



Netherlands Consumer Authority
Ministry of Economic Affairs, Agriculture and
Innovation

10

REVIEW

enforcement and providing information | results



Review 2010

enforcement and providing information | results

The Netherlands Consumer Authority: for fair trade between companies and consumers

To promote fair trade between companies and consumers, the Netherlands Consumer Authority has, since 1 January 2007, been supervising if companies observe consumer rights in the Netherlands. The key tasks of the Netherlands Consumer Authority are tackling collective violations of consumer law and increasing the knowledge of consumers and companies about their rights and duties. The Netherlands Consumer Authority is an agency of the Ministry of Economic Affairs, Agriculture and Innovation.

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Preface

In this Review the Netherlands Consumer Authority reports about the first year of its two-year Agenda for 2010 and 2011. 2010 was a special year for the Netherlands Consumer Authority in more than one way, but also for me personally: it was my first year as the Director of the Netherlands Consumer Authority.

In 2010 the Netherlands Consumer Authority imposed its first fines based on the Unfair Commercial Practices Act (OHP). The added value of the Act is becoming very clear: the Netherlands Consumer Authority is able to act more forcefully and can impose much higher fines. Whereas the Netherlands Consumer Authority imposed fines totalling about 400,000 euros in 2009, the total amount was over 2.5 million euros in 2010. On two occasions we issued a company with a fine of more than 1 million euros. These are firm signals, which cannot be ignored, that unfair commercial practices are not being tolerated.

In 2010 ConsuWijzer was chosen as the best government website of the year. This public award is a great compliment. The customer satisfaction survey also shows that consumers are happy with ConsuWijzer: they believe they are being well assisted. In 2010 the use of the sample letters present on the ConsuWijzer website doubled to half a million. The letters are an example of empowerment; they help consumers to pursue justice themselves. Every day ConsuWijzer offers direct access to consumer issues and is an unmissable tool for supervision of compliance and enforcement of consumer rights. In 2010 ConsuWijzer received 100,000 reports from consumers.

Because of the limited size of the organisation, the Netherlands Consumer Authority will have to continue setting priorities in the form of an Agenda with focus areas. Working with the two-year Agenda has been good. This timeframe offers excellent opportunities to achieve structural behavioural changes within companies and tackle persistent consumer issues.

Due to the fact that consumer issues increasingly often cross national borders, the Netherlands Consumer Authority is also internationally active. We provide an active contribution to the European CPC network and are the president of the global ICPEN network for a year. Both networks are used to exchange knowledge and experience, and to allow enforcement authorities to learn from each other via best practices.

The Netherlands Consumer Authority stands firm in providing information and enforcement. I am proud of the organisation and the involvement and commitment of its staff. I am therefore fully confident that the results of the first evaluation of the Netherlands Consumer Authority, which will be published in mid 2011, will be positive. The evaluation coincides with the reviews for a possible merger between the Netherlands Competition Authority (NMa), the Independent Post and Telecommunications Authority (OPTA) and the Netherlands Consumer Authority. The results of this are still unknown. I trust and expect that the interests of consumers will be firmly enshrined in the tasks of the enforcement authority to be newly established, especially in a time of growing internationalisation and the increasing impact of the internet.

Bernadette van Buchem

Bernadette van Buchem has been the Director of the Netherlands Consumer Authority since 1 April 2010. She succeeded Marije Hulshof, who became the Director of NL EVD Internationaal at Agentschap NL (an administrative agency of the Ministry of Economic Affairs, Agriculture and Innovation) on 1 January 2010. Bernadette van Buchem previously worked ad interim for the Ministry of Justice and the Municipality of The Hague, among other places. Before that she worked for the Ministry of Economic Affairs and held the positions of Deputy Secretary-General and Director of Internal Affairs, among others.



Enforcement and providing information

Strengthening the position of the consumer

Since 1 January 2007, the Netherlands Consumer Authority has been supervising whether companies observe the legislation for the protection of consumers. Its mission is to promote fair trade between companies and consumers, using the economic interests of consumers as the basic value.

The Netherlands Consumer Authority has various powers for investigating violations and enforcing compliance with the law. At the same time the Netherlands Consumer Authority informs consumers about their rights and duties.

The Netherlands Consumer Authority is an agency of the Ministry of Economic Affairs, Agriculture and Innovation, and was set up in response to a European regulation prescribing that an

Powers of the Netherlands Consumer Authority:

- conducting investigations to establish if rules are being violated
- in the event of violations, they can decide to initiate:
 - proceedings under administrative law: after preparing a report, the Netherlands Consumer Authority can impose a fine and/or penalty imposed on a daily basis in case of non-compliance
 - or proceedings under civil law: the Netherlands Consumer Authority requests that the Court of Appeal deliver judgment
- for less serious violations the Netherlands Consumer Authority may issue a warning first
- in certain circumstances, it is possible for a company to promise publicly that it will no longer commit a violation; the company should then in any case admit that it acted in violation and take demonstrable measures to end the violation(s)
- cases that (may) also involve a criminal offence can be handed over to the Public Prosecution Service.

enforcement authority for consumers must be active in all European countries as of 1 January 2007.

The tasks and powers of the Netherlands Consumer Authority are laid down in the Consumer Protection (Enforcement) Act (Whc).

ConsuWijzer

This information desk for consumers of the three enforcement authorities – the Netherlands Consumer Authority, the Netherlands Competition Authority (NMa) and the Independent Post and Telecommunications Authority (OPTA) – has been organisationally assigned to the Netherlands Consumer Authority. ConsuWijzer wishes to make consumers aware of their rights and duties, and provide practical advice about how they can take action themselves to resolve their problems. If the question falls outside of the field of activity of any of the three enforcement authorities stated, ConsuWijzer will point them towards other organisations. Consumers can submit questions, report complaints, search information and download sample letters via www.consuwijzer.nl, by telephone and in writing. At the same time, the questions and complaints submitted to ConsuWijzer provide the Netherlands Consumer Authority with a good insight into what is happening on the market. This means that the information desk has an important signalling function.

Cooperation with other parties

National cooperation

The Netherlands Consumer Authority cooperates closely with other enforcement authorities, social organisations and self-regulatory bodies.

Where required, matters are coordinated with other enforcement authorities, such as OPTA, NMa and the Authority for the Financial Markets (AFM), about how violations of consumer rights can best be tackled.

