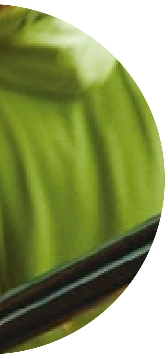







Enforcement and information

Review 2008

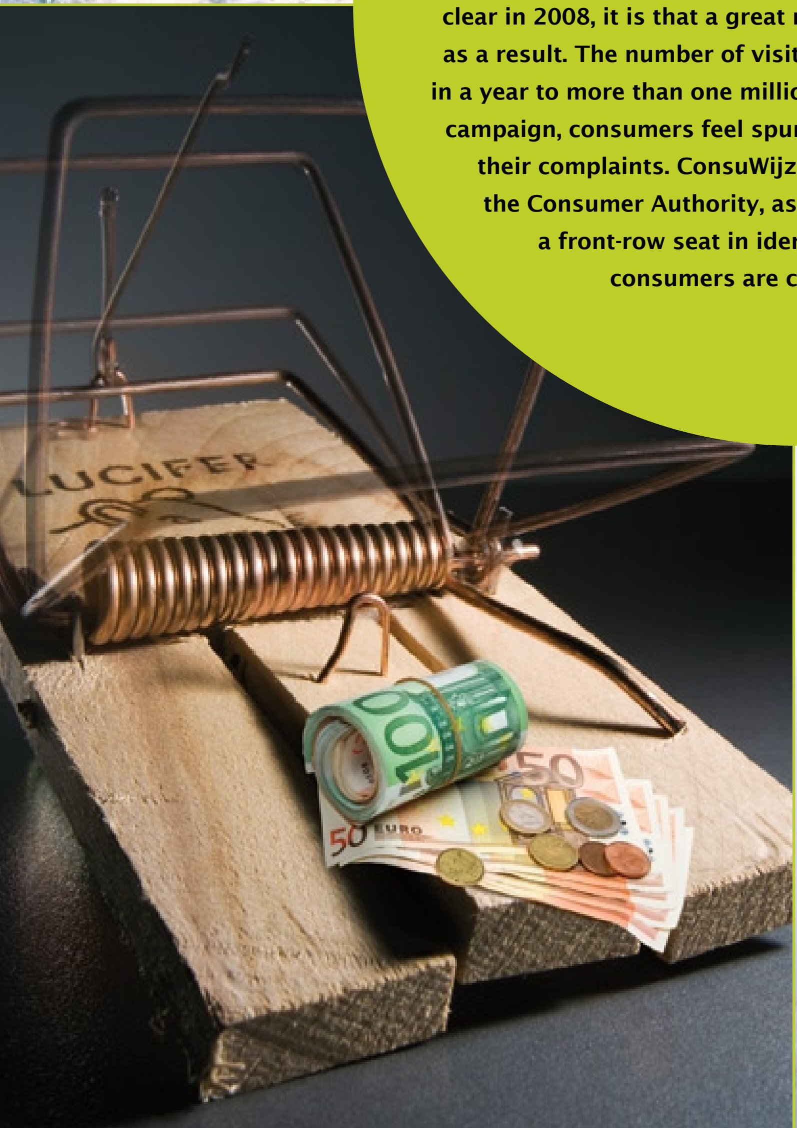
Results


consumentenautoriteit

Contents

Review of 2008

Compliance by businesses with consumer rights still leaves much to be desired. This is not simply a recent observation. But if there is one thing that ConsuWijzer has made clear in 2008, it is that a great many consumers are suffering as a result. The number of visits to ConsuWijzer has doubled in a year to more than one million. Partly thanks to the national campaign, consumers feel spurred to seek justice and report their complaints. ConsuWijzer is indispensable; it gives the Consumer Authority, as an enforcement authority, a front-row seat in identifying problems that consumers are confronted with.



ConsuWijzer still receives many complaints about guarantees and conformity. However, consumer problems are not confined merely to the shop floor. More and more reports concern sales and promotion activities using modern techniques, such as text messaging services, Internet and telemarketing. Fraudulent companies are exceptionally fleet-footed and inventive. They do not hesitate to continue their activities in a slightly modified, but often just as misleading form. In view of the success of the approach and the need for a long-term view, the Consumer Authority sees sufficient reason once again to designate guarantees and conformity and text messaging services as a priority area in 2009.

The picture given by ConsuWijzer is unfortunately not complete. We concluded this following our own investigation in 2008 into unfair commercial practices. Consumers do not even report some problems to an official body, often because of embarrassment or because they believe that nothing can be done about it anyway. This is particularly the case with aggressive and misleading practices that take place out of public view. Examples are sales demonstrations, where consumers are pressurised to buy something or enter into an agreement. The investigation into unfair commercial practices has provided us with much information, including the vulnerability of certain consumer groups. It also gives us more work to do: two themes of the investigation are now priority areas on the 2009 Agenda: telemarketing and sales demonstrations.

The Consumer Authority is well equipped to tackle violations by businesses. This is evident from the results in the area of unfair contract terms and the guarantees given in the travel sector. Our investigation into unilateral contract terms in the home furniture and kitchens sector showed that none of the businesses investigated had their contract terms in order. The Consumer Authority gave the businesses a period of time within which their conditions should be brought in line with the law. We expect this to be achieved in the spring of 2009. Similarly, the investigation into and action taken against businesses in the travel sector which had not adopted proper guarantee measures could be completed in 2008. Nearly all businesses who had failed in this area have now taken appropriate measures; the Consumer Authority is preparing legal proceedings against a number of businesses. The Consumer Authority imposed sanctions five times in 2008 on businesses that did not comply with statutory rules. The chapter 'The Consumer Authority in figures' gives more data on investigations and enforcement in 2008.

The entering into force of the *Unfair Commercial Practices Act* in the autumn of 2008 constitutes a broadening of the legal basis for tackling cases. The Consumer Authority can now take enforcement measures even more effectively, because the law states explicitly what practices are unfair. In other words: it has become easier to identify unfair commercial practices as misleading or aggressive and impose a fine accordingly. The severe penalties should act as a sufficient deterrent to fraudulent businesses. As this is a European directive, these violations can be dealt with at a European level by the enforcement authorities jointly. Cooperation in 2008 under the Consumer Protection Cooperation Directive proved highly successful in tackling cross-border infringements.

