



Enforcement and
information

Review 2009

Results





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Review of 2009

In just three years the Netherlands Consumer Authority has grown to become a fully-fledged organisation. The synergy between regulation and consumer information is something that we have learned to use increasingly effectively, and has enabled us to achieve tangible results for the consumer. The signals received from the two million visitors to ConsuWijzer.nl have provided us with valuable information. Thanks to these developments, the Netherlands Consumer Authority has been able to carry out 115 investigations in 2009, for the first time too on the basis of the Unfair Commercial Practices Act [*Wet oneerlijke handelspraktijken* (OHP)]. As a result, the Netherlands Consumer Authority can tackle even more effectively those companies which mislead or exert undue pressure on consumers. This happened in 2009 in the case of providers of text messaging services and companies which make use of telephone sales.

The fines imposed by the Netherlands Consumer Authority have not gone unnoticed. More and more companies have come to realise that they may well find themselves having to answer to the Authority if they infringe the statutory rules for consumer protection. A few companies filed an administrative appeal against the fine imposed on them by the regulator. These administrative appeals were submitted to the external administrative appeals advisory committee of the Netherlands Consumer Authority. In general, the fines have proved to be justified and have been upheld. The court will give its decision on the first appeal cases in 2010. The priority areas of text messaging services and guarantees and conformity continue to dominate the Agenda. The market for text messaging services is complex: there are an increasing number of providers which do not always abide properly by the rules, and these providers are constantly changing. Since self-regulation still has little effect, stricter legislation is being prepared.

The Netherlands Consumer Authority imposed fines and carried out regulatory investigations in 2009, and will continue to monitor this market closely. Once again ConsuWijzer received the most reports on guarantees and conformity in 2009. In order to avoid unpleasant discussions with the supplier, consumers often purchase an extra warranty. That is why in 2009 the Netherlands Consumer Authority conducted an investigation into extended warranty products. At a Benelux level, the general terms and conditions in the electronics sector were examined, and the results of both investigations will be announced in 2010. A positive development is the considerable interest shown by the retail trade in the free online training course 'Gegarandeerd Goed' ('Guaranteed Good') which was introduced in 2009. This should mean that knowledge of guarantees and conformity in the retail sector will improve. Another development in 2009 involved two major chains of computer shops, which put their warranty schemes in order following an investigation by the Netherlands Consumer Authority.

Consumers now use ConsuWijzer in large numbers. In 2009 ConsuWijzer recorded two million web visits and there were more than a hundred thousand contact moments by telephone and e-mail.

Much use is made of the resources available on ConsuWijzer, such as the example letters which consumers can use to formulate their complaints in a legally correct manner.

ConsuWijzer brings together the informative and signalling tasks. In 2009 the Netherlands Consumer Authority placed much information about telemarketing on ConsuWijzer, including the Tele-Checklist which helps consumers when being called by telephone sales representatives. In the column 'Uitgelicht' ('In the spotlight'), detailed information was provided on another

priority area: sales demonstrations. Many consumers responded to the call to report their complaints. This produced such a large response that the Netherlands Consumer Authority was able to carry out targeted investigations into fraudulent practices.

Cooperation with foreign regulators is developing well, both at a Benelux and European level. In 2009 almost half of all regulatory investigations in which the Netherlands Consumer Authority was involved were of a cross-border nature. The Netherlands also led

the way in Europe in terms of receiving and dealing with requests from other member states.

The Netherlands Consumer Authority itself called on foreign regulators for the first time, such as in its investigation into holiday clubs in Spain. Thanks to the cooperation between consumer regulators internationally, companies which are active outside their national borders can no longer avoid being scrutinised for their compliance with consumer rights. Companies would appear to be taking the rights of the consumer more seriously. Even so, structural changes in behaviour takes time. That is why the new Agenda will cover a period of two years: 2010-2011. We will work hard to fulfil this important task effectively once again in 2010.

Dr. D.J. Janssen, Deputy Director of the Netherlands Consumer Authority



Enforcement and information

Results

Enforcement and information

Strengthening the position of the consumer

Since January 2007 the Netherlands Consumer Authority has been overseeing compliance by businesses with consumer protection laws. Its mission is: *fair trade between companies and consumers, taking the economic interests of consumers as the starting point.*

The Netherlands Consumer Authority has a range of powers to investigate violations and to enforce compliance with the law. At the same time, the Netherlands Consumer Authority informs consumers and businesses of their rights and obligations.

The Netherlands Consumer Authority is a division of the Ministry of Economic Affairs. It was set up in response to a European regulation which requires a consumer regulatory body to be active in all European countries with effect from 1 January 2007. According to the regulation, national regulatory bodies must also work together closely in tackling cross-border, collective breaches in order to ensure that European consumers can make purchases safely outside their national borders.

The tasks and powers of the Netherlands Consumer Authority are laid down in the Consumer Protection (Enforcement) Act [*Wet handhaving consumentenbescherming* (Whc)].

ConsuWijzer

This information desk of the three regulators - the Netherlands Consumer Authority, the Netherlands Competition Authority (NMa) and the Independent Post and Telecommunications Authority (OPTA) - comes under the Netherlands Consumer Authority from an organisational point of view.

ConsuWijzer aims to strengthen the position of the consumer in economic activity by making him aware of his rights and obligations, to give him practical advice and direct him towards organisations and bodies which will help him to enforce his rights. Consumers may contact ConsuWijzer through its

website www.consuwijzer.nl to ask a question, make a complaint, search for information and download example letters. They may also telephone or write to ConsuWijzer. ConsuWijzer provides the Netherlands Consumer Authority with a good insight into what is going on in the market, and therefore plays an important signalling role.

