

Agenda 2010 - 2011

Oneerlijke Handelingen

Conformiteit
Eerlijke Praktijken
Overschrijdende Consument





consumentenautoriteit



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Consumer Authority:

For fair trade between companies and consumers

Since 1 January 2007, the Consumer Authority has overseen compliance with consumer rights in the Netherlands, in order to promote fair trade between companies and consumers.

The most important tasks of the Consumer Authority are to tackle collective infringements of consumer rights and to increase knowledge among consumers and businesses about their rights and obligations. The Consumer Authority is a division of the Dutch Ministry of Economic Affairs.

Task and supervisory domains of the Consumer Authority

The mission of the Consumer Authority is to promote fair trade between companies and consumers, taking the rights of the consumer as the starting point. Its most important tasks are to tackle collective infringements of consumer rights and to increase knowledge among consumers and businesses with regard to their rights and obligations.

I Tackling infringements of consumer rights

On the basis of the Act on Enforcement of Consumer Protection Law [Wet handhaving consumentenbescherming (Whc)], the Consumer Authority is authorised to take action against 'collective infringements' of the following regulations in the field of consumer protection, most of which can be found in the Dutch Civil Code:

- Unfair commercial practices
- E-commerce
- General Terms and Conditions
- Consumer purchases and guarantees
- Distance purchasing
- Timesharing
- Package holidays
- Door-to-door sales
- Price indication

Not only is the Consumer Authority authorised to take action in cases that occur inside the Netherlands, but it is also able to act in cross-border situations, in which the provider is established in the Netherlands and the consumers who have been misled live in another Member State of the European Union.

The Consumer Authority anticipates that its duties will increase as a result of new legislation that entered into force recently or which is expected to enter into force soon. Its additional duties will be:

- Implementation of Regulation 1008/2008 with regard to the 'operation of air services in the Community'. The intention is that the Consumer Authority becomes the enforcement authority.
- The Services Act [Dienstenwet], which entered into force at the end of 2009 and contains several provisions in the area of consumer protection, etc.
- (Automatic) extension of subscriptions. If the related legislative proposal that was submitted in 2009 is adopted, the Consumer Authority will monitor compliance with the new regulations.

Further explanation can be found in the Agenda under theme four.

II Increasing knowledge among consumers with regard to their rights and obligations

The ConsuWijzer information desk that is operated by the Consumer Authority informs consumers about their rights and obligations. ConsuWijzer, which can be contacted via its website and by telephone, is the joint information desk of the Consumer Authority, the Independent Post and Telecommunications Authority (OPTA) and the Netherlands Competition Authority (NMa). ConsuWijzer holds extensive information with regard to all kinds of topics that are of importance to consumers. Consumers may also contact ConsuWijzer if they have any questions or should they wish to find out any facts surrounding current topics, or in order to submit a complaint in relation to unpleasant experiences at the hands of providers or abuses committed by providers. As an enforcement authority, complaints of this type represent an important source of information for the Consumer Authority. Consumer advice and supervisory activities are inextricably linked and enhance one another.

Agenda 2010 - 2011

Every year so far, the Agenda has contained details of the Consumer Authority's priority areas for that particular year that form part of its enforcement policy. Three years of experience have taught us however that what happens in practice cannot necessarily be encompassed in an annual agenda cycle. It often takes longer to achieve visible changes in behaviour. After all, bringing about sector-wide, permanent changes in behaviour takes time and cannot be achieved within a year, even if all available resources are allocated to a specific initiative. This is why the Consumer Authority has now drawn up an Agenda for the next two years, 2010-2011.

Information about (collective) consumer problems that originates from various sources forms the basis when selecting themes. A significant proportion of the information is taken from reports that the Consumer Authority has received via its information desk, ConsuWijzer, but the choice is also based upon information from consumer organisations, self-regulating authorities, reports from the media and the Consumer Authority's own research.