This review outlines how we used our supervisory and enforcement powers in 2008, the second year in which we supervised compliance with consumer rights. Our aim for 2009 is once again to do our utmost to fulfil this important task effectively.

***Marije Hulshof**, The Consumer Authority*

Enforcement and information

Enforcement and information

Strengthening the position of the consumer

Since 1 January 2007 the Consumer Authority has been monitoring whether businesses comply with consumer protection legislation. Its mission is: *to promote fair trade between businesses and consumers, based on the economic interests of the consumers.*
The Consumer Authority has a range of powers to investigate infringements and enforce compliance with the law. At the same time the Consumer Authority provides information to consumers and businesses about their rights and obligations.

The Consumer Authority is a division of the Ministry of Economic Affairs, and was set up following a European regulation stipulating that a consumer enforcement authority must be active in all European countries as from 1 January 2007.
According to the regulation, national enforcement authorities must also work together closely in tackling cross-border, collective infringements in order to ensure that European consumers can make purchases safely outside their national borders.
The tasks and powers of the Consumer Authority are laid down in the *Consumer Protection (Enforcement)* Act.

ConsuWijzer
ConsuWijzer aims to strengthen the position of consumers in economic transactions by making them aware of their rights and obligations, providing practical advice and directing them towards organisations and bodies where that can obtain legal redress.

Consumers may make their complaint and seek information via www.consuwijzer.nl, but also by telephone or in writing. ConsuWijzer gives the Consumer Authority a good idea of what is going on in the market, and therefore performs an important signalling function. This information desk of three enforcement authorities – the Consumer Authority, the Netherlands Competition Authority (NMa) and the Independent Post and Telecommunications Authority (OPTA) are brought for organisational purposes under the Consumer Authority.

Cooperation with other parties

The Consumer Authority works intensively with other enforcement authorities, public organisations and self-regulation bodies. The Consumer Authority and ConsuWijzer have made agreements with many parties in cooperation protocols.

The Consumer Authority's powers:

- *monitoring compliance: establishing whether rules have been infringed*
- *in the event of infringement, there may follow:*
  - *a procedure under administrative law: the Consumer Authority imposes a fine and/or a penalty on a daily basis*
  - *or an enforcement procedure under civil law: the Consumer Authority will apply to the court for a decision*
- *with less serious infringements, sometimes a warning will suffice*
- *under certain circumstances, it is possible for a business to promise that it will stop the infringement; in that case the business must at least admit that it had infringed the rules and that it has taken demonstrable measures to end the infringements*
- *cases which may also potentially constitute a criminal violation are passed on to the Public Prosecution Service*

The Consumer Authority cooperates with public parties through the 'Public Consultation', which it conducts with consumer and business organisations on a regular basis. The Consumer Authority's annual agenda and the Annual Report (review of the past year) are discussed at such moments.

Dutch Advertising Code Authority
Complaints about misleading advertising are in principle dealt with first by the Dutch Advertising Code Authority (SRC), even though the Consumer Authority reserves the right to deal directly with serious forms of misleading advertising.
In the two years of its existence the Consumer Authority has submitted nine complaints to the SRC. All of these complaints were declared well-founded. A judgment by the SRC leads in most cases to the advertisement concerned being modified. If the advertiser fails to do so or repeats the offence, the Consumer Authority can exercise its enforcement powers. This did not occur in 2008.

Other enforcement authorities
A few other enforcement authorities also have powers to act against infringement of consumer rights. These are, for example, the Authority for the Financial Markets (AFM), OPTA and the NMa. In cases where both the Consumer Authority and other enforcement authorities are authorised to take action, in principle the Consumer Authority will not do so. Here too, cooperation protocols have been drawn up. The Consumer Authority worked closely with other bodies in 2008. Consumer problems that needed supervision and enforcement were particularly prevalent in the electronic communications sector. Cooperation with the AFM was also intensive in 2008 due to the introduction of the new *Unfair Commercial Practices Act*, in which the Consumer Authority has been appointed as the generic enforcement authority, while the AFM is the enforcement authority for the financial markets.

In 2008 the Consumer Authority, together with other market enforcement authorities, signed a statement of intent to set up the *Markttoezichthoudersberaad* (Market Enforcement Authorities Consultation). This consultation, an initiative of the NMa, forms the basis for a structural and multilateral cooperation between the participating market enforcement authorities – NMa, OPTA, NZa, AFM and the Consumer Authority – to increase the exchange of knowledge, experience and information on the subject of market supervision. This will increase the efficiency of supervision, which in turn will reduce the supervisory burden.

International cooperation
The Consumer Authority comes in contact with many partners at an international level. Firstly, the Consumer Authority, together with colleague authorities from other EU member states, tackles cross-border violations at a European level, in which it forms part of CPC (Consumer Protection Cooperation), the network of European consumer enforcement authorities. The enforcement authorities may ask each other to provide information on or enforcement action against cross-border violations of consumer law. The Consumer Authority acts as the Liaison Office in the Netherlands for coordinating such requests. European cooperation started at the start of 2007 and is now well established. *(see page 24).*

In addition to this international network, there is a separate cooperative venture between enforcement authorities of the Benelux countries. In 2008 they investigated jointly the contract terms of internationally operating businesses in the home furniture and kitchens sector.

Partners in the Public Consultation:
Consumers Association
ECC-net
Legal Aid and Advice Centre
Dutch Federation of Small and Medium-Sized Enterprises
Consumer Ombudsman Foundation
Dispute Resolution Board Foundation
Dutch Advertising Code Authority
Confederation of Netherlands Industry and Employers VNO-NCW

New European directive

At a global level, ICPEN (the International Consumer Protection and Enforcement Network) is also active. ICPEN is the worldwide network of consumer authorities. About 40 countries are now affiliated to the network, including European countries and the United States, Canada, Australia, Chile, China and Japan. ICPEN's aim is to promote cooperation and the mutual exchange of experiences and best practices in supervision and enforcement, as well as information to consumers. Many consumer problems are familiar ones around the world, and so it is useful to exchange information on them within the ICPEN, to learn from each other and where possible to take joint action.
Each year attention is given globally to misleading trading practices during Fraud Prevention Month. An Internet Sweep is also carried out each year. This is a simultaneous search action on the Internet into potential infringements.