The cooperation with social parties is given further shape in the 'National Forum', which the Netherlands Consumer Authority holds periodically with consumer and business organisations pursuant to the Consumer Protection (Enforcement) Act. Topics discussed here include current affairs and priorities. The Netherlands Consumer Authority also participates in the so-called 'Market Enforcement Authority Council', which includes the NZa and DNB in addition to the enforcement authorities stated. The central theme here is exchanging knowledge and experience.

The enforcement authorities can ask each other to provide information or enforce matters in the event of international violations of consumer law. They are obliged to take action following these requests. To coordinate these, the Netherlands Consumer Authority acts as the 'Single Liaison Office' in the Netherlands for the other Dutch enforcement authorities that are members of the CPC network¹.

On a global level the Netherlands Consumer Authority participates in ICPEN (the International Consumer Protection and Enforcement Network). ICPEN is the worldwide network of consumer authorities. Currently over 40 countries are members of the network, including European countries and countries such as the United States, Canada, Australia and China. The aim of ICPEN is to cooperate and exchange experiences and best practices relating to supervision and enforcement on the one hand and informing consumers on the other. Each year attention is paid worldwide to misleading commercial practices during the Fraud Prevention Month. The Netherlands Consumer Authority is the president of ICPEN between July 2010 and July 2011.

Partners in the National Forum:

- The Consumers' Association
- ECC net
- The Legal Aid and Advice Centr
- The Dutch Federation of Small and Medium-Sized Enterprises
- The Consumer Ombudsman Foundation
- The Dispute Resolution Board Foundation
- The Dutch Advertising Code
- The Confederation of Netherlands Industry and Employers VNO-NCW

International cooperation

The Netherlands Consumer Authority maintains contact with a number of partners on an international level. First of all, the Netherlands Consumer Authority tackles international violations in a European context together with fellow authorities from other EU member states. For this, it is part of the network of European consumer protection authorities CPC (Consumer Protection Cooperation).

¹These are: the Authority for the Financial Markets, the Healthcare Inspectorate, the Food and Consumer Product Safety Authority, the Dutch Media Authority and the Transport and Water Management Inspectorate

Results

What has the Netherlands Consumer Authority undertaken in 2010 to strengthen the position of the consumer?

ConsuWijzer

ConsuWijzer helps consumers to personally resolve their issues with their provider. If the problem appears to be too big for individual consumers to resolve it themselves, the enforcement authority may take action. Enabling consumers to defend themselves and supervision go hand in hand.

In 2010 ConsuWijzer received about 100,000 questions and signals from consumers. The signals are highly important to the enforcement authorities behind the counter, which started various investigations as a result.

In 2010 the quality and accessibility of the information on the ConsuWijzer website was further improved. As a result, consumers can now find the information relevant to them faster and more easily, both when searching within the ConsuWijzer website and when using relevant search terms in search engines. A clear indicator of the effect of the modifications is the number of visits.

This increased by 15 percent to 2,350,000 compared to 2009. The increase in the number of sample letters viewed is also striking within the context of empowering consumers. This number doubled to half a million in 2010. In 2010 ConsuWijzer handled 57,000 telephone calls and 40,000 emails.

The accessibility of the website improved even more in 2010. Since November 2010 ConsuWijzer.nl has been entitled to use the Barrier-Free Quality Mark priority 2. This means that the website scores very well in terms of user friendliness and accessibility for people with a disability or impairment.

Providing information

Apart from answering and registering questions and complaints on a daily basis, the Netherlands Consumer Authority also organises information campaigns to enable consumers to defend themselves better, relating to a specific theme. In 2010 the focus was on doorstep selling and guarantees. The campaign held as part of Fraud Prevention Month informed consumers of their rights relating to doorstep selling. One part of the campaign was the 'DeurWijzer' ('DoorPointer'), with useful tips for when a salesperson knocks on your door. The Netherlands Consumer Authority

Top five matters reported to ConsuWijzer in 2010

1. misleading and/or aggressive sales methods
2. guarantee and nonconformity
3. invoices and payment (e.g. unclear energy bills)
4. terminating agreements
5. unclear conditions in agreement

Top five reported sectors

1. telecommunication
2. energy
3. electronics / white goods / household appliances
4. living retail
5. text services / ringtones

Top five reported sales channels

1. by telephone
2. in shops (including markets)
3. via the internet (webshops)
4. by mail
5. by text message

Top vijf best bezochte pagina's in 2010

1. telemarketing / bel-me-niet
2. voorbeeldbrieven
3. abonnement opzeggen
4. elektronica & huishoudelijke apparatuur
5. internet, telefonie, kabel & post

also organised the ‘Right to justice days’ about guarantees in cooperation with the Legal Aid and Advice Centre. Consumers could ask for legal advice about their defective appliances and were helped in their pursuit of justice. Both campaigns gained a lot of publicity and, as a result, a wide audience. Just like in previous years, ConsuWijzer answered a question in the free newspaper Spits every week and relevant decisions from the three enforcement authorities behind ConsuWijzer were announced via news messages on ConsuWijzer. Throughout the year, ConsuWijzer also participated in various radio and television programmes to inform consumers about their rights as a consumer. The media pay a lot of attention to consumer affairs.

Marketing

Consumer recognition: corporate campaign
In late October 2010 the campaign ‘Go to ConsuWijzer.nl’ was launched. The aim of the campaign is to increase the consumer recognition of ConsuWijzer. The campaign consists of radio commercials and adverts in newspapers, strengthened online by integrated banners and Google Ads. The campaign will run until late 2011. In the commercials stand-up comedian Hans Dorrestijn sings ironically about the things that happen to him as a consumer, and each time his conclusion is: I should visit ConsuWijzer.nl. The adverts focus on the new ‘character’ of ConsuWijzer.nl. In 2010 the campaign lasted a total of six weeks. An interim effect survey showed that consumer recognition had increased by 11 percent from 29 to 40 percent compared to the period preceding the campaign. In 2011 another ten campaign weeks will follow throughout the year.

Marketing website

The strategy relating to online marketing, which was launched successfully in 2009, was continued in 2010. The number of visits to the website via search engines and relevant adverts on other websites once again increased greatly and accounts for about 74 percent of all visits. Furthermore, an innovative advert system for banners developed by ConsuWijzer was introduced. ConsuWijzer can use this system to launch new online banner campaigns about a specific consumer issue within a few hours.

