

Oikeuskäytäntö**Tapaustiedot**

Kansallinen tunniste: 2011:65 (S2009/859)

Jäsenvaltio: Suomi

Lyhytnimi: The Consumer Ombudsman vs. TeliaSonera Oyj

Päätöksen tyyppi: Muu

Päätöksen päivämäärä: 07/09/2011

Tuomioistuim: Korkein oikeus

Aihe:

Kantaja:

Vastaaja:

Avainsanat:

Direktiivin artikkelit

Price Indication Directive, [Article 3](#) Price Indication Directive, [Article 4](#), 1.

Ylähuomautus

A telecommunications operator (TeliaSonera Oyj) had marketed its mobile phone subscriptions in a television commercial. The monthly subscription fee and a time-limited special offer concerning talk time and text messages (SMS) connected to the acquisition of the mobile phone subscription were prominently reported in the advertisement. Other operating costs and the restrictions of the said subscription had been presented with a small text, which was only a short time visible.

The question of whether the costs of the mobile phone subscription and the restrictions of the special offer were clearly presented and the question of whether the special offer dominated in the advertisement at the expense of the main product, so that the marketing had been in these respects from the consumer's point of view inappropriate.

Taustatiedot

In the latter part, which lasted about 20 seconds, of a television commercial of the MTV3 channel on August, 5th, 2008 TeliaSonera Oyj had marketed My Sonera mobile phone subscriptions.

The advertisement began with an about five seconds long narrative section, where a young schoolboy, walked away from the school yard and spoke into a mobile phone, saying, "Hi Mom. I had a really nice school day. How has your day been?"

After this, the ad continued to the presentation of My Sonera and of the Sonera subscription "Family Service", so that a red circle with the text "My Sonera subscription from € 1.99/month." appeared on a light blue background. In the red circle there was a large number 1, and a slightly smaller number 99 the text even smaller. Below the red circle was very little visible for about three seconds, the following text: "To customers purchasing a new My Sonera subscription by September 30th, 2008, is offered "the Sonera Family Service" for the monthly payment of 0 € for one year starting from the date of the opening of the service (normal 9.90 to 17.90 €/month). If the customer unsubscribes to the service during the year after the opening date, the offer shall immediately cease to be valid in all the connections belonging to the service. The offer also applies to customers with at least 7 Sonera subscriptions in his or her name, if he or she during the offer takes "the Family Service" ..." At the same time a voice of a female stated in the ad that "now the whole family should get a My Sonera subscription and the Sonera Family Service."

Next another red circle began to grow to the right of the first red circle, as described above, and a woman's voice said: "you will get all the family calls and SMS free of charge for the year ahead." At the bottom of the screen the content of the very small text was changed to the next text, which lasted for about three seconds: "... to the current My Sonera subscription. The opening of the Family Service until September 30th, 2008, 0 € (normal price € 3.90). Calls and text messages from a Company subscription to Family Service subscriptions will be normally charged. Sonera reserves the right to use normal pricing, if the internal call traffic inside "the Family Service" exceeds 1,000 minutes/subscription and SMS traffic 500 pcs/subscription per billing month. The customer will be informed about the introduction of limits in advance."

Thereafter, the above-mentioned new red circle grew bigger than the first red circle, which reduced its size at the same time, and in the new circle appeared the text: "For one year you will get all of the family calls and SMS messages for 0 €." The zero and the €-sign were large compared to the other text, which itself was easily legible. The content of the very small text at the bottom of the screen changed for a period of about three seconds: "The opening of a My Sonera subscription 0 € (normal price € 3.90). My Sonera subscription calls 0.079 €/starting minute + starting set-up fee 0.049 €/call. SMS 0.079 €/pcs, monthly fee starting from € 1.99/month. Rates to normal priced domestic numbers, not to service and company numbers. The offer does not apply to switches made during the offer to My Sonera, and to terminated and re-opened subscriptions during the offering period."

Finally, on the screen appeared for about three seconds four logos of TeliaSonera dealers selling subscriptions. The advertisement ended by the picture, where Sonera, a trademark of TeliaSonera, and below the company's web address were showed. A woman's voice continued saying: "My Sonera. Just the way you want it."

The plan of the image of the second part of TeliaSonera's ad: <http://www.kko.fi/uploads/xo17k65c6j7qo.pdf>

Oikeudellinen kysymys**Ratkaisu**

The Finnish Supreme Court stated in its decision (extract):

"10. According to the Decree on informing of the price of consumption utilities Sec. 4 there must be a notification of the price and the unit price of a consumption utility in the marketing in a clear and unambiguous way and in a way which is easily understood and noticed by the consumer. According to Sec. 5 of the decree there is a duty for the trader, marketing by advertisements or in any other way an individual consumption utility to the consumer, to disclose the price of the utility and, except as otherwise provided, at the same time the unit price. According to Consumer Protection Act, Ch. 2, Sec. 1 subsection 1 (38/1978) practices contrary to good faith or otherwise unfair to consumers may not be used in marketing.

11. A mobile phone subscription does not normally have an express selling price, but the cost for the consumer consists of the monthly subscription fee and

other costs arising from the use of the mobile phone subscription. The most important costs are the costs for calls and text messaging charges. The selling price according to the Decree on price notifications consists of those costs.

12. Subscriptions have been marketed as fixed-term and free-of-cost advantage for communicating between family members. The question is not, however, only about a subscription used for communication within the family, but about a subscription for usual, all type communication by mobile phone. The monthly subscription fee has been relatively low. Therefore, the most significant factors for the formation of the price of the subscription are the call set-up charge, call charge per minute and the price of each text message. These are presented in the ad in a text with small font, and only about three seconds at a time. When the free advantage and a low monthly fee have been highlighted in a prominent place, the consumer has had difficulties to form an understanding of the actual subscription price on the basis of the advertisement.

13. The Supreme Court considers that the costs arising from the subscription to the consumer have not been indicated in the advertisement, as is required in the Decree, in a clear and unambiguous way and in a way which is easily understood and noticed by the consumer. In the marketing there has been a breach of the Decree. Such marketing has been unfair from the consumer's point of view and prohibited according to Consumer Protection Act, Ch. 2, Sec. 1 subsection 1 (38/1978).

14. The duty to disclose the selling price according to the Decree on price notifications does not take into account the restrictions due to the means of communication and it is irrelevant whether the data is available from other marketing material. TeliaSonera has held that the Decree is inconsistent in this respect with the Unfair Commercial Practices Directive and the provisions currently in force in the Consumer Protection Act.

15. The Supreme Court finds that according to the Unfair Commercial Practices Directive, Article 3, paragraph 5, Member States may, within six years, from June 12th, 2007, continue to apply national rules that are more restrictive and prescriptive than the directive and that are implementing the minimum harmonization clauses of other directives. The Decree on price notifications implements Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (Directive on price indication). Therefore, the provisions of the Directive on price indication can be applied, despite the entry into force of the Unfair Commercial Practices Directive, provided that they are essential to ensure consumer protection against unfair commercial practices and proportionate to achieving that objective.”

Koko teksti: [Koko teksti](#)

Asiaan liittyvät tapaukset

Ei tuloksia saatavilla

Oikeuskirjallisuus

Ei tuloksia saatavilla

Hakutulos