Legal developments

Provision of information to consumers
The State Secretary of Economic Affairs has drawn up an instruction for the provision of information by the Consumer Authority about practices that may adversely affect consumers, without an infringement having yet been established. If there is an acute and genuine risk to consumers and/or demonstrable economic damage and there is a reasonable suspicion of an infringement, the Consumer Authority may warn consumers quickly and efficiently about the practices of an individual business in order to prevent any damage. The instruction was published on 26 March in the Government Gazette no. 59. The Consumer did not exercise this new power in 2008.

Penalty maximum
As from 1 January 2008 the maximum penalty that the Consumer Authority may impose for each infringement has been increased from 67,000 euro to 74,000 euro. This is a consequence of an amendment in the Criminal Code, which also affects the Consumer Protection (Enforcement) Act, from which the Consumer Authority derives its powers.

Unfair Commercial Practices Act
On 15 October 2008 the Unfair Commercial Practices Act entered into force. This act prohibits unfair commercial practices with the promotion, sale and supply of goods and services to consumers. The new rules are based on a European directive and are enforceable in all 27 member states of the European Union. If these rules are infringed, the Consumer Authority has the power to impose a fine of up to a maximum of 450,000 euro or a penalty on a daily basis in case of non-compliance. The same applies to the AFM, which enforces the Unfair Commercial Practices Act in the financial sector.

Results

This section sets out the Consumer Authority's activities in 2008 and what it achieved to strengthen the position of the consumer.

ConsuWijzer

In 2008 ConsuWijzer's website was visited 1,050,000 times, the first time it has exceeded one million visits annually and double the number of visits in 2007.

A guide through the mass of quality marks
A new feature at ConsuWijzer since 2 April 2008 has been the 'quality mark function'. This allows consumers themselves to assess the reliability of the many quality marks in the Netherlands. The information provides answers to questions such as: who is the owner of this quality mark, what does this quality mark stand for in the opinion of the owner, and how reliable is the monitoring of products and services that bear this quality mark? The independent Accreditation Board assesses each quality mark before it is placed on ConsuWijzer, which in turn offers owners of quality marks the opportunity to distinguish themselves from their competitors. This makes the quality marks submitted for assessment and publication extremely transparent for the consumer. The number of quality marks submitted for this function continues to increase.

EnergieWijzer
In November the EnergieWijzer was introduced in ConsuWijzer. This tool allows consumers to compare energy companies on their products and service (not on price). For example, it is possible to see whether companies send their bills on time, whether they are easy to contact by telephone, and what products they offer.

ConsuWijzer: Know what you are entitled to
Under this motto a campaign was launched in the autumn through Postbus 51 (the Dutch Government's central information point) on the radio, television and Internet to make consumers aware of their rights when purchasing products and services and to increase public knowledge of ConsuWijzer further. The campaign was successful and ensured a significant increase in website visits and the number of telephone calls. Following the campaign, visits to the site and the number of telephone calls remained at a structurally higher level than before the campaign.

ConsuWijzer even more customer friendly
In order to give proper help to as many consumers as possible, the texts on ConsuWijzer have been rewritten in more straightforward language.
The website has also been made compatible for BrowseAloud software. This software reads the text and marks on the screen each word as it is read out. People with reading difficulties will understand the text better through a combination of reading and listening. The read-aloud function was activated

Of all the reports made to ConsuWijzer in 2008, the following subjects came up most frequently:

Top 5 reports to ConsuWijzer 2008

1. *guarantee and conformity*
2. *advertising for customers and switching energy companies*
3. *advertising for customers and switching telecom providers*
4. *unclear energy bills*
5. *text messaging services (including ringtones)*

Top 3 reports in Consumer Authority's area of supervision

1. *guarantee and conformity*
2. *text messaging services*
3. *telemarketing*

This picture is largely the same as that in 2007.

> 1,000,000 visitors

Results

Clients ConsuWijzer satisfied

by the State Secretary of Economic Affairs during a guest lesson for students at the ROC Mondriaan in The Hague during the '*Week van de Alfabetisering*' (Literacy Training Week).

Consumers who have submitted a question or complaint to ConsuWijzer were asked how satisfied they were with the service they received. The average score awarded to ConsuWijzer for all elements (telephone, mail, letter, website) was 7 out of 10. Consumers who had contacted ConsuWijzer by telephone were the most satisfied, giving the service a score of 7.9.Telephone contact gives the consumer a listening ear. The reply given by the staff member at ConsuWijzer also directly answers the consumer's question. Most consumers are positive about the website. Consumer satisfaction is determined to a significant extent by the type of question or problem. ConsuWijzer has taken action to ensure that the service matches the wishes of the consumer even better. The customer satisfaction survey was repeated at the start of 2009.

Online communication developed further

The website is ConsuWijzer's most important channel of communication. In 2008 ConsuWijzer invested in its online communication in order to inform as many consumers as possible about their rights. The intention is to develop a more interactive website, while retaining its independence and reliability. Interactivity is important, because the Consumer Authority obtains valuable supervisory information through ConsuWijzer. The investment in the website has proved to be worthwhile, as is evident from the growing number of visits to the site. In addition, ConsuWijzer carried out two pilots in the area of community marketing in collaboration with the websites www.scholieren.com and www.plusonline.nl. A community is an online community where participants exchange knowledge, discuss or work together on a particular subject. By taking part in these communities, ConsuWijzer was able to provide consumers with relevant information in their own online environment, while at the same time collecting supervisory information and maintaining contacts with specific target groups. The pilots form a good basis to build on in 2009.