The criteria for the selection of priority areas are:

- The extent of the *loss* incurred by consumers
 - a large group of consumers is (potentially) being misled and the loss per consumer is considerable.
- The impact upon *consumer confidence*
 - a particular issue is relevant from the perspective of restoring or increasing consumer confidence.
- The impact on the *market*
 - particular behaviour has a negative impact upon the degree of (fair) competition.

Areas for attention 2010 - 2011

On the basis of the information given above, the Consumer Authority has determined the following as themes for 2010-2011:

- 1 Aggressive and misleading canvassing
- 2 Unfair online commercial practices
- 3 Guarantee and non-conformity

In addition, the Consumer Authority will also be prioritising the following:

- 4 New statutory duties
- 5 Cross-border consumers

The fourth theme has come about as a result of the new legislation that will enter into force during the term of the Agenda and will give rise to new duties for the Consumer Authority. The fifth theme has been chosen because consumer problems are increasingly failing to cease at the borders of the Netherlands and the Consumer Authority is increasingly becoming an enforcement authority that operates at an international level.

Attention to current issues

This Agenda offers the Consumer Authority scope to reserve time explicitly for 'incidents'. These are issues about which ConsuWijzer suddenly receives a great many complaints from consumers and which are so urgent that the Consumer Authority is required to act quickly and decisively. Incidents have occurred every year so far and require a great deal of additional attention at the moment they occur.

Although the themes in the Agenda are mainly described from a future perspective, the Consumer Authority regards supervision and enforcement on the one hand and consumer information on the other hand as two sets of tools that can be used simultaneously and in order to enhance one another for the same purpose: to bring about a change in behaviour within markets. Within all of its enforcement programmes, the Consumer Authority considers what mix of resources and tools are most appropriate in order to achieve the desired objective.

Unfair online commercial practices

The range and diversity of products and services available on-line is growing all of the time. The law imposes additional requirements in the case of online trading, because when purchasing goods or services on-line, consumers cannot visit a 'conventional' shop, where they are first able to view a product and see the person with whom they are doing business. In practice, as far as compliance with statutory regulations is concerned, some essential requirements are still not being adhered to.

What is the problem and what is the Consumer Authority going to do about this?

Just as in 2008 and 2009, in 2010-2011 the Consumer Authority will once again devote attention to text messaging services. It will also focus upon the online sale of admission tickets to concerts and events.

Text messaging services

Text messaging services refers to services provided by mobile telephone, such as ringtones, games and increasingly also other entertainment and subscription services. Advertisements often appear on the internet to advertise such services. In recent years, there has been a significant increase in the provision of services via text message due to advances in technology etc. Major providers, as well as a great deal of minor providers, in particular, are operating within the market, whether this is for a short amount of time or not. The size of the market for text messaging services is estimated to be equivalent to at least 200 million euros.

The problems that consumers encounter are:

- Advertisements that appear on the internet for text messaging services are often confusing and unclear: the consumer often fails to realise that by ordering a 'free' service he/she is committed to a contract
- It is unclear how the contract is formed and how the consumer is able to discontinue the service or contract if required
- The price/costs advertised are unclear.

Consumers encounter these problems in other European countries too, as was revealed previously from a joint European search campaign on the internet.

The sector itself set up the 'Text Messaging Code of Conduct', which entered into force in April 2008 and was amended further at the end of 2008. The Code of Conduct of the SMS Foundation incorporates tools that are able to ensure that websites that contradict the code can be amended. The Consumer Authority has lodged a total of 21 complaints with the Foundation. The statements submitted have subsequently been amended in relation to the most important points.

ConsuWijzer is still receiving many reports (approximately 400-500 per month on average in 2009), however, that the problems with text messaging services have not yet been rectified.

What makes a commercial practice unfair?