Cooperation with other parties

The Netherlands Consumer Authority works together intensively with other regulatory bodies, public organisations and self-regulating bodies. Cooperation with public parties is developed further through

Powers of the Netherlands Consumer Authority:

- *to institute an investigation to establish whether rules are being violated*
- *in the event of a violation, it may be decided:*
 - *to pursue proceedings under administrative law: after drawing up a report the Netherlands Consumer Authority will impose a fine and/or an order subject to a penalty for non-compliance, or*
 - *to pursue proceedings under civil law: the Netherlands Consumer Authority will apply to the Court of Appeal for a ruling*
- *in the case of less serious breaches, the Netherlands Consumer Authority may sometimes issue a warning first*
- *under certain conditions, it is possible for a business to give a public undertaking that it will no longer commit such a breach; in that case the business must at any rate acknowledge that it was in breach and that it has taken demonstrable measures to end the breach(es)*
- *cases which involve or potentially involve criminal offences may be passed on to the Public Prosecution Service*

the Public Consultations ('Maatschappelijk Overleg') which the Netherlands Consumer Authority conducts periodically with consumer and business organisations. During these meetings, parties discuss such issues as the annual agenda and the Netherlands Consumer Authority's review of the previous year.

Other regulatory bodies

Several other regulators also have powers to act against infringements of consumer rights. These include the Netherlands Authority for the Financial Markets (AFM), the Independent Post and Telecommunications Authority (OPTA) and the Netherlands Competition Authority (NMa). In cases where both the Netherlands Consumer Authority and another regulator have the power to intervene, it is decided by mutual agreement who will take action.

A start was made in 2009 with the 'Market Regulators Meeting' [*Markttoezichthoudersberaad*]. This meeting forms the basis for a structural and multi-lateral cooperation between the participating market regulators - the NMa, OPTA, the Dutch Healthcare Authority (NZa), the AFM, DNB [*De Nederlandsche Bank N.V.*] and the Netherlands Consumer Authority - in order to achieve greater exchange of knowledge, experience and information to do with market regulation. This increases the efficiency of regulation, which allows the regulatory burden to be reduced.

International cooperation

At an international level the Netherlands Consumer Authority deals with a number of partners. First and foremost, the Netherlands Consumer Authority, together with colleague authorities from other member states of the EU, tackles cross-border violations at a European level, within the network of the Consumer Protection Cooperation (CPC). The regulators may ask each other for information or enforcement in the event of cross-border infringements of consumer rights. They are required to respond to such requests. The Netherlands Consumer Authority acts as a liaison office to coordinate such activities in the Netherlands.

Each year the Netherlands Consumer Authority also takes part in an Internet sweep. This is a joint, simultaneous investigation on the Internet within the European network of regulators. In 2009 an Internet sweep was held, focusing on the sale of electronic products over the Internet. During the sweep, the Netherlands Consumer Authority checked a number of preselected webshops to see whether they abide by consumer protection rules with the sale of electronic products. Letters were subsequently sent to businesses which did not comply with the applicable rules. The investigations are expected to be completed in mid-2010. Where necessary, the Netherlands Consumer Authority will take enforcing action. There is also cooperation between the regulators in the Benelux countries. In 2009 they jointly investigated compliance with the rules for guarantees and conformity in the consumer electronics sector.

At an international level, the Netherlands Consumer Authority also participates in ICPEN (the International Consumer Protection and Enforcement Network). ICPEN is the worldwide network of consumer authorities. Today about 40 countries are affiliated to the network, including the United States, Canada, Australia, Chile, China and Japan as well as European countries. The aim of ICPEN is to cooperate and share experiences and best practices in the area of regulation and enforcement on the one hand, and information for consumers on the other hand. Each year attention is focused worldwide on misleading commercial practices during the Fraud Prevention Month. In 2009 the Netherlands Consumer Authority put itself forward for the rotating chairmanship of ICPEN for one year, starting in mid-2010.

Partners in the Public Consultations:

Consumer Association
ECC-net
Het Juridisch Loket [Legal Aid and Advice Centre]
Dutch Federation of Small and Medium-Sized Enterprises
The Ombudsman Foundation
Foundation for Dispute Resolution Committees
Dutch Advertising Code Foundation
Confederation of Netherlands Industry and Employers
VNO-NCW

Legislation

Services Act

The Services Act [*Dienstenwet*] ensues from the European Services Directive (EU Directive 2006/123/EC) which entered into force on 28 December 2009. The Services Directive makes it easier for businesses to offer their services to customers in another member state or to set up business there. The Netherlands Consumer Authority has been given the statutory task of providing information to consumers on the operation of the directive and the Services Directive. ConsuWijzer will carry out this task and act as an information point for consumers. The government information desk for businesses, '*Antwoord voor Bedrijven*', performs this task for businesses. The Netherlands Consumer Authority will also monitor compliance with a number of information obligations for service providers under the terms of the Services Act. These obligations have been implemented in Book 6 of the Netherlands Civil Code. The information obligations under the Services Act overlap to some extent as regards content with existing, similar obligations based on the rules for distance selling, e-commerce and unfair commercial practices. But it also concerns new obligations. The Netherlands Consumer Authority can enforce compliance with the new rules by imposing an administrative fine (of up to 76,000 euro per violation) and/or impose an order subject to a penalty for non-compliance.