Supervision and enforcement

A total of 211 supervisory investigations were completed in 2008, of which 160 were national and 51 international.
91 investigations were stopped due to insufficient reason for enforcement. 90 of these involved travel guarantees. One reason was that tour operators had obtained SGR membership in the meantime.
76 investigations (53 national and 23 international) were completed after the company concerned had ceased its infringement after action by the Consumer Authority. 28 international investigations involved gathering information for authorities from other member states. These investigations were concluded with the provision of the requested information to the foreign authorities. In ten investigations a complaint was submitted to the SRC. In six cases, the Consumer Authority drew up a report.
The Consumer Authority imposed a sanction in five cases in 2008.

Below follows a report of the activities and results as part of the 2008 Agenda. The aim of the Agenda is to deploy manpower and resources specifically in those areas most needed by the consumer, and where the Consumer Authority can have the greatest impact. Apart from this Agenda, the Consumer Authority tackles cross-border cases in cooperation with other European consumer enforcement authorities. Each year there are also 'other' cases, particularly incidents which require the Consumer Authority to take immediate action.

2008 Agenda

Contract terms

What is the problem?

Consumers must have confidence that the conditions under which they make a purchase comply with the statutory rules. This confidence is even more vital where large sums of money are involved. In 2007 the Consumer Authority investigated unreasonable conditions in the white goods and electronics sector and demanded that companies amend conditions that were unsatisfactory. Another sector about which ConsuWijzer receives many complaints is the home furniture and kitchens sector. Here too, many consumers are confronted with unreasonable conditions.

What has the Consumer Authority done about this?

In 2008 the Consumer Authority investigated unilateral contract terms in the home furniture and kitchen sector. These are conditions that a company has drawn up itself. With bilateral conditions, the interests of the consumer are taken into account, because they have been drawn up in consultation with representatives of businesses and consumers. This applies, for example, to the general conditions of the *Centrale Branchevereniging Wonen* (CBW). Companies that are affiliated to the CBW are obliged to use these bilateral general conditions.

Examples of violations:

- *stipulations that require the consumer to pay the full purchase price in advance;*
- *stipulations allowing the company to have unclear or unreasonably long delivery times;*
- *interim price increases;*
- *exemption from damage by third parties (e.g. the company accepts no responsibility for damage if the goods are delivered by a transport company).*

Contract terms in the home furniture and kitchens sector are also on the agenda of enforcement authorities at Benelux level. Many cross-border purchases are made in this sector and the same problems occur in all three countries. It has been decided on a joint campaign to ensure that consumer rights are respected when making cross-border purchases. The contract terms of sale of home furniture and kitchens companies with branches in the Benelux are inspected in each country.

The Consumer Authority investigated the contract terms of ten companies in the home furniture and kitchens sector, with a total of 307 branches in the Netherlands. Four of the ten companies are larger chains, together accounting for 184 branches in the Netherlands, as well as branches in Belgium and/or Luxembourg. The remaining 123 branches are of companies active only in the Netherlands.

The Consumer Authority has given the companies a period of time to amend their conditions, which they are expected to have done by the end of the first quarter of 2009.

What is the result?

None of the companies concerned had contract terms that fully complied with the law.
The Consumer Authority uncovered many violations in all ten companies.

Follow-up investigation

Guarantees in the travel sector

What is the problem?
A provider of package tours is obliged by law to cover the financial risk for the consumer, such as if the tour operator goes bankrupt. A package tour is a combination of holiday services arranged (and paid for) beforehand, which comprise at least transport and accommodation, or one of these plus another tourist service. Most travel organisations have covered the financial risk through the Travel Compensation Fund, or *Stichting Garantiefonds Reisgelden* (SGR). A relatively small number of organisations have taken alternative measures or no measures at all and are sometimes insufficiently aware of this obligation. The financial risk to consumers is great. If a tour operator goes bankrupt, the consumer who has booked and paid for his holiday with that company will lose all his money.

Results

What has the Consumer Authority done about this?
Following its survey of guarantees in the travel sector in 2007, the Consumer Authority carried out a further investigation in 2008 into package tour operators which had taken inadequate or no measures. Of this group, it called upon the companies with the largest turnover, 106 in total, to fulfil their obligation.
In order to inform consumers about their statutory rights and the importance of keeping up to date with developments, detailed information is available on ConsuWijzer. In addition, in 2008 the Consumer Authority organised a free publicity campaign through such means as door-to-door newspapers and media for travel lovers. The main message was: know whom you are booking a holiday with and check that this tour operator or travel agent has joined a guarantee scheme.

What is the result?
Virtually all companies have now taken measures, either via the SGR or otherwise.
A small number of companies did not respond satisfactorily to the warning by the Consumer Authority. Two court cases are being prepared at the time of publishing this review.

The Consumer Authority's activities have raised awareness among businesses and consumers of the obligation to ensure a travel guarantee is in place. Businesses should now be aware of their statutory obligation to offer the consumer financial security. Consumers can now know that they are entitled to this security and that they should check this when booking a holiday. The travel sector is constantly changing, and so the Consumer Authority will continue to follow events closely, also through reports received by ConsuWijzer.

Information

The Netherlands Consumer Authority has run a free publicity campaign on the subject of guarantees provided by the travel industry. This campaign had the following message: before you book, check what kind of guarantee the tour operator has put in place for travellers. Articles were placed in more than 30 different media, with a joint circulation of more than four million copies. These media included: Reizen.nl, Dalili (free Dutch-Arab newspaper) and Ufuk (Dutch-Turkish monthly magazine).

New code of conduct

Text messaging services

What is the problem?
There is a great deal of advertising for text messaging services on the Internet and television. These are services that can be purchased via mobile phone, such as ringtones, wallpapers and games. If payment of a subscription is involved, the advertisement must never suggest that the services are free. Unfortunately this happens only too often. In addition, providers must make their identity known to consumers, an obligation which is often ignored. Many consumers, including children and young people, fall victim to this. They take out a subscription unwittingly and then find it difficult to stop it.