A commercial practice is unfair if the consumer is approached in such a way that his or her consideration as to whether to buy a product or a service is or could be influenced in an improper manner. Examples of unfair commercial practices include: misleading advertising, naming prices in which not all additional costs are stated, special offers, omitting important information about a product and aggressive canvassing. As a result, the consumer is tempted to make a purchase that he or she may not have made otherwise and which he or she may later regret. Since October 2008, the Unfair Commercial Practices Act [Wet oneerlijke handelspraktijken (Wet OHP)] strictly forbids these kinds of sales methods. The Consumer Authority and the Netherlands Authority for the Financial Markets [Autoriteit Financiële Markten (AFM)] monitor compliance with the Unfair Commercial Practices Act.

This has also been proven from a recent inventory drawn up by the Consumers Association [Consumentenbond]. The effectiveness of the code was therefore evaluated by the Ministry of Economic Affairs, the Independent Post and Telecommunications Authority (OPTA) and the Consumer Authority in the autumn of 2009. On account of the problems that are still being reported, the issue shall continue to remain a matter of social and political interest.

The Consumer Authority feels that there is still sufficient reason to continue taking tough action against providers who, despite all the enforcement activities, self-regulation initiatives and political and social pressure, are so far still violating the law when they provide mobile services. The Consumer Authority is working in close collaboration with the Independent Post and Telecommunications Authority [OPTA] in order to achieve this.

Online resale of admission tickets for concerts and events

Many people buy their tickets for concerts and (sports) events via the internet, which often involves paying considerable amounts of money. The Consumer Authority has recently begun monitoring the accuracy and completeness of information on websites of companies that use admission tickets such as these. This campaign is a result of the complaints that consumers have submitted to ConsuWijzer. It is often unclear to consumers that admission tickets are being re-sold and what that means. The tickets sometimes turn out to be invalid or the consumer loses money if the concert does not go ahead.

In 2009, the Consumer Authority sent the companies concerned a letter concerning the statutory obligations with which their websites must comply. The Consumer Authority will publish the results of these investigations during the course of 2010. As some providers also supply tickets across the borders with the Netherlands, the Consumer Authority works in collaboration with its European counterparts where necessary, especially in the Benelux countries.

Other activities within this theme

The Consumer Authority also wishes to focus upon the (markets for) online dating services and social networking sites. Both types of services have increased in popularity tremendously over the past

few years and have undergone major growth.

The sales from online dating in Europe increased over the past two years from approx. 320 million to approx. 400 million euros. It is estimated that around 200 to 250 dating websites are now operating in the Netherlands. Studies have also shown that almost half of Dutch nationals aged 18 years and above are active users of social networking sites that focus upon personal contact, and that 9% make use of business-related social networks.

With their growth and success, consumer complaints are also on the increase, however, such as with regard to unclear information about charges for online dating services and misleading information in advertising texts. Social networking sites are also used as a vehicle that enables new types of marketing and advertising, such as the opportunity to focus advertising specifically on certain groups (profiles) of consumers (and even individual consumers). Furthermore, the distinction between general communication and advertising is not always obvious. All of this is all the more relevant now that children and young people form an important user group of social networking sites. Studies have shown that 80% of 14-year-olds have a Hyves profile.

For this reason, the Consumer Authority decided to familiarise itself with the consumer complaints and problems involved in online dating services and social networking sites.

What is the Consumer Authority hoping to achieve?

The Consumer Authority wants the consumer to be able to trust that his/her rights are also being respected in the digital environment. Providers of mobile services, dating services or online tickets must provide consumers with the statutory information in an understandable and clear manner. Consumers must be able to make their decision on the basis of correct and complete information and not be misled by this. On social networking sites, the distinction between personal and commercial information must be clear to the consumer. Only then will the consumer actually benefit from the advantages of buying online, such as ease and speed. The consumer is entitled to honest information with regard to what he/she is buying, the costs of the purchase and the terms and conditions under which he/she is making the purchase¹.

¹ 'Personal messages and respect plz? Hyves and children', research by the My Child Online Foundation [Stichting Mijn Kind Online] (September 2009).