Unfair Commercial Practices Act

In 2009, for the very first time the Netherlands Consumer Authority made use of its new powers under the Unfair Commercial Practices Act. This Act is a significant addition to the range of powers available to the Netherlands Consumer Authority. It protects the consumer even better from practices whereby he is approached in such a manner that his decision whether or not to buy a product or service is or can be influenced in an improper manner. The consumer may be tempted in this way to make a purchase that he might not otherwise have made. The Netherlands Consumer Authority and the Netherlands Authority for the Financial Markets (AFM) monitor compliance with the Unfair Commercial Practices Act, which entered into force in October 2008.

Results

This section describes the activities the Netherlands Consumer Authority carried out in 2009 and what it achieved to strengthen the position of the consumer.

ConsuWijzer

More and more consumers use the information of ConsuWijzer to enforce their rights. The number of visits to the ConsuWijzer website has increased enormously. The year 2009 saw once again a doubling compared to the previous year, with 2 million visits made to the website. This increase clearly demonstrates that ConsuWijzer is meeting a need.

In 2009, ConsuWijzer answered 75,000 telephone calls and 30,000 e-mails.

Information

As well as giving interviews and answering readers' questions each week in the daily paper *Spits*, the Netherlands Consumer Authority also actively seeks to publicise its decisions, which are made accessible to consumers as news releases on ConsuWijzer. In order to make consumers better able to stand up

Top five reports to ConsuWijzer in 2009

- 1 *Guarantees and non-conformity (the right to a good product)*
- 2 *Telemarketing (misleading and/or undesirable sales telephone calls)*
- 3 *Energy contracts (customer canvassing)*
- 4 *Text messaging services (undesired contracts)*
- 4 *Online purchasing*

Top five most-visited pages in 2009

- 1 *Telemarketing and Bel-me-niet [Telephone Preference] Register*
- 2 *EnergieWijzer / Energy supplier comparisons*
- 3 *Guarantees and non-conformity*
- 4 *Text messaging services*
- 5 *Cancelling contracts and tacit renewals*

Doubling of website visits to consuwijzer.nl



for themselves, in information campaigns consumers are always referred for further information to the column *'uitgelicht'* [In the spotlight] on ConsuWijzer. An example of this is the warning about misleading Valentine messages.

As part of Fraud Prevention Month during the spring, the Netherlands Consumer Authority also focused attention on misleading telemarketing. Through ConsuWijzer, consumers could request or download the specially developed 'ConsuWijzer Tele Checklist'. An information campaign was started up in June to warn holidaymakers about deceptive memberships of holiday clubs, and in December the Netherlands Consumer Authority warned about sales demonstrations during bus tours.

Marketing of the website

Much was invested in 2009 in marketing the ConsuWijzer website online. Using search engines and through links on other websites where the advice of ConsuWijzer may be relevant, ConsuWijzer has a prominent presence. An example is the link to ConsuWijzer on the www.bel-me-niet.nl website. In October, the month in which the *Bel-me-niet Register* was launched, ConsuWijzer recorded 400,000 web visits. This is a fifth of the annual total.

Campaign Postbus 51

The campaign by the government's central information point Postbus 51 on radio and TV, *'ConsuWijzer, dan weet je waar je recht op hebt'* [ConsuWijzer, know your rights] was held once again during the first few months of 2009. As a result of the campaign, the number of contacts with ConsuWijzer rose, through the website as well as by telephone and email. Even after the campaign had ended, the number of contacts was structurally higher than it had been before the campaign.

Drempelvrij certification

In 2009 the ConsuWijzer website received the *Drempelvrij* certification. This means that the site is optimally accessible, even for the elderly and those with a functional limitation.

Consumers positive about ConsuWijzer

The annual customer satisfaction survey was held at the beginning of 2009. The results show an ongoing, slight improvement compared to the 2008 survey. Average customer satisfaction is 7.3.

Follow-up campaigns in response to the survey results in 2008 are evidently bearing fruit:

- ConsuWijzer communicates clearly what happens to the complaints or reports submitted by consumers. As a result, consumers know that they can contact ConsuWijzer for practical advice, but also that they must take action themselves to solve their individual problems.
- The information pages have been improved and made more readable for those with reading difficulties. Back-office staff have completed writing training for this purpose. The latest customer satisfaction survey shows that the readability of e-mail is a strong point.
- Since telephone contact scores more highly than contact by e-mail and letter, each e-mail states that the consumer may continue the contact by telephone.

Information about the Services Act

During the second half of 2009, ConsuWijzer devoted considerable attention behind the scenes to its new informative task in connection with the Services Act. ConsuWijzer performs this task for consumers in close cooperation with the government information service for businesses *'Antwoord voor bedrijven'* and the European Consumer Centre (ECC).

Supervision and enforcement

115 supervisory investigations were completed in 2009; 67 national and 48 international.

Agenda 2009

Text messaging services

What is going on?

For the second time the issue of misleading text messaging services was placed on the Netherlands Consumer Authority's Agenda for 2009. This was the result of ongoing complaints and signals received by ConsuWijzer, despite the updated Text Messaging Code of Conduct which has been in force since mid-2008. For example, advertisements for text messaging services suggest far too often that a free service is being offered, whereas this is actually not the case. Consumers also find that advertised prices are often confusing and it is difficult to find out how they can discontinue the service. In addition, a clear relationship between the character of the advertisement and the text messaging service subsequently supplied is frequently lacking. In other words, the contents of the text messaging service received do not correspond with the contents the consumer could expect based on the advertisement. As a result, consumers often find themselves unwillingly or unintentionally tied into a contract. In 2009 ConsuWijzer received an average of between 400 and 500 reports each month on problems with text messaging services.

Text messaging services, incidentally, are not just about ringtones and games, but increasingly all kinds of other services that can be offered by mobile phone, such as wallpapers, dating services and other entertainment and subscription services.

How has the Netherlands Consumer Authority tackled this?