Not only has this demonstrably affected the quantity of the number of web visits, but in particular also the quality and relevance of the visits. Consumers who visit relevant pages and/or enter relevant search terms into search engines will quickly end up on the right page of ConsuWijzer.nl for the answer to their question.

Libelle summer week

In May 2010 ConsuWijzer participated in the Libelle summer week, which was visited by about 82,000 people. The initiative for this had been taken by the Dutch representatives of the European Commission. ConsuWijzer and the European Consumer Centre (ECC) had been invited to participate. The primary goal of ConsuWijzer was to increase its consumer recognition. In addition, consumers were made aware of their rights in a low-barrier manner. In the joint ‘ConsuTent’, for example, they were able to participate in a consumers’ quiz, often presented with assistance from Dutch celebrities and politicians.

Quality

Best government website 2010

In 2010 ConsuWijzer was voted the best government website of 2010. The website received the highest scores from the public with regard to content, design and navigation out of all government websites nominated. It was the first time that ConsuWijzer.nl had been nominated for the ‘Website of the Year’ public award. The Website of the Year award is the largest online poll in the Netherlands. Over 1.5 million people cast their votes.

Consumers well assisted by ConsuWijzer

The annual customer satisfaction survey with regard to the services provided by ConsuWijzer has shown once again that consumers are satisfied with the way in which they are addressed. The average score for ConsuWijzer is 7.4 out of 10, which is slightly more than in 2009 (7.3). Visitors to the website are clearly more satisfied than in previous years.

The appreciation is not only reflected in a good score (7.4), but also in the high level of customer loyalty: the vast majority of consumers intend to use the services of ConsuWijzer in the future.

Mobile website

The number of consumers with internet on their mobiles has increased dramatically in the past two years. This is why ConsuWijzer launched m.consuwijzer.nl in August; the special website for use on mobile phones. The site means that the services provided by ConsuWijzer can be improved even more: consumers with internet on their

mobiles now always have practical information about their rights available, wherever they are. The mobile site is not a copy of the regular site. It is specifically intended for use on location and contains useful advice for consumers that can be used immediately, for example, in shops, on the street or at the airport. The mobile site was visited about 7,000 times within a few months.

Supervision and enforcement

74 supervision investigations were completed in 2010: 39 national and 35 international ones.

Agenda 2010

In 2010 the Netherlands Consumer Authority worked for the first time on the basis of a two-year Agenda for the years 2010 and 2011. What is the progress of tackling the five topics in the Agenda?

Consumer issues

1 Unfair online commercial practices

What is the issue and how is the Netherlands Consumer Authority tackling it?

When making purchases on the internet, a consumer cannot view a product first or see with whom he is dealing. That is why there are statutory rules, especially for online sales. However, some companies are still not observing them enough.

The Netherlands Consumer Authority has made it its intention for 2010 and 2011 to confront two sectors with their legal obligations. These are companies that resell tickets for concerts and events via the internet and companies that offer text message services. Many reports from these have been received by ConsuWijzer. The Netherlands Consumer Authority also conducted an initial investigation into advertising on social media.

Online reselling of tickets

When buying tickets on the internet, many people are unaware that they are buying second-hand tickets and what that means. Sometimes tickets turn out to be invalid or the consumer loses his money if the event is cancelled.

Websites investigated

In August 2009 the Netherlands Consumer Authority started informing all the companies behind the websites reselling tickets (24 in total) that it was aware of in writing about their legal obligations with regard to consumer protection. In the first quarter of 2010 the Netherlands Consumer Authority checked the websites and informed the companies behind the sites of the violations on their websites. They were then given the opportunity to modify the websites. After the period for this had passed all the websites were checked again, after which the Netherlands Consumer Authority published the results of this in May. One of the conclusions was that none of the websites checked had completely removed all the violations. Following this, the Netherlands Consumer Authority announced that it would start enforcing matters, using the basic principle that the largest websites with the highest number of violations would be dealt with first.

Penalties

In August 2010 the Netherlands Consumer Authority imposed penalties on a daily basis to four companies with a total of five websites, because they still failed to observe the statutory rules for the provision of information sufficiently on their sales sites. The Netherlands Consumer Authority demanded that they modify their websites with regard to matters such as stating that the tickets are

Webshop
information modified



second-hand, information about the possible risks to which consumers may be subject as a result, stating the price in the correct manner and stating the details of the company behind the website. In December 2010 the Netherlands Consumer Authority imposed penalties on a daily basis to four other resellers for similar violations. If the companies do not make the changes in time, they will have to pay penalties of up to 5,000 euros per week per violation, up to a maximum of 100,000 euros per violation. All companies had promised to make the required changes. During a check of the five websites to which the penalties on a daily basis had been imposed in August 2010, it turned out that none of the five websites fully complied with all the obligations. As a result, they had to pay penalties with a total value of 25,000 euros. In early 2011 it will become clear whether all the companies in the second group have met the imposed orders.

Text services

Text services involve services via mobile telephones, such as ringtones, games and increasingly often other entertainment and subscription services as well. As more and more becomes technically possible, the range of services is shifting constantly and new services are added all the time. Despite the sector's Code of Conduct for Text Messages, ConsuWijzer still receives many complaints, especially about misleading or unclear information. The consumer thinks they are receiving the results of a test, for example, submit their mobile number for this and are suddenly stuck with an unwanted text message subscription. It is then difficult to stop the subscription, because the provider cannot be traced very easily.

Celldorado fine

After finishing a large-scale investigation, the Netherlands Consumer Authority issued a fine totalling 1,190,000 euros to Artiq Mobile B.V. and Blinck International B.V. in June for misleading text message services. Artiq Mobile B.V. is one of the largest text message service providers in the Netherlands. Trading under the name Celldorado, the company offers subscriptions to consumers for text services via the internet and television. The only director and shareholder of Artiq Mobile B.V. is Blinck International B.V.

In response to reports from consumers submitted to ConsuWijzer and various enforcement requests from abroad, the Netherlands Consumer Authority conducted an investigation into Celldorado internet adverts and television campaigns. This showed that the company was violating the rules. Both in the internet adverts and the television campaigns, Celldorado misled consumers with regard to the nature and key features of its service, among other things. Celldorado's overall presentation gave consumers the wrong impression and it was not clear that the offers on the internet and television were related to a paid subscription service. The company left out essential information or presented this information in a vague, unintelligible or ambiguous manner. This involved the price, the required technical features of the mobile telephone and the way in which the subscription could be cancelled. As a result, consumers could unintentionally take out a subscription, which would be very difficult to get rid of. Apart from the imposed fines, the Netherlands Consumer Authority also imposed several penalties on a daily basis, which should ensure that Celldorado changes its activities to comply with the law as soon as possible. The company has lodged an appeal against the penalty decision.

