guidelines.

A study has been published on the problems arising in connection with **value-added services**.

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