The Netherlands Consumer Authority's approach in 2009 has been along two lines:

- submitting complaints to the *Stichting SMS Gedragscode*;
- taking action independently against those offering text messaging services which do not comply with the code of conduct and the law, and engage in misleading practices.

Code of Conduct for text messaging services

In order to monitor the effectiveness of the revised Text Messaging Code of Conduct and to encourage self-regulation, the Netherlands Consumer Authority actively reports conflicts with the code of conduct and/or corresponding statutory regulations to the *Stichting SMS-Gedragscode* [Text Messaging Code of Conduct Foundation]. Between October 2008 and July 2009 the Netherlands Consumer Authority submitted 21 complaints about advertising by 11 different providers of text messaging services to the foundation. Some of the advertisements were consequently modified or withdrawn. In cooperation with the OPTA the Netherlands Consumer Authority has contributed to an evaluation of the revised code of conduct carried out by the Department of Economic Affairs. Based on this evaluation, at the start of 2010 the State Secretary of Economic Affairs announced measures to force the sector to change its conduct in the short term. Regulations are also being prepared.

Since the problems with text messaging services persisted despite self-regulation, the Netherlands Consumer Authority felt there was no reason for it to exercise restraint in 2009. Investigations into infringements of statutory rules for consumer protection by providers of text messaging services therefore continued apace in 2009, leading potentially in 2010 to new sanction decisions.

Text messaging services appearing in new forms all the time



Misleading statements about text messaging services

In early February 2009 the Netherlands Consumer Authority gave the consumer an extra warning through the media about misleading online statements about text messaging services on the theme of Valentine's Day. ConsuWijzer also posted information on this.

In December 2009 the Netherlands Consumer Authority made preparations to issue a warning once again about misleading statements on the Internet, this time in relation to the flu epidemic. In order to prevent this, the provider concerned decided to remove the statements from the Internet.

Enforcement

In 2009 the Netherlands Consumer Authority completed two investigations into providers of text messaging services, whereby one sanction was imposed in the same year. The outcome of the other case is expected in 2010.

In January 2009 the Netherlands Consumer Authority imposed a fine on Smart Media Services B.V. totalling 118,750 euro. This company lured consumers through its website www.skilled2win.com with games, creating the suggestion that large cash and other prizes could be won. However, for a genuine chance of winning a prize, the consumer had to take out a text messaging contract on a word game. This continued until the consumer cancelled the contract. The fines were imposed for sending paid text messages to consumers without them having given their explicit permission, and for failure to comply with information obligations applicable to e-commerce and entering into contracts at a distance. An order subject to a penalty for non-compliance was also imposed to ensure that the company changed its information and stopped sending unsolicited texts. Smart Media Services B.V. paid the fine and did not lodge an objection to the decision.

The company OX-2 International filed an administrative appeal against the decision of the Netherlands Consumer Authority in 2008 when it fined the company 85,000 euro and imposed an order subject to a penalty for non-compliance. The company operated a number of websites with prize draws and advertisements for ringtones or quizzes via text. Visitors had to give their MSN name and password.

OX-2 International then used this information to send unsolicited advertising messages for 'free' ringtones or prize draws to the contact persons on its MSN address list.

The administrative appeals of OX-2 International were rejected. OX-2 paid the fine and did not lodge any further appeal.

What is the result?

Despite the new Code of Conduct for text messaging services, extra efforts are still required to put an end to fraudulent practices in this sector. It is a market that is constantly changing: providers come up with new services in different forms and new, young consumers are appearing all the time. Partly on the basis of all the signals and input from the Netherlands Consumer Authority, the Ministry of Economic Affairs has now acknowledged these problems and pressure is being exerted on the sector to bring about a real change in behaviour. In addition, extra rules are being drawn up to protect consumers. Even so, strict supervision is still necessary, and that is why the Netherlands Consumer Authority has once again put text messaging services on the agenda for 2010, as part of the theme 'unfair online commercial practices'.

SRC
Following complaints submitted earlier to the Netherlands Consumer Authority, three appeal cases involving providers of text messaging services were assessed by the Board of Appeal of the Advertising Code Committee. The Board of Appeal judged, as did the Advertising Code Committee, that these were cases of misleading advertising.

Telemarketing

What is the problem?

Telemarketing or telephone sales is in itself a legitimate sales method, but in practice a number of telephone sales representatives do not abide properly by the statutory rules for distance selling and the new rules on unfair commercial practices. Many consumers complain about the intrusive, aggressive approach over the telephone. It has also become apparent that the information the consumer receives is sometimes incomplete or incorrect. This can be misleading. What's more, it is not always clear to consumers that the telephone conversation has a commercial objective.

Research in 2008 by the Netherlands Consumer Authority into unfair commercial practices in the Netherlands has shown that consumers suffer considerable financial loss as a consequence of aggressive and misleading telemarketing.

How has the Netherlands Consumer Authority tackled this?

Legislation and self-regulation

New telecommunications legislation entered into force in the autumn of 2009. This included rules for the *Bel-me-niet* [Telephone Preference] Register, which established an initiative for self-regulation in legislation. Consumers who do not wish to be approached by telephone sales representatives can register here. Sellers must consult this register before they launch a telemarketing campaign. Although telephone sales will become less attractive as a result, they will still be possible. Consumers must therefore be confident that if they are telephoned, this will be in accordance with the rules.

The OPTA monitors compliance with the *Bel-me-niet* register and may impose fines on infringers.