Online
ticket sales





Undesirable and persistent canvassing

Aggressive and misleading canvassing

In the case of aggressive canvassing, consumers are placed under pressure in an intrusive manner in order to persuade them to enter into a purchase agreement. If the provider is not honest about his/her commercial intentions or withholds any relevant information from the consumer, for example, this is deemed to constitute deception.

What is the problem?

Attempts to persuade a consumer to purchase a product or service in an inappropriate manner are prohibited. Nevertheless, salespeople regularly fail to abide by the statutory regulations that forbid aggressive and misleading sales methods. Consumers submit complaints via ConsuWijzer concerning canvassing - on the telephone, door-to-door or in the street for energy and telephone subscriptions. Other examples of possibly aggressive and misleading canvassing include inexpensive trips, the sole purpose of which is to sell as many household or health products as possible during a sales demonstration.

A salesperson must make his/her identity known in the case of telephone sales and door-to-door sales and explain that he/she is seeking contact with a commercial objective. In most cases, the consumer shall also be entitled to return a product that he/she has bought, without stating his/her reasons and to cancel the contract. Furthermore, in the event of 'persistent and undesirable pressure', this may be deemed to constitute a prohibited unfair commercial practice if it causes the consumer to make a decision about a contract that he/she will later come to regret.

What is the Consumer Authority going to do about this?

The Consumer Authority will complete the studies started in 2009 into aggressive and misleading canvassing by means of telemarketing and aggressive sales during bus trips. The Consumer Authority also wishes to start new studies, which may once again consider the matter of telephone sales and sales during trips, but also door-to-door sales (canvassing). It is not beyond the bounds of possibility that the advent of the 'don't call me register' will cause a shift from telephone sales to more traditional canvassing, for example. The Consumer Authority will monitor this development closely via ConsuWijzer and collaborate with the Independent Post and Telecommunications Authority (OPTA) and the Netherlands Competition Authority (NMa) where necessary.

What is the Consumer Authority hoping to achieve?

By taking enforcement action, the Consumer Authority hopes that providers who place consumers under pressure or who mislead consumers will adapt their behaviour and abide by the regulations. The consumer must be safeguarded from these kinds of practices. It must always be clear to a consumer what he/she is buying and under what terms and conditions, especially if the salesperson approaches him/her directly and unexpectedly.

The right to receive accurate and truthful information

Guarantees and conformity

Guarantees and conformity, or rather non-conformity, has been on the Agenda since the Consumer Authority was founded in 2007. It is pre-eminently a long-term issue, for which a sector-based approach is necessary in order to achieve a permanent change of behaviour.

What is the problem?

Guarantee and conformity still rank among the Top 3 questions and complaints that ConsuWijzer receives from consumers. In 2009, ConsuWijzer received 16,000 questions and complaints about this matter. Once the warranty period has expired, in particular, a great deal of discussion takes place with the consumer and the vendor with regard to matters such as who is responsible for the repair costs. A considerable lack of clarity also exists in relation to the lifespan of expensive appliances, in particular.

What is the Consumer Authority going to do about this?

During the period 2010-2011, the Consumer Authority will focus upon the companies about which a great deal of questions and complaints are being submitted to ConsuWijzer. So far, the Consumer Authority has spent a great deal of time and energy advising not just consumers, but companies, too. The Consumer Authority has spoken to companies that violate regulations and received formal promises from companies that they will adhere to the regulations from now on. In 2010-2011, the Consumer Authority will focus its attention on companies that nevertheless continue to cause structural problems and it will not hesitate to impose sanctions where necessary.

The Consumer Authority is carrying out research into the purchasing of extended warranties. In practice, additional warranties do not provide many extras over and above the consumer's statutory rights. Furthermore, the consumer is not always provided with complete and correct information. The result is that consumers may buy additional warranty on false grounds. Another result may be that consumers are wrongfully not informed of their rights in the event that they have not bought an additional warranty. In the event that incorrect and/or incomplete or misleading information is provided with the sale of this product, the Unfair Commercial Practices Act may have been violated. The Consumer Authority will take enforcement action against this in 2010.