In 2007 an Information Hotline for text messaging services was set up on ConsuWijzer. Once again in 2008 there were a vast number of complaints on this subject, despite the fact that a new Code of Conduct for Text Messaging Services entered into force in May 2008. The sector did this under pressure from the State Secretary of Economic Affairs, the aim being to provide the consumer with even better protection. The newly set up *Stichting SMS-Gedragscode* (Text Messaging Code of Conduct Foundation) ensures that all the parties involved abide by the new Code of Conduct.

Following the introduction of the new code of conduct, on 1 July 2008 the text messaging services filter became available on the Internet, which allows the consumer to block text messaging subscription services.

Two sanction decisions

What has the Consumer Authority done about this?
The Consumer Authority, together with OPTA, closely monitors the partners in the *Stichting SMS-Gedragscode* to ensure that they actually abide by the agreements in the code of conduct.
In 2008 the Consumer Authority focused its attention on the way in which text messaging service providers inform consumers about taking out contracts. It has used a variety of enforcement tools for this purpose.

Code of conduct for text messaging services
The Consumer Authority calls on operators, service providers and gateways to honour their responsibilities. According to the code of conduct, they must check sites on a random basis to check compliance with the code of conduct. Sites that act in conflict with the code must be modified. As a last resort the service can be shut down. In 2008 the Consumer Authority submitted twelve complaints about text messaging offers to the Stichting SMS-Gedragscode. The Consumer Authority itself may also pursue an enforcing role against providers who do not change their conduct voluntarily.

Reports and sanction decisions
In 2008 the Consumer Authority drew up three reports against text messaging service providers. Two of them resulted in a sanction decision in 2008:

The company Wizz Mobile was fined a total of 76,000 euro for its poor information to consumers. It placed its banners on websites that targeted mainly children and young people, such as www.spele.nl and www.clipjes.nl. Consumers thought that they had signed up for free ringtones, but actually received each week three ringtones costing three euro apiece. It was difficult to cancel the subscription, because it was not clear where and with whom it could be done. As well as the fine, the Consumer Authority imposed on the company a penalty on a daily basis to compel it to put its provision of information in order. This decision is now final.

International investigation SMS services

OX-2 International was fined 85,000 euro. Here too, the Consumer Authority imposed a fine on a daily basis in order to bring an end to the violations it had observed. The company managed a number of websites which displayed advertising for text messaging services from providers of ringtones or quizzes. In order to qualify for a prize or a ringtone, visitors had to enter their MSN name and password. OX-2 International then used this information to send the contact persons on the MSN address list unsolicited advertising for free ringtones or quizzes. In doing so, it appeared as if these emails originated from a known source. In order to receive the 'free' ringtone or win the prize, the recipient had to take out a paid text messaging subscription. The company has lodged an appeal against this decision.

SMS-filter
The website www.smsdienstenfilter.nl is an initiative of the SMS Code of Conduct Foundation (*Stichting SMS-Gedragscode*). The SMS Code of Conduct Foundation is supported by all mobile telephony providers, SMS service providers and content providers. The website makes it possible to block your mobile telephone number for SMS subscription services. You can also block the mobile number used by your minor child.

Internet sweep
The Consumer Authority monitored 32 popular websites for children and young people to ensure that the commercial information offered (usually in the form of banners) complied with the requirements. The investigation formed part of a coordinated Internet investigation within the European network of consumer enforcement authorities.
The investigation revealed that much was wrong with these sites, and led to the Consumer Authority submitting complaints about five providers to the *Stichting SMS-Gedragscode* and about three providers to the Dutch Advertising Code Authority.

What is the result?
In 2008 the Consumer Authority imposed the first fines on companies found to be guilty of violating the rules. The SRC declared the complaints of the Consumer Authority well-founded.
The new code of conduct for text messaging services is a new and better tool for ensuring suppliers and providers honour their obligations. It is expected that extra efforts will be needed to bring an end to fraudulent practices in this sector. The number of complaints that ConsuWijzer received in 2008 confirm this picture. As it is unlikely that the problems with text messaging services will be solved very soon, the Consumer Authority will continue to monitor closely compliance with the rules. It will not hesitate to act in an enforcing capacity against providers who do not comply with the rules and will exert pressure on those parties that have signed the code of conduct.
Since 15 October 2008 the Consumer Authority, as an enforcement authority under the Unfair Commercial Practices Act, has been able to target its activities against violations of a code of conduct. This Act states, amongst other things, that a business that claims to endorse a code of conduct but does not act in accordance with it is in breach.

Guarantee and conformity

What is the problem?
Questions and complaints about guarantees and conformity continue to head the list of complaints received by ConsuWijzer. Not only consumers, but businesses too find the rules difficult to apply, especially if it concerns defects to expensive products after the warranty period has expired. Because: what is the minimum length of time that such a product is expected to last? And who pays for the costs of repair? Businesses in the electronics and household furnishings sector in particular are the cause of many complaints to ConsuWijzer about compliance with guarantee and conformity rules. This subject had been on the 2007 Agenda, but in view of the undiminishing number of complaints, it was put on the 2008 Agenda once again.

What has the Consumer Authority done about this?
During the past year the Consumer Authority has carried out an investigation into electronics firms, particularly computer stores. The investigation focused on businesses which, partly on the basis of complaints received by ConsuWijzer, were suspected of not complying with the statutory rules for guarantees and conformity, such as not accepting any liability whatsoever for complaints about the product after the guarantee period had expired, or by referring consumers with complaints to the manufacturer. As far as the home furnishings sector is concerned, the guarantee rules were scrutinized as part of the investigation into contract terms. The results of this investigation are discussed as part of the priority area of contract terms.

At the same time the Consumer Authority continued its information campaign on this subject. In 2007 the information was directed at the consumer, while in 2008 the Consumer Authority targeted businesses in particular. A highly successful free publicity campaign was organised, focusing on media for sellers in the ICT and electronics sector. The subject was also discussed at meetings with businesses from the electronics sector and the home furniture and kitchens sector. The Consumer Authority also established contacts with the Central Industry Board for Retail Trades (HBD), one of whose tasks is to develop educational resources for employers and employees in the retail sector.