As well as the register there are other initiatives for self-regulation, such as the Telemarketing Code. The Netherlands Consumer Authority entered into discussions in 2009 with a number of parties in the sector on ways to improve telemarketing calls and on revising the Telemarketing Code. Compliance

with the code, however, still does not allow affiliated organisations to differentiate themselves sufficiently. The sector began its review of the code in the autumn of 2009.

In addition, the Netherlands Competition Authority together with the OPTA has begun an investigation into the *Nederlandse Energiemaatschappij* (NL Energie). This investigation was initiated in the summer of 2009 following a company visit. The signals which the regulators picked up indicated that NL Energie was potentially approaching consumers by telephone in a misleading and/or aggressive manner to persuade them to become customers. Consumers also stated that they had unwillingly entered into a contract for their energy supply. Whether or not a violation has been committed, and if so, what sanction will be imposed, will be made known in 2010.

Enforcement

During the first quarter of 2009 the Netherlands Consumer Authority imposed two fines on companies which violated the rules with the use of telemarketing. It also dealt with an objection by a company that had been fined previously for violating these rules.

Tele2

Tele2 makes use of external call centres, which target existing customers of the company on a large scale with the offer of a landline contract. Following its investigation, the Netherlands Consumer Authority conclude that Tele2 did not make clear at the start of the call that they were telephoning with the intention of offering a landline contract. During the phone call too, the consumer was not always sufficiently or promptly informed about the costs of the landline contract, the method of payment, the minimum term of the contract and the cooling-off period. Tele2 also failed to state the cooling-off period correctly in the letter of confirmation that the consumer received later. As a result, the consumer was seriously curtailed in his rights. For these violations, fines were imposed totalling 70,000 euro. Tele2 lodged an administrative appeal against this judgment, and this appeal was declared partly well-founded and partly unfounded.



Information not always complete

Computer chains modify behaviour

KPN

The Netherlands Consumer Authority also carried out an investigation into the information that KPN gives consumers about the cooling-off period when entering into a contract that has been formed over the telephone. This investigation showed that KPN, in its letters to consumers, did not correctly state the commencement date of the cooling-off period. For this infringement the Netherlands Consumer Authority imposed a fine of 9,500 euro on KPN. KPN corrected its information for consumers.

Appeal by Pretium Telecom B.V.

Pretium Telecom (hereinafter Pretium) filed an administrative appeal against the decision of the Netherlands Consumer Authority from 2008. The Netherlands Consumer Authority fined the company for four violations of telemarketing rules under the Netherlands Civil code (Distance Selling Act). For these violations, the company was fined a total of 87,000 euro and received three orders subject to a penalty for non-compliance up to a maximum of 100,000 euro per penalty payment. Pretium's

Information

As part of the 'Fraud Prevention Month', an initiative of the International Consumer Protection and Enforcement Network (ICPEN), the Netherlands Consumer Authority conducted an information campaign in March 2009 on 'Telemarketing and the elderly'. Extra attention was given to this campaign on the ConsuWijzer website, with special information pages. Consumers could also request the newly developed 'Tele-Checklist' via the website. This checklist helps consumers to engage in a good conversation and take a well-informed decision on whether or not to make a purchase. Finally, a publicity campaign was launched to draw as much attention as possible to this subject in those areas of the media which focus on this target group, in addition to the regular press activities of the Netherlands Consumer Authority.

administrative appeal was declared partly well-founded and partly unfounded, and the fine was reduced to 81,600 euro. Pretium also objected to the publication of the sanction imposed by the Netherlands Consumer Authority, but this was declared unfounded. Pretium has lodged an appeal against both decisions before the Court of Rotterdam, and a judgment is expected in 2010.

Concerning the orders subject to a penalty for non-compliance, the Netherlands Consumer Authority conducted follow-up checks in the spring of 2009, which revealed that Pretium was not complying with the orders. The Netherlands Consumer Authority therefore established that the penalty had been forfeited and proceeded to demand payment. In response to this, Pretium applied to the civil courts. A judgment in this case is also expected in 2010.

What is the result?

Today there is plenty of information readily available on ConsuWijzer about telemarketing. As a result, consumers are much better informed about which rules telemarketing has to comply with and they have become better able to hold their ground in telemarketing conversations. ConsuWijzer is also found to be good on this subject, with a peak of visits in October 2009 when the *Bel-me-niet* Register was introduced.

The fines which the Netherlands Consumer Authority has imposed have had the desired effect in the sector. Because of decisions taken by the Netherlands Consumer Authority, companies have had their attention drawn to the rules for the use of telemarketing. The investigation into NL Energie and the joint visit to the company together with the OPTA put out a strong signal. The telemarketing sector is working on improvements, such as revising the code of conduct for telemarketing, while at the same time we can see a gradual shift towards the use of other sales channels, such as doorstep selling.

Guarantee and conformity

What is the problem?

Most of the questions and complaints received by ConsuWijzer are still to do with guarantees and conformity. In 2009 ConsuWijzer received 16,000 reports on the subject, mostly about issues that play out over the long term. Problems arise in particular once the manufacturer's guarantee has expired, when a discussion arises between the customer and the seller about who should pay for the repair costs, which are often very high. Since providers do not always comply with the statutory rules for guarantees and conformity, consumers are regularly confronted with unnecessary costs.

How has the Netherlands Consumer Authority tackled this?

Investigation into extended warranties

The Netherlands Consumer Authority has carried out an investigation into extended warranty products in the electronics sector, at six companies which together have more than 180 branches. The investigation showed that the purchase of an extended warranty in practice does not offer many extras in addition to the consumer's statutory rights. Furthermore, companies actively offer the extended warranty during the sales talk, but do not always provide full and correct information on what the extended warranty offers compared to the rights which the consumer already has. The consequence of this may be that consumers purchase the warranty based on false grounds. A report is being drawn up against individual companies which infringe the rules, possibly leading to sanctions being imposed in 2010.