Request to Germany

In 2010 the Netherlands Consumer Authority also investigated a provider of text message services from Germany. This provider actively targets Dutch consumers and is the cause of many complaints.

As a result, the Netherlands Consumer Authority sent an enforcement request to Germany in late 2010, to have them put a stop to these practices.

New legislation implementation test

Finally, the Netherlands Consumer Authority published an implementation test for new legislation in 2010, promoting broader tackling of misleading text services and setting conditions for suspending and cancelling a telephone service by telephone operators if text services are not being paid. In it the Netherlands Consumer Authority says that it will support the broader approach and states a few comments and caveats with regard to the new rules. The new legislation will enter into force in 2011.

2

Aggressive and misleading acquisition

What is the problem?

It is forbidden to pressurise a consumer into buying something or entering into an agreement for a particular service or product. The consumer may not be misled either. This is the case if the salesperson is not open and honest about his intentions. Despite this, salespersons often fail to observe these rules. ConsuWijzer receives many reports from consumers, for example, about acquisition for energy and telephone subscriptions by telephone, at their doors or on the street, and about sales demonstrations. In this case a cheap day-trip, for example, is used as an excuse to sell as many products as possible to consumers. Consumers feel pressurised into buying things. Afterwards they often regret their purchases and are unaware if they can reverse them and, if so, how.

to ConsuWijzer about text services is visible, from 475 complaints in January 2010 to 325 in December.

With its decision in the Celldorado case, the Netherlands Consumer Authority has made it clear that text service providers must communicate clearly with consumers. The sector appears to be responding to this. However, the problem has not yet been resolved. By being alert to signals from the market, the Netherlands Consumer Authority wishes to put a quick stop to possibly misleading text services.

In early 2011, the NJR survey into adverts in social media showed that young people themselves indicate they are not highly sensitive to adverts on social networking sites. The Netherlands Consumer Authority will take these results into account in its exploratory investigations into online games and fake reviews (fake customer responses on the internet) in 2011. The Netherlands Consumer Authority will also review whether there are any structural problems with regard to online dating that require attention.

How does the Netherlands Consumer Authority tackle this?

Doorstep selling

ConsuWijzer has opened a special information hotline for doorstep selling by energy companies. Questions had also been asked in Parliament after media attention for this. Over 200 reports were received by ConsuWijzer during the first quarter of 2010.

The Minister of Economic Affairs asked the Netherlands Consumer Authority and the Netherlands Competition Authority to investigate whether energy suppliers are guilty of misleading doorstep selling. The investigation was aimed at suppliers that use doorstep selling and, as a result, are the cause of many complaints.

Reports sent to ConsuWijzer and a large-scale telephone survey among victims of doorstep selling painted a picture that doorstep selling was sometimes conducted in a misleading way. For a number of companies these practices appeared to have a pattern.

**Fine in excess of 1 million
for misleading
telemarketing**



Based on the investigation, the Netherlands Consumer Authority and the Netherlands Competition Authority conducted follow-up investigations into individual companies. The results will be published in the first half of 2011. In spring, the annual information campaign relating to Fraud Prevention Month focused on doorstep selling. This fitted in nicely with the attention at the time for doorstep selling by energy companies. Fraud Prevention Month not only focused on doorstep selling by energy companies, but on doorstep selling in a wider sense. This is because other products and services are also sold door-to-door, for example, window frames or subscriptions to sets of magazines. In this context, an information campaign has been launched to inform consumers about their rights relating to doorstep selling. Apart from specific information about this on ConsuWijzer, a tool for consumers has been developed: the DeurWijzer. It contains information and tips for consumers to keep with them when a salesperson knocks on their door. In this way consumers know exactly what they should look out for, what their rights are and they can read what they can do if they regret their purchase afterwards. The DeurWijzer was part of the free publicity campaign. This campaign was aimed at older consumers in particular. The start of the campaign was signalled on 22 March by the then Minister of Economic Affairs, Mrs Van der Hoeven.

Sales demonstrations

In 2009 the Netherlands Consumer Authority started a large-scale investigation into a company that organises a lot of sales trips. Topics investigated include whether the company encourages consumers to buy things in a misleading or aggressive way. The investigation was completed in 2010. In early 2011 it will be announced whether the company is violating the rules. In addition, an enforcement request was sent to Germany in late 2010. This was done in response to an investigation conducted by the Netherlands Consumer Authority into German companies that organise sales demonstrations in the Netherlands, which may violate the rules.

Acquisition by telephone

In mid 2010 the Netherlands Consumer Authority completed the investigation into misleading

telephone acquisition by the company Nederlandse Energie Maatschappij (NLEnergie). As a result of this, the company received a fine of more than 1 million euros in September. Between October 2008 and July 2009 the Nederlandse Energie Maatschappij contacted large numbers of consumers by telephone to sign an energy contract. In this case the company did not observe a number of statutory rules for acquisition by telephone. The Nederlandse Energie Maatschappij acted in violation of the Distance Selling Act, because the company did not clearly state its identity and commercial intention at the start of the sales talks. The Nederlandse Energie Maatschappij was also guilty of unfair commercial practices, among other things, due to misleading statements about price benefits, due to confusing statements about competing companies and by asking for direct debit authorisation, even though that is not permitted for this type of telemarketing. The company also acted in violation of the Consumer and Energy Supplier Code of Conduct and the Telemarketing Code. The Nederlandse Energie Maatschappij has lodged an appeal against the penalty decision. Previously the company had also lodged an appeal against publication of the penalty decision. This was rejected by Rotterdam District Court.

What are the results?

ConsuWijzer.nl now contains lots of information about doorstep selling. Consumers can use this to familiarise themselves with the rules for doorstep selling. This makes them more assertive whenever a salesperson knocks on their door. The necessity of this is shown by the fact that reports about misleading and/or aggressive sales techniques of companies are the most frequent at ConsuWijzer. In the second half of 2010, after the information and enforcement campaigns, the number of reports about misleading doorstep selling dropped, but the reports about misleading telephone acquisition increased. This mainly concerned reports from consumers who are registered in the Telephone Preference Register, which was introduced on 1 October 2009, but are still being called by companies with special offers. The campaign relating to doorstep selling during Fraud Prevention Month gained a lot of publicity. 2.5 million people were given information about their rights with regard to doorstep selling.

