

Case Details

Case Details

National ID	MD 2011:26
Medlemsstat	Sverige
Common Name	Konsumentombudsmannen v. Tele2 Sverige AB
Decision type	Annat
Decision date	02/11/2011
Domstol	Marknadsdomstolen
Ämne	
Kärande	
Svarande	
Nyckelord	

Directive Articles

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 3, 3.](#)

Headnote

Unfair contract term

Facts

Tele 2Sverige AB (Tele2) – national telephone company – had in an one-sided standard contract reserved the right to block a mobile telephone subscription, in case of non-payment of a claim belonging to a supplier of services paid for through a call fee – for example directory enquiries, television program votings, call signals, pictures etc. –, until payment had taken place. A customer who contested the claim and presented a material ground within a reasonable time period would though be granted a respite with the payment until the issue was solved. A contested claim referring to the mentioned services would, according to Tele2, automatically be treated as it bore a material ground.

The Swedish Consumer Ombudsman (ombudsman) filed a complaint against Tele2, claiming that the term was unfair to the customer according to § 3 Lag (1994:1512) om avtalsvillkor i konsumentförhållanden, demanding the court to prohibit Tele2 to use the term. The ombudsman referred to a previous case from the Market Court, MD 1994:31 (22.12.1994).

Tele2 contested the claim.

Legal issue

Beslut

The legal issue at hand is if the term of the agreement was unfair towards the customer, according to § 3 Lag (1994:1512) om avtalsvillkor i konsumentförhållanden.

Concerning what kind of circumstances that should be taken to in consideration the court referred to the preparatory work to Lag om avtalsvillkor i konsumentförhållanden – a term of contract is generally considered as unfair when in

conflict with effective legislation or imperative general legal principles, or when misleading or unclear in a way that makes it difficult for the customer to foresee the possible consequences for him/her (prop. 1994/95:17 s. 64 f.).

The court went on to conclude that chapter 5 § 7 a Lag om (2003:389) om elektronisk kommunikation was applicable to the services at hand. The regulation provides a telephone company the possibility to block a mobile telephone subscription in case of non-payment, given that the customer has been requested to pay within reasonable time, and notified under what circumstances the subscription could be blocked. If the non-payment concerns a specific service the customer shall, if technically possible, be blocked only from this service,

With reference to the above mentioned regulation and the possibility provided by Tele2 for the customer to withhold payment, the court took the stand that the term of contract did not cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. The term could not be considered unfair and the claim was hence dismissed.

(Abstract drafted by Egil Nordqvist)

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Legal Literature

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Result