Benelux investigation

Partly due to the earlier, successful Benelux investigation into general terms and conditions in the furniture sector in 2008, a joint investigation was started up once again in 2009. This focuses on the way in which companies selling consumer electronics communicate the rules on guarantees and conformity in

their general conditions, for example, and how they apply them. The common theme for the investigation in the three countries comprises a check on the general conditions of sale, the websites and possibly brochures and leaflets regarding the rules for guarantees and conformity. Consumer electronics are given a broad interpretation here, so that stores which sell only mobile phones or stores with a wide range of consumer electronics are both included in the investigation, the outcome of which will be announced in 2010.

Undertaking by Paradigit and Computerland

Following the undertaking given by Dynabyte in 2008, that the company will from now on comply with the rules for guarantees and conformity, two other computer chains gave the same undertaking in 2009: Paradigit en Computerland. The two companies have 21 and 15 computer stores respectively in the Netherlands. The Netherlands Consumer Authority carried out an investigation into these companies based on questions and complaints that had been sent to ConsuWijzer. It became apparent that the information about the companies on their website, the general conditions, the instruction material and practices in the stores did not correspond to the statutory rules on guarantees, conformity and unfair commercial practices.

The undertakings made to the Netherlands Consumer Authority established that the companies acknowledge that they themselves are the first point of contact for consumers who have bought a product which turns out to be unsound. It was also confirmed that Paradigit and Computerland will repair or replace the product within a reasonable period of time, regardless of the manufacturer's policy. If the product breaks down within two years of purchase and has been used in a normal way, Paradigit or



HBD Hoofdbedrijfschap Detailhandel

GEGARANDEERD GOED

WAT BETEKENT...*

NON CONFORM PRODUCT

NIET BRUIKBAAR PRODUCT

ONDEUGDELIJK PRODUCT

GARANTIE

WAARBORG

RECHT OP VERVANGING

* KLIK MET JUISTE ANTWOORD AAN VERDER

Information for businesses

Sales demonstrations

What is the problem?

During an excursion, following a sales presentation about a product or service consumers feel under pressure to make a purchase. Complaints to ConsuWijzer about sales demonstrations concern in particular the intrusive and aggressive manner of the presentation or demonstration, as a result of which consumers, usually older people, find themselves tied to a sales contract before they realise it. In addition, the information about the features of the product or service is sometimes poor and consumers are not properly informed about their rights. For example, sales representatives do not always observe the 8-day cooling-off period which applies under the Door-to-Door Sales Act.

Another example of a sales method which dupes many consumers involve fraudulent sales practices for membership of holiday clubs. It is estimated that some 165,000 Dutch people abroad have fallen victim to this, mainly in popular destinations such as Greece and Spain. Membership gives a person access to a special reservations system where he can book 'cheap' holidays. Holidaymakers are often approached on the street and invited to an informative gathering, where the salespeople try to get the consumer to sign the contract and pay a deposit. Holidaymakers who sign up for membership on the spot are usually pressurised to do so by the salesperson. Once they are back home, the offer often proves to be less attractive than it looked at the time.

These sales demonstrations can be an example of aggressive commercial practices, because the consumer, when subjected to such pressure, may possibly make a purchase or sign a contract which he might not otherwise have done.

Computerland will repair or replace it free of charge. Even after that period of two years, the consumer is still entitled to a sound product. Agreements have also been reached on this in the undertaking. Furthermore, Paradigit and Computerland have promised consumers they will not give any incorrect information about their rights to repair or replacement free of charge. The Netherlands Consumer Authority monitors compliance with the undertakings made.

E-learning module

The e-learning module 'Gegarandeerd Goed' [Guaranteed good] which the Netherlands Consumer Authority has developed in collaboration with the Central Industry Board for the Retail Trades [Hoofdbedrijfschap Detailhandel - HBD], was launched in the summer of 2009. The module is intended for employers and employees in the retail sector, and for students of the retail trade at *vmbo* (pre-vocational secondary education) and *mbo* (senior secondary vocational education) level. It involves a training course using the computer to learn about the main guarantee rules. The candidate who answers all examination questions correctly will receive a certificate from the HBD. There is considerable demand for the module and more than 500 certificates have already been awarded. It is easy to participate: the module can be accessed free of charge from the HBD website.

What is the result?

In 2009 there were an additional 36 computer shops where the consumer's statutory rights to a good product are respected and where the consumer is given the right information about the product. Regarding investigations into the purchase of extended warranties, the Netherlands Consumer Authority will announce enforcement measures in 2010. Following the Benelux investigation into electronics firms offering the benefit of extended warranties, it will become clear in mid-2010 whether the Netherlands Consumer Authority will take enforcing action. Thanks to the e-learning module for the retail sector, knowledge of the rules to do with guarantees has improved among retail businesses and staff. In view of the level of interest in the module, this knowledge will increase further.



How has the Netherlands Consumer Authority tackled this?

Within this priority area, based on its investigations into unfair commercial practices in 2008 the Netherlands Consumer Authority chose two spearheads:

- excursions during which the participants are given a sales demonstration for products such as household goods, health products, bed linen or mattresses;
- presentations for membership of or an investment in a 'holiday club' or timeshare project.

The Netherlands Consumer Authority examined both forms of commercial practices. Its investigation into unfair commercial practices in 2008 revealed that the loss suffered by consumers from these practices is considerable, but even so the number of complaints was relatively low. In order to obtain a clear picture of the problem and to reach agreement on sharing these signals, the Netherlands Consumer Authority discussed the issue with many parties, such as sector organisations, the media and foreign regulators. In order to obtain more signals from consumers, the Netherlands Consumer Authority posted separate items on both subjects on ConsuWijzer, in the column 'Uitgelicht' [in the spotlight].