Consumers better informed about guarantees



3

Guarantee and non-conformity

What is the problem?

In 2010, the subject of guarantee and conformity (or rather non-conformity) was in the top three of reports received by ConsuWijzer, just like in the previous three years. It is a focus area that constantly requires attention. ConsuWijzer shows that not all companies implement the statutory rules correctly, especially when the manufacturer's guarantee has expired. Also the number of years that an appliance should be able to last with normal usage often leads to discussions that are not satisfactory for the consumer.

How does the Netherlands Consumer Authority tackle this?

In 2010 and 2011 the Netherlands Consumer Authority's main focus is on companies that are structurally causing problems.

Reports in the electronics sector

As a result of the exploratory investigation in 2009 into the usefulness and necessity of purchasing additional guarantee, the Netherlands Consumer Authority prepared reports against a number of companies in 2010. The investigation was aimed at informing consumers about their statutory right to an adequate product. In early 2011 it will be announced whether these cases actually involved violations.

Benelux investigation

The Benelux-wide investigation launched in 2009 into how 18 major consumer electronics chains inform their customers about the guarantee rights in their general terms and conditions and brochures was completed in 2010.

These are chains that sell washing machines and DVD players, but also companies offering mobile telephones and computers. A total of 21 violations were discovered at 10 out of the 18 companies. Examples are incorrectly stating the statutory

Lots of 'DeurWijzers' were also distributed, both in printed form and digitally via ConsuWijzer. Finally, the fine imposed on the Nederlandse Energie Maatschappij by the Netherlands

Consumer Authority is a powerful signal that the Netherlands Consumer Authority demands that companies observe the law during their recruitment campaigns.

rights of consumers and creating barriers in the form of additional costs for consumers who want to pursue justice. The Netherlands Consumer Authority has written to all these companies with a total of 1500 shops. They have been given a certain period of time to adjust their information to the rules for guarantee and conformity.

All companies modified their information. The Netherlands Consumer Authority will, for the time being, keep a close eye on reports about these companies and the way in which they handle the guarantee rights of consumers, including via ConsuWijzer.

Investigation into company with the highest number of reports

According to the Agenda 2010-2011, the emphasis for the approach of the guarantee subject will shift from information to enforcement. In 2010 the Netherlands Consumer Authority therefore launched an investigation into one of the companies generating the highest number of reports at ConsuWijzer relating to guarantee and conformity, a company in the consumer electronics sector. The investigation is expected to be completed in the first half of 2011.

Guarantee week

In November 2010 ConsuWijzer and the Legal Aid and Advice Centre organised the Right to Justice Days, also called the Guarantee Week. The legal experts from ConsuWijzer, the Legal Aid and Advice Centre and the technical experts helped many consumers with a defective appliance or other product, or gave them the right information. The week was a huge success.

What are the results?

In the electronics sector the Netherlands Consumer Authority is clearly noticing the effects of its actions. Companies that promised to change their behaviour are actually doing so. By now there are also 3000 members of staff in the electronics

4

Developments

New statutory duties

What is the case?

New European and Dutch legislation may lead to new tasks for the Netherlands Consumer Authority, because providers will have to adjust to this new legislation and the obligations arising from it. In early 2010 the Netherlands Consumer Authority reserved capacity for three new statutory frameworks for which it had been assigned as the enforcement authority. ‘New statutory tasks’ was placed on the Agenda 2010-2011 as a focus area, because the Netherlands Consumer Authority wanted to see if (certain) providers were guilty of structural non-compliance.

What action did the Netherlands Consumer Authority take?

Services Act

The Netherlands Consumer Authority supervises compliance with certain information obligations of service providers pursuant to the Services Act. These obligations have been enshrined in Book 6 of the Civil Code since late 2009. In 2010 the Netherlands Consumer Authority analysed the Services Act and integrated it in its processes. The reports and analyses have not yet provided any grounds to act, but the Netherlands Consumer Authority will remain alert to this.

Aviation Regulation

The Netherlands Consumer Authority has started the preparations for its supervisory task with regard to Regulation 1008/2008, intended for

sector who have completed the interactive guarantee training developed by the Netherlands Consumer Authority and HBD. The sector is also developing initiatives to ensure that the guarantee rules are observed more. In early 2011 it will be announced if enforcement measures will be taken as part of the investigation into additionally purchased guarantee. All companies contacted as part of the Benelux-wide investigation have modified their information about guarantee and conformity. As a result, this information is now compliant in 1500 shops, at least on paper, and many consumers will immediately benefit from this. The Guarantee Week has reached many consumers. The media attention, both on a national and a regional level, also improved the consumer recognition of ConsuWijzer and the Legal Aid and Advice Centre. This means that consumers know faster who to contact for help.

aviation. Article 23 of this Regulation contains rules for stating the fares of plane tickets (cargo and/or passenger rates). The Netherlands Consumer Authority has developed a method for analysing prices of plane tickets stated on websites. This is used to monitor the developments periodically. The Netherlands Consumer Authority has by now gathered extensive knowledge of the aviation sector, more specifically of fare transparency when plane tickets are offered. This knowledge has mainly been collected in a European context, in which the Netherlands Consumer Authority has an active role in the Airlines Working Group of the CPC network. Among other things, the aim of this partnership is to ensure that the member states agree on the interpretation and implementation of European legislation. Another aim is to ensure that consumers receive more transparent and better information when they book a flight. The result of this should be that consumers can compare prices more easily and are more aware of their right to a refund in certain situations.

Tacit extension of subscriptions

The legislative proposal from the Member of Parliament Van Dam about the tacit extension and the notice period of subscriptions has been published in the Bulletin of Acts and Decrees. This means that the law will enter into force on 1 January 2012 for new contracts. The new law provides a change to the rules for general terms and conditions. As a result, consumers are better protected against constant tacit extension of subscriptions. In the next couple of months the Netherlands Consumer Authority will prepare for its supervisory task.

Preparations for supervision of Aviation Regulation



5

The cross-border consumer

What is the case?

