

Case Details

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National ID	ECLI:NL:RBROT:2011:BQ3528
Lidstaat	Nederland
Common Name	link
Decision type	Administrative decision, first degree
Decision date	04/05/2011
Gerecht	Rechtbank Rotterdam
Onderwerp	
Eiser	Pretium Telecom B.V
Verweerder	Consumentenautoriteit
Trefwoorden	Distance Selling Directive, information obligation, injunction, judicial review, withdrawal period

Directive Articles

Distance Selling Directive, [Article 4](#) Distance Selling Directive, [Article 6](#)

Headnote

A telecom provider violates the obligations laid down in book 7 of the Dutch Civil Code when not providing enough information, such as the duration of the agreement, the time of termination and the reflection time when entering into an agreement.

Facts

Plaintiff is a provider of telephone services. Defendant has received various signals on the way in which plaintiff offered subscriptions. As a result, defendant initiated an investigation into the compliance by plaintiff with various provisions of the Dutch Civil Code, specifically the distance selling provisions in Book 7.

Defendant summoned the plaintiff three fines. The plaintiff appealed against the decision.

The detected violations were:

- violation of the information obligation regarding the identity and commercial purpose.
- violation due to not giving notice of the time for reflection and not mentioning the time for refusal.
- violation due to not giving notice of the minimum duration of the agreement
- violation due to not informing the main features of the service in time.

Legal issue

Does a telecom provider violate the information obligations of book 7 Dutch Civil Code when not providing information regarding the identity and commercial purpose, the duration of the agreement, the time of termination and the reflection time?

Uitspraak

The obligation of giving information regarding the identity and the commercial purpose at the commencement of the telemarketing conversation can be found in 7:46h (1) BW. The article is an implementation of article 4 (3) Directive

97/7/EC. The ratio of the prescription that the seller must give his identity is that the consumer in question knows who he may appeal, for example, if he still wants to be moved from further calls.

The court is of the opinion that the defendant has shown that the plaintiff has not fulfilled the requirement to communicate the identity and the commercial purpose of the conversation at the beginning. The plaintiff does not clearly explain what the company claims to be. The way of constructing the conversation gives the impression that the current subscription of the consumer is reduced and not that the consumer enters into a new contract with another provider.

Violation due to not giving notice of the time for reflection and not mentioning the time of termination on the basis of art. 7:46c BW.

The court is of the opinion that the term of termination must also be mentioned in the telephone conversation. The court refers to art. 4 Directive 97/7/EC. The court considers that plaintiff violated art. 7:46c BW by not mentioning the terms in the conversation prior to the part in which the agreement is concluded.

Violation due to not giving the minimum duration of the agreement in a timely manner on the basis of 7:46c (1) (i) BW.

The court has found that the transcripts show a representative selection of the conversations that have been conducted. The court is of the opinion that the fact that in all incoming conversations in which an agreement has been reached the call script has not been followed at this point is sufficient to establish that there is a structural misstatement.

Violation of not informing the main features of the service in time.

The court is of the opinion that the defendant has rightly established that there has been an infringement. The main features are the acquisition of the contract, the maintenance of the connection, the subscription costs and the call costs. In view of the premise that the consumer should be able to provide an adequate idea of the telephone service offered to him on the basis of the information provided to him by telephone prior to the agreement, the mere mention of a price guarantee does not suffice

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Result

In view of the foregoing, the court ruled that the defendant rightly held that there was an infringement