This allowed the Netherlands Consumer Authority to obtain a good idea of practices relating to the sales demonstrations and the main players in this area. This led to various regulatory investigations, which in turn will lead to enforcement measures being imposed in 2010. In two cases concerning holiday clubs, the Netherlands Consumer Authority has submitted a request to the regulator in Spain to take enforcing action.

Regarding the activities relating to holiday clubs and timeshare projects, a free publicity campaign was set up in mid-2009 to warn consumers about these practices and urge them to report them to ConsuWijzer. This campaign attracted much attention in the media.

At the end of 2009 the Netherlands Consumer Authority once again initiated a free publicity campaign, this time to warn consumers of excursions with a sales objective, and to encourage them to report their complaints.

What is the result?

The Netherlands Consumer Authority has identified and analysed the nature and extent of the problem concerning sales demonstrations for holiday clubs, timeshare projects and sales demonstrations during bus excursions. A number of investigations are underway at companies active in this area, partly in cooperation with foreign regulatory bodies. Because of the publicity campaigns, the public at large has become more aware of the negative aspects of holiday clubs and sales demonstrations during bus excursions. Consumers confronted with these kinds of practices can find information on ConsuWijzer about their rights, and can find out what rules such salespersons must abide by and what action they themselves can take. This makes them less vulnerable to such sales activities. The results of enforcement by the Netherlands Consumer Authority will be made known in 2010.

Campaign to warn consumers

Misleading holiday practices



Matters not on the Agenda

National issues

Investigation into Fotosessie.com

Fotosessie.com offers photo shoots and records the result on a digital carrier. It targets mainly young consumers via networking sites, telling them that they have been selected and have won a prize, or that they can be auditioned through the website of Fotosessie.com. In its marketing activities, the company targets young people above all, and uses the photo shoot as a means of offering the person a potential career as a model. Complaints and reports received by the Netherlands Consumer Authority showed that Fotosessie.com was possibly in violation of the rules. The Netherlands Consumer Authority investigated the commercial practices of the company, which resulted in a report identifying violations by Fotosessie.com concerning its general terms and conditions, information obligations in respect of distance selling and unfair commercial practices. A fine of 100,000 euro was imposed in early 2010.

Travel organisations before the courts

In response to the priority area 'Guarantees in the travel sector' in 2008, in early 2009 the Netherlands Consumer Authority submitted an application to the courts to order a tour operator to comply with the statutory requirements for travel guarantees. The judgment of the court upheld the application of the Netherlands Consumer Authority. The tour operator was given a period of time in which to comply with the statutory requirements. If the company does not do so, it will be ordered to pay a penalty of up to 100,000 euro.

The Netherlands Consumer Authority has also submitted applications for ten other tour operators to the court, and the judgment is expected in early 2010.

Resale of tickets

In response to complaints by consumers to ConsuWijzer, in 2009 the Netherlands Consumer Authority investigated the websites of companies which resell tickets to concerts and events via the Internet. This investigation focused on the accuracy and completeness of the information provided to consumers. Following the investigation the Netherlands Consumer Authority sent a letter in September 2009 to the companies concerned, together with an explanation of the statutory obligations for these types of websites and an announcement that it would monitor compliance with these statutory obligations. The Netherlands Consumer Authority has submitted its requirements for websites of resellers to the sector association for ticket resellers (EUSTA) which was formed on 1 July 2009. The sector association has drawn up a code of conduct for its affiliated members which has been in force since 1 January 2010.

If the monitoring of the websites shows that companies do not comply with all their obligations, the Netherlands Consumer Authority may draw up a report, which may lead to the imposition of a fine and/or an order subject to a penalty for non-compliance. In the meantime, it has been observed that potential violations are taking place on a number of websites where tickets are resold. Action has been initiated against the companies involved, which have been given a period of time to put their website in order. Checks on the other websites will continue in 2010. Online reselling of tickets is one of the subjects on the theme of unfair online commercial practices which is on the Agenda for 2010.

Administrative appeal UPC Nederland B.V.

In 2008 the Netherlands Consumer Authority imposed a fine on UPC Nederland totalling 303,000 euro for the way in which the company offered digital television subscriptions in 2007 through door-step selling and telephone sales. In doing so, UPC infringed the Door-to-Door Sales Act. In addition,

UPC was ordered from then on, subject to a penalty of 1,000 for each working day, to state clearly the commercial purpose of the conversation at the start of each telemarketing call. UPC lodged an administrative appeal against the decision of the Netherlands Consumer Authority, but its appeal was rejected in 2009. For one element of the administrative appeal - stating the identity of door-to-door salesmen during sales talks on the doorstep - the Netherlands Consumer Authority explained further why it held the view that a violation of the Door-to-Door Sales Act had occurred. UPC has lodged an appeal against the decision. The case is expected to come before the court in early 2010.

Administrative Appeal Post Garant B.V.

In 2008 the Netherlands Consumer Authority established that PostGarant had not complied with various information obligations that apply to Internet providers, and that the company had sent unwanted follow-up products to consumers. For these violations, the Netherlands Consumer Authority imposed on PostGarant - previously Fitanova - fines totalling 130,000 euro. In addition, the company was ordered, subject to a penalty for non-compliance, to improve the information it gives its consumers on its website and refrain in the future from sending unsolicited products to consumers. The administrative appeal filed by PostGarant against the decision of the Netherlands Consumer Authority was to a large extent rejected; on the basis of facts presented during the case the fine was reduced by 10,000 euro. PostGarant appealed against this decision, and the case was heard in 2009. The court is expected to deliver its ruling in early 2010.