Also on the 2008 Agenda was an investigation into warranty insurance. This is an additional guarantee that some businesses offer in addition to or as an extension of the statutory guarantee. The Consumer Authority is investigating how the contents of the warranty insurance offered compare to the statutory rights of the consumer. The results will be published in early 2009.

What is the result?
Following complaints received by ConsuWijzer, the Consumer Authority carried out an investigation at Dynabyte, a computer chain with 47 branches. The Consumer Authority concluded that the information on the website, the contract terms and in-store practices were not always in accordance with the rules. Dynabyte has declared in writing that from now on it will abide by the law. This means that the consumer who buys a product from Dynabyte will have his statutory rights honoured if the product is unsatisfactory or breaks down earlier than could have been expected under conditions of normal use. In addition, the undertaking contains a number of clear rules for consumers who bring a defective product back to a Dynabyte store. Similar investigations are in progress at other businesses but have not yet been completed.

The Consumer Authority launched a co-production with the HBD to develop an e-learning module on guarantees and conformity. The module is intended for employers and employees in the retail sector and for students of retail subjects at VMBO and MBO. This involves training with the aid of the computer on the most important guarantee rules. The HBD is developing the module and is supplying the network for distribution among a broad target group, while the Consumer Authority is providing the subject expertise. The module is expected to be available in the summer of 2009.

Misleading and aggressive

Unfair commercial practices

What is the problem?
The *Unfair Commercial Practices Act* entered into force on 15 October 2008. This Act prohibits misleading and aggressive commercial practices with the promotion and sale of goods and services to consumers. In the event of a violation, the Consumer Authority may impose fines of up to a maximum of 450,000 euro per violation. The new rules are valid for both goods and services, and apply to all economic sectors.

Consumers can find themselves severely out of pocket through unfair commercial practices.
For example, they receive a so-called 'free' product or have won a so-called 'prize' in the lottery. Or they are approached in an aggressive manner by a telephone salesperson or have to telephone an excessively expensive information number. What these practices have in common is that through misleading information, an aggressive approach or because important information is not mentioned, the consumer unwillingly decides to buy a product or make use of a service. He would not have done this if he had received the correct information or had not felt he had been pressurized into doing so.

The Consumer Authority had the following unfair commercial practices on its Agenda for 2008:
- Misleading and aggressive sales tactics;
- Misuse of quality marks and codes of conduct.

What has the Consumer Authority done about this?
Since the new Act only entered into force in the final quarter of 2008, the Consumer Authority has only been able to exercise its new enforcement powers to a limited extent. The consequence was that the implementation of the OHP point on the agenda could only be started much later than had been anticipated when the Agenda was drawn up.

As part of its Agenda the Consumer Authority carried out an investigation into three kitchen companies that are members of the CBW (*Centrale Brancheverenigîng Wonen*) and are obliged to abide by the CBW rules. These companies claim to follow the CBW's rules for deposit payments, but do not do so in practice. According to the new Act, this is prohibited. A company that claims to follow the agreements laid down in a code of conduct or quality mark but then does not act accordingly is in breach. In that case the Consumer Authority is authorized to take action. The investigations will be completed in 2009.

Unfair Commercial Practices Act
The new act prohibits suppliers from conducting unfair commercial practices with the promotion, sale and supply of products and services to consumers. The rules are valid throughout the European Union.

The Unfair Commercial Practices Act describes in detail what sales practices are misleading and aggressive, and therefore prohibited. A number of examples:
- *Misleading advertising*
- *Improperly bearing a quality mark or subscribing to a code of conduct*
- *Failure to comply with an obligation contained in a code of conduct*
- *Quoting prices which do not include all additional costs*
- *Failure to give vital information on the features of the product*
- *Offering 'teasers', without a realistic chance that the product itself will be available*
- *Aggressive targeting of new customers*
- *Promoting a product as being 'free' even though there are actually costs involved*

Results

Special offers

Investigation Unfair Commercial Practices

What has been done in the run-up to the new Act?

Fraud Prevention Month
As part of the annual international Fraud Prevention Month, an initiative of the International Consumer Protection and Enforcement Network (ICPEN), the Consumer Authority organised in the spring a campaign about sales tricks. The campaign targeted the general public, particularly older people (55+ yrs) and young people (12-20 years). Since then, Consuwijzer has been running a special campaign on this subject, under the motto '*Laat je niet beetnemen*' (Don't be duped). It gave away to young people 5,000 copies of a special Lucky Luke cartoon entitled '*Sluipend bedrog*' (sneaky tricks), in which the poor lonesome cowboy Lucky Luke takes on consumer fraudsters. The cartoon is an initiative of the FOD Economie, the Belgian Consumer Authority, in cooperation with the Consumer Authorities of the Netherlands and Luxembourg. An extensive publicity campaign was also launched to generate as much free publicity as possible for recognising sales tricks. Almost 1,000,000 consumers from the target groups were reached through the public media.

Investigation
In preparation of its new supervisory task, the Consumer Authority conducted an investigation into the nature, extent, target and victim groups of unfair commercial practices in the Netherlands. The investigation was inspired by similar investigations in Great Britain, Canada and the United States. Some 70,000 respondents participated in this investigation of the Consumer Authority. The following practices were investigated: so-called free products, misleading health claims, misleading lotteries, misleading prize draws, misleading or aggressive telephone sales, misleading or aggressive doorstep selling practices, too expensive telephone numbers, unsolicited deliveries, pyramid constructions, misleading holiday clubs, misleading and aggressive sales during bus tours.

This investigation showed that the total loss to consumers as a result of these unfair commercial practices was at least 579 million euro during the past year. More than two million consumers have fallen victim to an unfair commercial practice. The average loss to each victim is 217 euro a year. Particularly striking is that the majority of consumers do not report their complaint to an official body. The results of the investigation were presented in the presence of the State Secretary of Economic Affairs and a representative of the European Commission and received much media attention. The investigation provides the Consumer Authority with a valuable insight into the target and victim groups for each practice. Age appears not to play such a significant role as suspected. The investigation showed that everyone can fall victim to unfair commercial practices. However, certain groups are particularly vulnerable to certain practices. The results of the investigation were taken into account when selecting priority areas for 2009.