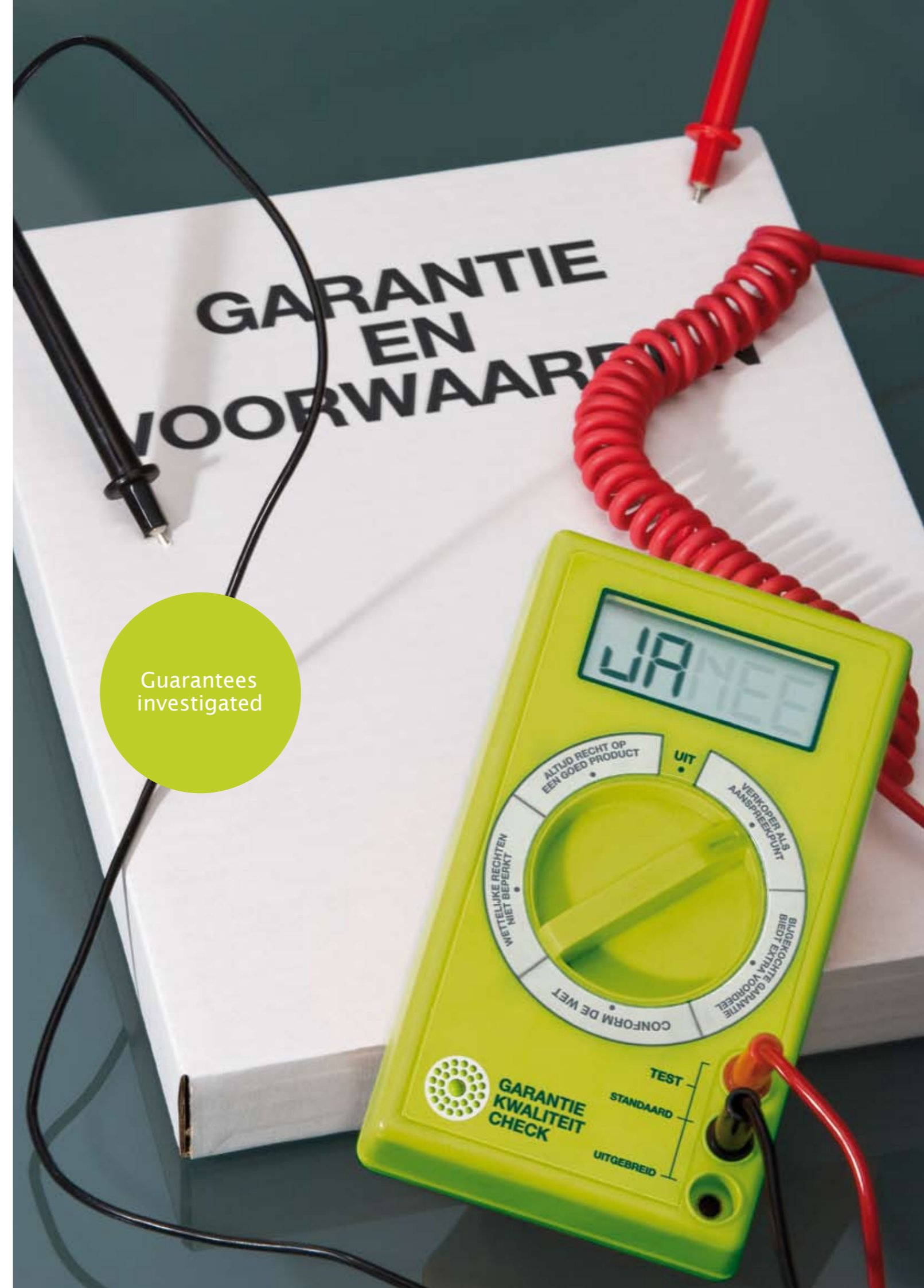
Furthermore, the Consumer Authority is participating in major studies in the Benelux countries in which various telephone shops, DIY stores and electronics shops are being tested in order to check that they provide accurate information with regard to guarantees and conformity.

