

## Case law

### Case Details

**National ID:** 175/02/M2

**Member State:** Finland

**Common Name:** The Consumer Ombudsman (CO) vs. Nokia Plc. (the Company)

**Decision type:** Other

**Decision date:** 04/09/2003

**Court:** Markkinaoikeus (Court of first instance)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 3, 1](#). Consumer Sales and Guarantees Directive, [Article 7, 1](#).

### Headnote

Consumer Sales - Unfair Contract Term

### Facts

The defendant Company had granted a guarantee, that when a consumer as an end user buys a Nokia mobile phone, the phone contains no material or construction defects or defects concerning the quality of the product. According to contract terms the guarantee time was 12 months as of the purchase day. The Company had limited its liability by announcing that the Company is not liable for the indirect damages or costs.

The provisions concerning the guarantee are part of the defect provisions concerning the consumer sale. The provisions of traders liability are included to Consumer Protection Act (CPA) Chapter 5. According to the CPA 5:15 the seller is liable of the defect in the good in the moment of passing of the liability for risk.

According to the CPA 5:15 defect liability provisions and taking into account the guarantee the Company had provided the guarantee did not give consumer better position that (s)he was entitled according to CPA. The said provision contains so called presumed defect clause. According to this clause the defect it is a presumption that the defect has existed in the point of sale in case the defect appears during six months after the sale.

### Legal issue

According to the Court and considering the provisions of the CPA 5:15 during first six months the Companys guarantee did not give consumer any better position. The consumer was entitled to this "guarantee" directly pursuant to CPA. After six months the Company was liable for the defect pursuant to CPA Chapter 5 and to guarantee. The CO demanded that the six months guarantee was too short period and therefore it was unfair or misleading marketing pursuant to general clause of CPA Chapter 2:1. According to the CO the consumer has a reasonable expectation that a mobile phone functions without any defects more than one year. The CO demanded that the Court should oblige the Company to discontinue marketing. The Court held, however, that it was not unfair or misleading to call six months period a guarantee.

According to contract terms the Company was not liable for indirect damages. However, the CPA 5:20 stipulates that the trader is liable for the indirect damage in case of negligence. The provision is mandatory and the trader may not dispose of it to the detriment of consumer. Therefore the Company could not dispose of its liability to the detriment of consumer in its guarantee terms.

The Court held that the contract term, according to which the Company is not liable for consumer for the indirect costs or damages during the guarantee preparations is unfair in case the of negligence. Also the contract term, according to which the Company is not liable for indirect costs in case the mobile phone does not meet the quality the Company has promised in its guarantee, was deemed unfair.

### Decision

Full text: [Full text](#)

### Related Cases

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### Legal Literature

No results available

### Result