The fact that more and more consumers and companies sell and buy internationally, either via the internet or otherwise, is a positive thing and one objective of the internal European market. But it also means that consumers' questions and problems do not stop at the national borders. As a result, consumer issues, for example, regarding text services, webshops, general terms and conditions and guarantees, increasingly often have an international character. The Netherlands Consumer Authority has to handle this increasingly often and is prepared for it.

What action did the Netherlands Consumer Authority take?

In a Benelux context

In the past year the Netherlands Consumer Authority conducted an investigation together with the Belgian and Luxembourg enforcement authorities into ticket shops that resell tickets for concerts and events online. The Netherlands Consumer Authority investigated ten websites. The violations discovered here were included with the enforcement actions taken online by the Netherlands Consumer Authority within the context of the Unfair commercial practices focus area.

As a result of this investigation, the Netherlands Consumer Authority also received enforcement requests from other European enforcement authorities about companies that resell tickets to consumers in those member states.

The Netherlands Consumer Authority is hoping to

The Netherlands Consumer Authority already has power of enforcement with regard to the information obligations of service providers. In the second half of 2010 a review was conducted of the necessity to intensify the supervision of compliance with these obligations. The initial results show that this will not be necessary.

deal with these enforcement requests in the course of 2011. The report with the findings of the joint investigation will be published in the first quarter of 2011.

In a CPC context

In a CPC context, the European consumer protection authorities exchange information on a daily basis, ask each other for assistance and work together to resolve cross-border consumer issues. Together with fellow enforcement authorities from other European member states, the Netherlands Consumer Authority participated in an internet sweep in 2010 as part of the CPC network with regard to the online selling of tickets for events. Additionally, the European enforcement authorities meet a couple of times a year in Brussels, where, among other things, they draw up a joint action plan each year.

Within the CPC network, the Netherlands Consumer Authority is a member of the Expert Group on Airlines. In this working group, EU member states cooperate to discuss and jointly tackle consumer issues in the aviation sector. Furthermore, the Netherlands Consumer Authority participates in a project headed up by the United Kingdom, the objectives of which include improving the exchange of information and file preparation for enforcement and information requests on an EU level. This will further improve the supervisory and enforcement functions within the EU network.

The Netherlands Consumer Authority has published a report over 2009 and 2010 for the European Commission about the Dutch

experiences within the European network, with recommendations for improvement.

Requests received

In 2010 the Netherlands Consumer Authority received 37 requests from Europe. These involved:

21 enforcement requests:

9 requests were received as a result of the internet sweep in 2010 relating to ticket shops. 2 requests were related to text service providers that were guilty of misleading acquisition (in terms of price and conditions) in other member states. The other requests related to violation of the rules for e-commerce (the identity of the company was not clearly communicated), misleading advertising and unclear price statements on websites.

16 information requests:

Many requests related to the question of whether a certain company is registered in the Netherlands. The requesting authority would have clues for this (e.g. the use of a PO box in the Netherlands), but could not ascertain this with certainty. Additionally, the Netherlands Consumer Authority received the question a number of times if, according to the Netherlands Consumer Authority, a particular commercial practice was in violation of the rules for consumer protection.

The Netherlands Consumer Authority also received 19 alerts from other countries. An alert is a signal/report sent from one enforcement authority to another about an ongoing investigation that could affect the other enforcement authority. All alerts were related to websites and most were about misleading commercial practices. Failure to comply with information obligations was also a recurring theme.

Requests sent

The Netherlands Consumer Authority sent 5 enforcement requests to fellow enforcement authorities in Europe: 2 to Spain, 1 to Ireland and 2 to Germany.

The requests sent to Spain were related to the investigation into holiday clubs. The Spanish Public Prosecution Service has already conducted many investigations into these practices. The result of this is that one of the companies to which the enforcement request related no longer exists. This makes further investigations superfluous.

The second request is still being dealt with.

The request sent to Ireland related to an airline company. This request is still outstanding and forms part of a joint investigation with other member states. The two requests sent to Germany are also still outstanding. One request related to a provider of text services. The other request relates to the investigation by the Netherlands Consumer Authority into sales demonstrations. In that context, the Netherlands Consumer Authority had already sent an information request to Germany before.

The information obtained was added to the investigation. The Netherlands Consumer Authority sent out an alert to inform other CPC members of a Swiss company that was marketing puzzle books in the Netherlands in a misleading manner. This company was suspected of activities in other EU member states apart from the Netherlands. In the spring of 2010 the Netherlands Consumer Authority sent a warning letter to this company together with the Independent Post and Telecommunications Authority.

This has resulted in the company ceasing its activities in the Netherlands. A second alert was sent out in late 2010. The reason for this was an enforcement request from the French authorities relating to a Dutch company, about which the Netherlands Consumer Authority had already received complaints from within the Netherlands. The investigation, which is still ongoing, has already revealed that this company is not only active in France and the Netherlands, but in almost all European member states. This is why the Netherlands Consumer Authority sent out an alert to inform other enforcement authorities in Europe of its findings.

<p>European requests</p> <p>Received</p> <ul style="list-style-type: none">• 21 enforcement requests• 16 information requests• 19 alerts <p>Sent</p> <ul style="list-style-type: none">• 5 enforcement requests• 1 information request• 2 alerts <p>Handled</p> <ul style="list-style-type: none">• 25 enforcement requests• 10 information request	<p>Financial Markets.</p> <p>From the Netherlands, the Netherlands Consumer Authority sent one enforcement request to Belgium on behalf of the Healthcare Inspectorate.</p> <p>Within ICPEN</p> <p>The Netherlands Consumer Authority is the president of ICPEN between July 2010 and July 2011. The aim of ICPEN is to strengthen the international protection of consumers and, as a result, the position of the consumer. As consumers and companies are increasing their international activities, the number of consumer issues with an international dimension is also increasing. This requires more and more cooperation between national consumer authorities.</p> <p>In November 2010 the Netherlands Consumer Authority organised the international ICPEN conference attended by 110 representatives from over 40 countries, including most European countries and Japan, South Korea, Chile, the United States, Australia, Canada and Mexico. This made the conference one of the best visited in the history of ICPEN. During its presidency, the Netherlands Consumer Authority is responsible for the performance of ICPEN's Strategic Plan. This means that the Netherlands Consumer Authority has further strengthened ICPEN's internal structure and that a few practical projects were launched involving core themes, such as information exchange and cooperation during investigations. In this way, information is shared within ICPEN, so-called best practices are exchanged and investigations are jointly coordinated and facilitated. Under the Dutch presidency, further efforts are being made to build a secure website on which information is globally available about how countries are handling the protection of consumers on the web with legislation, by gathering information and with investigative practices. This allows the countries to cooperate more closely when tackling violations.</p> <p>What are the results?</p> <p>Thanks to the international activities of the Netherlands Consumer Authority, the protection of Dutch consumers is also improving for cross-border purchases. Due to the dynamics within the European market, the emergence and disappearance of companies selling products</p>
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Better protection for cross-border purchases



**Supervision does
not stop at the border**



outside their own national borders and the growth of international sales via the internet, the Netherlands Consumer Authority will remain alert and strict in the supervision of compliance with consumer legislation.