Brochure
For businesses, the Consumer Authority has developed a brochure with detailed information about the new Act, illustrated with clear examples. The attention of business owners is drawn to it through their trade magazines. The brochure can be downloaded via the Consumer Authority's website.

Matters not on the Agenda

National matters

Fine for UPC
The Consumer Authority imposed a fine on UPC Nederland B.V. totalling 303,000 euro for the way in which the company offered digital TV subscriptions via doorstep selling and telephone sales. In addition, UPC was required, on pain of a penalty imposed on a daily basis, to make clear from now on at the start of every telemarketing conversation the commercial purpose of the telephone call.
In order to encourage the use of digital television, UPC offered existing subscribers the mediabox, which is needed in order to receive the digital television signal. A digital TV subscription was attached to this deal, which consumers were then charged for, possibly after a free trial period. Following the countless complaints to ConsuWijzer about this mediabox the Consumer Authority began an investigation, which revealed that when selling digital TV subscriptions UPC did not explicitly ask the consumers for permission before the mediabox was offered and the digital TV subscription was provided. UPC also failed to inform the consumer about the option of cancelling the agreement within seven working days. UPC contravened the Doorstep Selling Act when canvassing for new subscribers, particularly because the information was sometimes misleading or incorrect and important information was not mentioned.
UPC lodged an appeal against the decision of the Consumer Authority, which will take a decision on this appeal in early 2009.

Garant-O-Matic must modify mailings
From now on the company Garant-O-Matic must keep to the rules for providing consumers with information. Through its catalogues Garant-O-Matic sells health, beauty and gift articles to consumers. In the past, the company wrongly gave the impression in its consumer mailings to consumers that they had won a large cash prize, whereas in actual fact they only had a chance of winning a prize or were entitled to a small part of it. The Consumer Authority received reports of this through ConsuWijzer and an enforcement request from the Belgian enforcement authority in connection with the activities of the company targeting Belgian consumers. The Advertising Code Committee had also reprimanded the company previously in connection with its activities. Garant-O-Matic acknowledged that it had made mistakes in the past and has made improvements in the provision of information about promotional campaigns. The company also promised that its future activities in both the Netherlands and Belgium would comply with the statutory rules for promotional campaigns.

Fine for Pretium Telecom
On 4 December 2008, the Netherlands Consumer Authority imposed fines amounting to a total of € 87,000 on Pretium Telecom B.V. for the way in which the company offered home telephone line rentals to consumers via telephone sales in 2007. Subject to the imposition of an order for incremental penalty payments, Pretium was also ordered to ensure that its acquisition practices were brought into line with the rules.
Pretium Telecom was using external call centres to approach consumers unannounced on a large scale, offering them a home telephone line rental subscription. After receiving many reports and information – via the ConsuWijzer information desk, for instance – the Netherlands Consumer Authority investigated the acquisition practices used by Pretium.

Following its investigation, the Netherlands Consumer Authority concluded that, at the beginning of its calls, Pretium failed to clearly indicate the company on behalf of which the calls were being made and what the object of the call was. Added to this, insufficient information was provided during calls about the nature of the line rental and about how consumers could cancel it. Finally, termination options were not stated correctly in the welcome letter received by consumers at a later date. This meant that the company was violating the rules applicable to remote selling.

Results

The institution of proceedings against publication meant that the decision made by the Netherlands Consumer Authority was only published in March 2009.

Pretium Telecom lodged a notice of objection against the decision arrived at by the Netherlands Consumer Authority.

Appeal by Naturpost
Naturpost kreeg van de Consumentenautoriteit The Consumer Authority imposed a fine on Naturpost in 2007 totalling 88,000 euro, because the company contravened consumer rules on clear, understandable and unambiguous information about the nature and content of the agreement as well as the way in which the consumer can cancel the agreement. Naturpost lodged an appeal against the decision of the Consumer Authority. Its appeal was largely denied. However, based on the facts presented in the case, the fine was reduced by 16,000 euro. Naturpost has not lodged a further appeal, and as a result the decision is final.

Objection by Post Garant B.V.
The Consumer Authority imposed a fine on PostGarant B.V. (previously Fitanova) totalling 130,000 euro. In addition, on pain of a penalty imposed on a daily basis the company was required to improve the information for consumers on the website and stop sending unsolicited products. PostGarant invited consumers through the Internet to complete a form to order a trial pack or welcome pack. The consumer then found that he/she had taken out a subscription for follow-up deliveries, with the associated costs, which were collected by automatic direct debit. Furthermore, the consumer was not informed about the seven-day cooling off period for Internet purchases. The business information was also incomplete, making it difficult to contact PostGarant.
These practices violated the consumer rules for clear, understandable and unambiguous information about the nature and content of the agreement as well as the way in which the consumer could cancel the agreement. The consumer must also receive sufficient information in advance about the party with which he concludes the agreement, particularly because the company is paid by automatic direct debit. PostGarant B.V. lodged an appeal against the decision of the Consumer Authority, and the appeal was largely denied. However, based on the facts presented, the fine was reduced to 120,000 euro. PostGarant has lodged an appeal against this ruling.

Other matters
As well as the above-mentioned matters, the Consumer Authority has conducted four proceedings on requests concerning publication, whether or not under the Government Information (Public Access) Act. These were civil and administrative proceedings.

International cases

The Consumer Authority increasingly has to deal with the international dimension in fulfilling its tasks. International cases demand more and more manpower and capacity.

European collaboration

European cooperation
After an initial start-up phase, cooperation within the European CPC (Consumer Protection Cooperation) network is now working well. Since the start of 2007 more than 400 requests for assistance (provision of information or enforcement activities) have been exchanged. The Consumer Authority was also the leader in Europe in 2008 with regard to the number of requests for assistance received.