What is the Consumer Authority hoping to achieve?

The Consumer Authority wishes to prevent a situation in which consumers pay money for a right that has already been provided by law. The Consumer Authority is also hoping to achieve a situation in which companies comply with the statutory regulations with regard to guarantees and conformity. By taking enforcement action against companies about which ConsuWijzer receives a large number of questions and complaints, the Consumer Authority will seek to prevent large groups of consumers from being duped as a result of companies violating the law. Consumers are informed about their rights relating to guarantees via ConsuWijzer.

Guarantees investigated

Research into warranties in the Benelux region





New statutory duties

New European and Dutch legislation sometimes gives rise to new duties for the Consumer Authority and ConsuWijzer. Suppliers too will also have to adapt to this new legislation and the resulting obligations.

What is the Consumer Authority going to do about this?

One of the new tasks that the Consumer Authority has set itself is to monitor whether (certain) providers are fundamentally failing to comply with the requirements and whether the Consumer Authority has to take action.

The enforcement authority cannot take action, however, until such time as its new competences have entered into effect.

These relate to violations of the next new statutory regulations:

Regulation 1008/2008 (Article 23)

This regulation relates to the 'operation of air services in the Community' and contains a number of provisions with regard to transparent prices for airline tickets. On the basis of this, providers of airline tickets are obliged to:

- State the prices including any additional taxes, levies, surcharges and fees that are unavoidable and can be foreseen at the time of publication
- Specify the components of the price list from which the price has been determined
- State all terms and conditions that apply.

What is more, at the start of the booking process, the consumer must be able to see in a clear and unambiguous manner what the surcharges are for additional services, such as additional legroom or accelerated check-in. The consumer must also be able to adopt this on an 'opt-in' basis (i.e. not via a system of pre-ticked boxes).

The Services Act

This act has been formed as a result of the European Services Directive. The Consumer Authority will set up an 'information point' where consumers can find out about what requirements service-providers have to comply with in order to be able to operate in the Netherlands, and where they can obtain assistance

with complaints or requests for further assistance. In practice, ConsuWijzer will carry out these duties, in close collaboration with Antwoord voor Bedrijven (Answer for Businesses), the governmental advisory desk for businesses that functions as the information point for businesses under the Services Act [Dienstenwet]. The Consumer Authority will also monitor compliance with a number of information obligations for service-providers arising as a result of the Services Act. These obligations will be implemented in Book 6 of the Dutch Civil Code. The information obligations from the Services Act overlap in part with existing, similar obligations on the basis of the regulations for distance buying, e-commerce and unfair commercial practices, but also involve new obligations. The Consumer Authority may enforce compliance with the new regulations by imposing an administrative penalty (of a maximum of €74,000 per violation) and/or by imposing an order for incremental penalty payments.

The legislation that relates to the term of the contract and (automatic) renewal of subscriptions

A private member's bill has been submitted for this purpose, which will bring an end to the automatic extension of subscriptions, with an exception for newspapers, periodicals and magazines. The legislative proposal, which was passed in the Lower House, provides for a change in regulations in respect of General Terms and Conditions (Articles 6:236 and 237 of the Dutch Civil Code). If there is reason for it to do so, the Consumer Authority will exercise its powers.

What is the Consumer Authority hoping to achieve?

The Consumer Authority wishes to increase knowledge among consumers and companies with regard to the new regulations and will actively oversee compliance with these regulations.