Matters outside of the agenda

This section addresses matters not related to the Agenda 2010-2011. These are partially cases from previous agendas or ad-hoc cases and partially cases dealt with under objection and appeal.

Fine for Fotosessie.com

Fotosessie.com uses the internet to offer photo shoots and records their results on a digital carrier. In its marketing activities the company mainly focuses on young people and uses the photo shoot offered to suggest a possible career as a model. Based on an investigation into the procedure used by Fotosessie.com, the Netherlands Consumer Authority concluded that the general terms and conditions of the company did not comply with several rules under consumer law. The company had not complied with all of its information obligations either. The Netherlands Consumer Authority also believed that Fotosessie.com was guilty of unfair commercial practices. For this, the Netherlands Consumer Authority issued the company with a fine totalling 100,000 euros in January 2010. Fotosessie.com has lodged an administrative appeal against this. The decision will be announced in early 2011.

Fine for Garant-O-Matic B.V.

In September 2010 Garant-O-Matic B.V. received a fine from the Netherlands Consumer Authority totalling 120,000 euros. The investigation was launched after reports from consumers. This showed that the company had not kept its previous promise to the Netherlands Consumer Authority (from 2008). In 2008 Garant-O-Matic had promised the Netherlands Consumer Authority that it would start informing consumers clearly from then on. The fact that violations were once again discovered was the reason why the enforcement authority increased the fine by 20 percent. Garant-O-Matic is a mail order company that markets its catalogues using promotional offers. In the promotional offer investigated, Garant-O-Matic was offering a promotional game of chance. In this promotional offer the Netherlands Consumer Authority concluded that there were seven violations of the Distance Selling Act and the Unfair Commercial Practices Act. The Netherlands Consumer Authority concluded that Garant-O-Matic B.V. failed to inform the consumer sufficiently clearly and understandably about the chances of winning, the period within which the

offer had to be accepted and the price of the offer. It also concluded that Garant-O-Matic B.V. wrongfully gave the impression that the consumer had already won a prize, that the product offered was wrongfully described as being free and that essential information for the consumer about the availability of the offer had been left out. Garant-O-Matic B.V. has lodged an administrative appeal against the Netherlands Consumer Authority's decision..

Civil enforcement in lawsuits against travel agencies

In January and March 2010 the court decided in favour of the Netherlands Consumer Authority in nine lawsuits against companies offering package travels. The Netherlands Consumer Authority had initiated the proceedings, because the tour operators allegedly failed to comply with their statutory guarantee obligation when offering package travels. Tour operators offering package travels have the statutory obligation to take measures to protect consumers if they were to be wound up, the so-called travel guarantee. This means that travellers who have already paid for the journey will be refunded if the tour operator is wound up. Travellers who have already left are brought back home. Most tour operators have arranged their guarantees via the Travel Compensation Fund (SGR). Tour operators are obliged to state their guarantee measures publicly, to allow the consumer to check personally if the company meets its statutory obligation.

The court has decided that companies should either arrange their guarantees in the short term or stop offering package travels. The court also imposed penalties to force the companies to take guarantee measures and make these measures public.

The companies involved are: Byblos Reizen in Amsterdam, Akwaaba Tours in Maastricht, 4WD Travel Club in Groenekan, Club Travel in Breda, Jero Reizen in Bemmel, Cimarron in Eindhoven, Best of Britain in Delft, Dynamic Holland in Haarlem and Opvakantie in Rotterdam.

Most of these companies have by now taken measures to comply with the law. Some have stopped offering package travels. The court has assessed that the alternatives presented other

than participation in SGR are insufficient. As a result, clarity for consumers and tour operators has increased about the way in which companies can meet their statutory obligations. The court's decision is also important for future supervision by the Netherlands Consumer Authority.

Administrative appeal by Keukenkampioen and Keukenco

In the cases of Keukenkampioen and Keukenco from 2009 the Netherlands Consumer Authority made decisions on appeal in July 2010. The two companies sell kitchens from shops throughout the Netherlands. They are members of the Living Central Trade Association (hereinafter: CBW). Companies with CBW recognition use the CBW-recognised programme and bear the CBW-recognised logo.

CBW-recognised companies use the general terms and conditions of CBW. The Netherlands Consumer Authority had discovered that Keukenkampioen and Keukenco failed to comply with a number of these conditions.

Contrary to those provisions, they demanded payment of the full purchase price 12 to 5 days before the kitchen was supplied. By indicating that they were CBW-recognised, but failing to use the associated conditions, Keukenkampioen and Keukenco acted in violation of the Unfair Commercial Practices Act. In late 2009 the Netherlands Consumer Authority issued administrative fines of 110,000 euros to both companies. They were also issued with penalties imposed on a daily basis of 5,000 euros per day, with a maximum of 200,000 euros, to force the companies to modify their general terms and conditions.

In July 2010 the Netherlands Consumer Authority decided that the administrative appeals of both companies against both the decisions and publication thereof were unfounded. Keukenkampioen and Keukenco then lodged an appeal against this in court. The decision is expected in 2011.

Appeal proceedings in court

In April 2008 the Netherlands Consumer Authority issued UPC with a fine of 303,000 euros because of violations of the rules for telephone sales and doorstep selling.

After the Netherlands Consumer Authority rejected

UPC's administrative appeal, UPC lodged an appeal in court. In April 2010 the court decided that UPC's appeal was unfounded. This closed the case.