Consumer enforcement authorities from other European member states called on the Consumer Authority 118 times in 2008. These were:
- 55 ‘alerts’. An alert is a signal/report of one enforcement authority to the other about an investigation in progress that may have consequences for the other enforcement authority. The alerts concerned aggressive sales techniques for holiday clubs, unsolicited subscriptions and incorrect price information;
- 36 enforcement requests, particularly those involving failure to state, or not state fully, business information on websites;
- 27 information requests, particularly to obtain business information and PO box details. Just as in 2007, foreign companies regularly use Dutch PO boxes for sending on post to the client.
- 65 of the 118 cases originated from Belgium, with England taking second place.

The Consumer Authority dealt with a total of 28 information and 23 enforcement requests in 2008 (the figures include requests remaining from 2007).

From the Netherlands, 12 cases were sent through the Consumer Authority to other member states:
- 4 alerts, one of which concerned a businessman who sold magazines and books for children through street selling and a website. These were periodic deliveries. It was only possible to cancel the subscription on unreasonable conditions. Furthermore, the method for acquiring clients on the street was felt to be very intrusive and misleading.
- 6 enforcement requests, including one involving a lack of price transparency at an airline and failure to comply with a duty of information on websites.
- 2 information requests on spam, both at the request of the OPTA.

Coordinated enforcement

Apart from the fact that requests for assistance are made and dealt with, the network is also more proactive in tackling consumer problems.
For example, to date two joint search campaigns in the area of e-commerce have been carried out. In 2008 these were online offers for ringtones. The Consumer Authority included this subject as part of its priority area of text messaging services. The initial findings of the joint European campaign showed that the problem of text messaging service offers (misleading advertising, non-compliance with the obligation to provide information) is also a problem in other European countries. That is why coordinated European enforcement activities against violations in the area of text messaging services will be continued in 2009.

Finally, staff of the Consumer Authority took part in a European project in 2008 in the area of e-commerce. This will lead in 2009 to an instrument to inform consumers about issues they need to be aware of when making purchases on the Internet.

European requests
Received
- 55 alerts
- 36 enforcement requests
- 27 information requests

Sent
- 4 alerts
- 6 enforcement requests
- 2 information requests

The Consumer Authority in figures

Supervision

National

Investigations started in 2007 and continued in 2008	55
Investigations started in 2008	165
Investigation stopped due to no/insufficient severity of infringement	91
Investigation stopped due to infringement ending after action taken by Consumer Authority	53
Report	6
Ruling by Advertising Code Committee following complaints by Consumer Authority	9
Ruling on appeal by the Advertising Code Committee	1
Total number of national investigations completed	**160**

International

Alerts received from EU member states in 2008	55
Alerts sent by the Netherlands in 2008	4
Enforcement requests received in 2007 and continued in 2008	2
Enforcement requests received from EU member states in 2008	36
Enforcement requests from EU member states completed by Consumer Authority	23
Enforcement requests sent by the Netherlands	6
Information requests received in 2007 and continued in 2008	10
Information requests received from EU member states in 2008	27
Information requests from EU member states completed	28
Information requests sent by the Netherlands	2
Total number of international investigations completed	**51**

Enforcement

Undertakings	2
Sanction decisions	5
Decisions on objection after advice from BAC	2
Other decisions on objection	1

ConsuWijzer in figures

Telephone calls	54.000
email	37.000
letters	1.800
Website visits	1.050.000

Investigations 2008

Priority Area	From 2007	2008
Contract terms	8	
Contract terms kitchen and home furniture sector		14
Guarantees in travel sector		107
Guarantee and conformity	7	9
Internet commerce	30	
Text messaging services		16
Other cases	4	10
SRC complaints	6	4
Unfair commercial practices		4
Enforcement requests		1
Total	**55**	**165**

Enforcement requests from EU member states

Basis	From 2007	2008
Doorstep selling		
E-commerce		25
Guarantee		
Distance selling		2
Timesharing		
Misleading advertising	2	4
Unfair contract terms		1
Package tours		
Price indication		2
Unfair commercial practices		2
Total	**2**	**36**

Information requests from EU member states

Basis	From 2007	2008
Doorstep selling		
E-commerce		8
Guarantee		
Distance selling	1	1
Timesharing	1	
Misleading advertising	5	18
Unfair contract terms	3	
Package tours		
Price indication		
Unfair commercial practices		
Total	**10**	**27**

Administrative expenses

The explanatory memorandum to the Consumer Protection (Enforcement) Act stipulates that the Consumer Authority will devote attention in its Annual Report to the administrative expenses involved in the implementation of its statutory tasks on the basis of the Act.

When drafting the Enforcement of Consumer Protection Act (*Wet handhaving Consumenten-bescherming (WHC)*), the Ministry of Economic Affairs calculated the administrative burden expected when implementing the Enforcement of Consumer Protection Act. This calculation was submitted to the Advisory Board on Administrative Burdens (*Advies-college toetsing administratieve lasten (ACTAL)*).
The calculation produced by the Ministry of Economic Affairs of the burden accompanying the implementation of supervisory and enforcement powers by the Netherlands Consumer Authority was based on the assumption that the Authority would handle approximately 95 cases a year, during which it would request information through the use of its supervisory powers to a greater or lesser extent. In the calculation, the cases in question included both cross-border and national cases.
The burden resulting from the use of supervisory and enforcement powers by the Netherlands Consumer authority
In 2008, the Authority completed 214 investigations relating to (possible) national and cross-border violations. This number exceeds the 95 cases that formed the starting point for the calculation used when drafting the Enforcement of Consumer Protection Act.
This resulted in a small increase in the administrative burden in 2008.

However, it must also be remembered that this burden is not one that arises from the imposition of a generic obligation to disclose information or obligation to have a licence on companies, but is a supervisory burden, resulting solely from investigations into possible violations.
The burden resulting from (rightful) objections or appeals against decisions (or applications) by the Netherlands Consumer Authority
The calculation of the administrative burden in this category was based on two cases, one with the district court of Rotterdam (enforcement under administrative law) and one with the court of appeal in The Hague (enforcement under private law), in which companies against which the Authority has taken enforcement action have the decision made by the Authority quashed at a later date.
The calculation of the administrative burden does not include cases in which an objection is made or an appeal lodged against decisions by the Authority and in which these decisions are upheld.

There were no proceedings of this nature in 2008.

Colophon

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