Cross-border consumers

Buying an airline ticket in Germany, booking a trip with a British tour operator, buying a kitchen in Belgium – an increasing number of consumers are shopping over the border, whether this is done via the internet or not. This is a positive development in itself, as it is one of the objectives of European unification, but it also means that consumer problems increasingly do not cease at the borders of the Netherlands.

What is the problem?

Nowadays, consumer problems are more likely to be international in nature than they ever were before. Some examples have already been discussed in this Agenda, such as text messaging services, webshops, General Terms and Conditions and guarantees/non-conformity and online ticket shops. Problems that cross-border consumers experience are not just damaging to their confidence, but also distort the European internal market. The Consumer Authority therefore also considers its international activities as an important part of its duties.

What is the Consumer Authority going to do about this?

The Consumer Authority is tackling cross-border infringements of consumer law and is working in close collaboration with its counterparts from abroad on this matter. That begins close to home: with its partners in the Benelux countries. During 2010-2011, the Consumer Authority anticipates further collaboration with regard to guarantees and conformity and the continued sale of admission tickets, etc.

CPC network

Together with fellow enforcement authorities from other European Member States, the Consumer Authority forms the Consumer Protection Cooperation (CPC) Network. Within this network, the European consumer authorities work together to combat cross-border violations of consumer law. Joint action by the European consumer enforcement authorities is therefore benefiting consumer protection throughout Europe.

European enforcement authorities may ask one another for assistance at any time: whether such assistance involves the provision of information or the taking of enforcement measures. If the Consumer Authority receives a request such as this

from another country with regard to activities carried out by providers in the Netherlands, it will answer this request, which is also obliged to do. On the other hand, the Consumer Authority asks European colleagues to take action if companies from these countries operate on the Dutch market and violate consumer protection regulations in the process.

In the case of requests for assistance from the CPC network, these are increasingly (more labour-intensive) requests for enforcement measures. Examples include misleading price indications for holiday offers on the internet and not stating company details on the internet, or stating incomplete business details. Incidentally, many requests come from the countries around us, especially Belgium.

ICPEN

In addition to the work it undertakes within the European network of consumer authorities, the Consumer Authority also collaborates within the international network ICPEN (International Consumer Protection and Enforcement Network). Around 40 countries are now associated with the network, including the United States, Canada, Australia, South Korea, Japan, China and Chile, in addition to European countries. The aim of ICPEN is to promote the collaboration and mutual exchange of experiences and 'best practices' in the field of supervision and enforcement on the one hand, and information on the other. Many consumer problems are known throughout the world. It is therefore useful to exchange thoughts, learn from one another and to take joint action wherever possible. People take it in turns to Chair ICPEN. The Consumer Authority has put itself forward to Chair ICPEN during the period from August 2010 – August 2011.

Cross-border collaboration

Internet sweeps

Internet sweeps are joint and simultaneous investigations on the internet within the European network of enforcement authorities. The consumer problems that have been the subject of internet sweeps include: the online sale of airline tickets, special offers for ringtones and the online sales of electronics. Websites which were potentially suspect have been examined further and enforcement measures followed if necessary. In the autumn of 2009, the Consumer Authority completed a ringtone sweep and it anticipates that the electronics sweep will be completed in the autumn of 2010.

The European Commission has major ambitions with regard to (cross-border) enforcement. This is favourable in order to protect European consumers. The Consumer Authority will therefore continue to actively invest in these activities, including in connection with its national campaigns, thus increasing the effect for the consumer.

What is the Consumer Authority hoping to achieve?

The aim of the activities under this particular heading is to ensure that consumers also receive protection when purchasing goods or services from outside of the Netherlands. Consumers must be able to rely upon the fact that providers of products and services, wherever in Europe they may be established, comply with the statutory regulations for consumer protection. The time when national borders prevented suppliers from being held responsible in the event of unfair commercial practices has now been consigned to the past. Once consumers gain confidence that this is the case, the internal European market should be more buoyant than ever.

Cross-border protection





consumentenautoriteit