Furthermore, the court hearing in the appeal procedure of Tele2 Nederland, Atlantic Telecom and Pretium Telecom against decisions by the Netherlands Consumer Authority from February and October 2008 was held in September 2010. In December 2007 the three companies had requested that the Netherlands Consumer Authority take action against KPN Telecom which, according to the three companies, had made misleading announcements to consumers and had issued them with incorrect information. The Netherlands Consumer Authority rejected that request at the time which, according to the three companies, was wrongful. The court has not yet pronounced its decision.

In another appeal case by Pretium Telecom, the administrative court has postponed the hearing. The case relates to a decision by the Netherlands Consumer Authority from December 2008, in which Pretium was issued with a fine and penalties imposed on a daily basis due to violation of the rules for telephone sales. The hearing in this case had initially been planned for September 2010. A challenge by Pretium was accepted by the court. The case will now continue in 2011 with different judges. The civil court has now decided that Pretium will not have to pay the penalties payable for as long as the administrative court has not announced its decision.

Publication of decisions

Three companies lodged an appeal in court against the publication of decisions by the Netherlands Consumer Authority. These were Keukenkampioen, Keukenco and the Nederlandse Energie Maatschappij. The court, however, decided that publication was allowed in all three cases.

Appeal by PostGarant B.V. to higher court

One of the cases of the Netherlands Consumer Authority has reached the stage of appeal to a higher court. This is the case of PostGarant B.V., formerly known as Fitanova. In January 2008 the Netherlands Consumer Authority concluded that

this company had failed to comply with various information obligations to which internet providers are subject. Additionally, the company sent follow-up packages to consumers without permission. PostGarant B.V. received a fine totalling 130,000 euros for these violations. In addition, the company had to improve the information for consumers on its website, subject to a penalty, and in the future stop sending products without permission.

In February 2010 the court announced its decision in this case. In it the appeal was partially allowed, in particular with regard to the amount of the fine imposed. With regard to the other points, the appeal was declared unfounded.

Both PostGarant B.V. and the Netherlands Consumer Authority have lodged appeals against the decision at the Trade and Industry Appeals Tribunal.

Administrative burden

The Explanatory Memorandum to the Consumer Protection (Enforcement) Act stipulates that the Netherlands Consumer Authority will address the administrative burden associated with the performance of its statutory tasks pursuant to the Consumer Protection (Enforcement) Act in its annual report.

While preparing the Consumer Protection (Enforcement) Act, the then Ministry of Economic Affairs (EA) made a calculation of the expected administrative burden for the performance of the Consumer Protection (Enforcement) Act. This calculation was submitted to the Advisory Board on Administrative Burden (ACTAL). The following categories of administrative burden, with the associated amounts, were used in the calculation:

- In the calculation by EA of the burden associated with the performance of the supervisory and enforcement powers by the Netherlands Consumer Authority, it was assumed that the Netherlands Consumer Authority would handle about 95 cases each year, in which information was requested to a greater or lesser degree by using supervisory powers. These 95 cases concerned both international and national cases in the calculation.

Burdens arising from the performance of supervision and enforcement requests by the Netherlands Consumer Authority

In 2010 the Netherlands Consumer Authority completed 74 investigations due to (possible) national and international violations. This is slightly less than the 95 used as a basis in the calculation while preparing the Consumer Protection (Enforcement) Act. This makes the administrative burden smaller than estimated at the time. It should be taken into account here that this is not a burden arising from the fact that companies are issued with a generic information or permit obligation, but a supervisory burden, which only arises from investigations into possible violations.

Re 2: The burden resulting from (justly) lodging an (administrative) appeal against a decision (or application) from the Netherlands Consumer Authority

Two cases are used to calculate the administrative burden in this category, one at the Rotterdam District Court (enforcement under administrative law) and one at the Court of Appeal in The Hague (enforcement under private law), in which decisions were eventually made in favour of companies against which the Netherlands Consumer Authority had acted in an enforcing manner. Cases in which an (administrative) appeal is lodged or an appeal is lodged at a higher court against a decision by the Netherlands Consumer Authority and in which the decision is made in favour of Netherlands Consumer Authority are not included in the calculation of the administrative burden.

In 2010 the Netherlands Consumer Authority did not (partially) allow any of the administrative appeals lodged. This did not give rise to any administrative burden.

Figures relating to the Netherlands Consumer Authority

ConsuWijzer in figures

telephone calls	57.000
e-mails	40.000
letters	1.500
website visits, including mobile site	2.357.000
Downloads	
sample letters	513.000
Tele-Checklists	12.000
Deurwijzers	5.000

Supervision

National

Investigations started in 2009 and continued in 2010	48
Investigations started in 2010	14
Investigations ceased due to ceasing of violations after action by CA	29
Reports	10
Total number of completed national investigations	39

International

Alerts received from EU member states in 2010	19
Alerts sent by the Netherlands in 2010	2
Enforcement requests received in 2009 and continued in 2010	18
Enforcement requests received from EU member states in 2010	21
Enforcement requests from EU states completed by CA	25
Enforcement requests sent by CA	5
Information requests received in 2009 and continued in 2010	1
Information requests from EU member states received in 2010	16
Completed information requests from EU member states	10
Information requests sent by CA	1
Total number of completed national investigations	35

Enforcement

Penalty decisions	5
Appeal decisions after advice from Administrative Appeals Advisory Committee	2
Other administrative appeal decisions	2
Decisions made in application proceedings	10
Penalties imposed on a daily basis	8

Enforcement requests from EU member states		Information requests from EU member states	
Basis	2010	Basis	2010
Doorstep selling		Doorstep selling	
E-commerce	6	E-commerce	3
Guarantee		Guarantee	
Distance selling	1	Distance selling	3
Timesharing		Timesharing	
Misleading advertising		Misleading advertising	
Unfair contract terms	1	Unfair contract terms	
Package travels		Package travels	1
Price indications		Price indications	
Unfair Commercial Practices Act	13	Unfair Commercial Practices Act	9
Total	21	Total	16

Enforcement requests OWN REQUEST		Informatieverzoeken EIGEN VERZOEK	
Basis	2010	Basis	2010
Doorstep selling		Doorstep selling	
E-commerce		E-commerce	
Guarantee		Guarantee	
Distance selling		Distance selling	
Timesharing		Timesharing	
Misleading advertising		Misleading advertising	
Unfair contract terms		Unfair contract terms	
Package travels		Package travels	
Price indications		Price indications	
Unfair Commercial Practices Ac	5	Unfair Commercial Practices Ac	1
Total	5	Total	1

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