

Case Details

Case Details

National ID	ECLI:NL:RBSHE:2010:BM1632
Lidstaat	Nederland
Common Name	link
Decision type	Court decision, first degree
Decision date	04/03/2010
Gerecht	Rechtbank 's-Hertogenbosch
Onderwerp	
Eiser	Tele2 Nederland BV
Verweerder	Unknown
Trefwoorden	Distance Selling Directive, information obligation

Directive Articles

Distance Selling Directive, [Article 5](#)

Headnote

- (1) Telecom provider should provide specific written information when entering into an agreement.
- (2) If the Telecom provider does not comply, the consumer is entitled to terminate the agreement during the term as referred to in art. 7:46d BW.

Facts

There was an agreement between the plaintiff (telecom provider) and the defendant (consumer) on a package for internet and tv. Applicant claims a payment from the defendant. The agreement by telephone has not been sent to the consumer in writing. The consumer acknowledges that he has concluded the agreement with the telecom provider, but says that the telecom provider never delivered what consumer is entitled to. Consumer argues that, upon the conclusion of the agreement by telephone, he has explicitly requested 2 decoders. Plaintiff disputes this and only delivered one.

Legal issue

- (1) Is a telecom provider in breach of article 7:46c BW when it fails to supply sufficient written product information to the consumer?
- (2) If the telecom provider does not comply with said article, does the consumer have the right to terminate the contract?

Uitspraak

Based on art. 7:46i BW and 7:46c BW, the telecom provider has an obligation to provide information on the characteristics of the product and the possibility of termination of the agreement. This specific information must be provided to the consumer in writing in a clear and comprehensible manner after the agreement has been concluded. If this information is missing, the customer will be entitled to terminate the agreement during the term as referred to in article 7:46d paragraph 1 BW.

The court contemplates that the telecom provider has not fulfilled the obligation to provide information. It has consciously provided no written information at all. As a result, the consumer has been denied the opportunity to

verify that the conditions discussed on the phone have been correctly included in the agreement. If this would have been the case, the consumer could have found that the agreement as noted by the telecom provider diverged from the telephonic agreement, at least from the consumer's intentions, and could, on the basis of this information, decide whether he would or would not accept the agreement.

URL: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBSHE:2010:BM1632>

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Result

Agreement shall be deemed to be dissolved