Keukenkampioen and Keukenconcurrent fined

The Netherlands Consumer Authority fined Keukenkampioen and Keukenconcurrent 110,000 each, and an order was also imposed on the companies, subject to a penalty of 5,000 euro per day for non-compliance, up to a maximum of 200,000 euro.

Both companies are affiliated to the *Centrale Branchevereniging Wonen* (CBW) and are required to adhere to the CBW's general terms and conditions on payment and deposits. If they fail to do so, they violate the Unfair Commercial Practices Act. Keukenkampioen and Keukenconcurrent acted in contravention of these terms and conditions, which state that when ordering a kitchen, a maximum of 15 per cent as a deposit may be demanded. The consumer pays the remainder of the purchase sum upon delivery of the kitchen. This 15 per cent comes under the CBW guarantee scheme, which means that the consumer, if the store becomes insolvent, may take out a replacement contract with another CBW-recognised store without having to pay a new deposit.

However, Keukenkampioen and Keukenconcurrent required full payment of a kitchen 12 to 5 days before delivery. This meant that the consumer was running a financial risk. If the companies were to run into financial difficulties between payment of the full purchase sum and delivery, the consumer would lose 85% of the purchase price paid. Moreover, requiring full payment 12 to 5 days before delivery of the kitchen is in contravention of the CBW condition that payment only needs to be made upon delivery. Keukenkampioen and Keukenconcurrent have promised that they will modify the standard order form on the matter of payment. They have however submitted an administrative appeal against the decision of the Netherlands Consumer Authority, because they disagree in principle with the way in which the Netherlands Consumer Authority has interpreted the CBW's terms and conditions.

Other cases

In addition to the cases referred to above, the Netherlands Consumer Authority has conducted a number of proceedings under both civil and administrative law on requests for publication, whether or not under the Government Information (Public Access) Act.

International cases

International cases demand considerable effort and capacity on the part of the Netherlands Consumer Authority. 42 per cent of the investigations started in 2009 arose from a request for information or enforcement. In addition, the Netherlands Consumer Authority has been actively involved in all kinds of

international activities, with the aim of optimising cooperation between European member states and countries outside the EU in cross-border infringements of consumer law. That is why the Netherlands Consumer Authority has explicitly identified its tasks as international regulator as a theme for the Agenda 2010-2011.

European cooperation

Following an initial phase, cooperation within the European network CPC (Consumer Protection Cooperation) has made good progress. More than 800 requests for assistance (provision of information and/or enforcing action) have already been exchanged since early

2007. The Netherlands Consumer Authority was also the leader in Europe in 2009 with regard to the number of requests received for assistance, followed by France and England. The reason for this is the large number of requests that the Netherlands Consumer Authority received from Belgium.

Consumer regulators from other European member states submitted 79 requests to the Netherlands Consumer Authority. These concerned:

- 31 'alerts'. An alert is a signal/report from one regulator to the other on an investigation in progress which may have consequences for the other regulator. The alerts concerned such things as misleading text messaging services, pricing of airline tickets and non-compliance with information obligations by webshops in a range of sectors.
- 28 enforcement requests, particularly due to failure of text messaging service providers and other providers of products and services over the Internet to comply with information obligations.
- 20 information requests, particularly to ascertain whether certain companies which use a Dutch P.O. box as a business address are actually established in the Netherlands and what their involvement is in misleading practices in the requesting member state.

The Netherlands Consumer Authority dealt with a total of 30 information requests and 18 enforcement requests in 2009 (these figures include the requests remaining from 2008).

From the Netherlands, 24 cases were sent via the Netherlands Consumer Authority to other member states: 23 information requests and 1 enforcement request. The enforcement request concerned a foreign webshop which has failed to comply with the e-commerce rules in the Netherlands and consequently has caused Dutch consumers considerable loss. A number of information requests were sent in national investigations into infringements, potentially involving foreign businesses. Requests were also sent to other member states to investigate or act jointly against a large international company which has systematically failed to comply with consumer protection rules and regulations.

Administrative burden

The explanatory memorandum to the Consumer Protection (Enforcement) Act states that the Netherlands Consumer Authority, in its annual report, will devote attention to the administrative burden associated with the implementation of its statutory tasks under the Act.

With the introduction of the Consumer Protection (Enforcement) Act, the Ministry of Economic Affairs calculated the expected administrative burden associated with the implementation of the Act. This calculation was submitted to the Advisory Board on Administrative Burden (ACTAL). The following categories of the administrative burden, with the associated amounts, were distinguished in the calculation:

In the figures produced by the Ministry of Economic Affairs on the burden associated with the exercising of supervisory and enforcement powers by the Netherlands Consumer Authority, it was assumed that the Netherlands Consumer Authority would deal with roughly 95 cases each year, in which information would be requested to a greater or lesser extent through the exercising of supervisory powers. These 95 cases concerned both cross-border and national cases in the calculations.

The following categories of administrative burden, with the associated amounts, are distinguished in the calculation:

1 Burden caused by the exercising of supervisory and enforcement requests by the Netherlands Consumer Authority

In 2009 the Netherlands Consumer Authority completed 115 investigations following actual or potential national and cross-border infringements. This is slightly more than the 95 which served as the starting point for the calculations when introducing the Consumer Protection (Enforcement) Act. This led to a slight increase in the administrative burden in 2009. It should be remembered here, however, that this

is not a burden arising from the fact that a generic information or licensing obligation is imposed on companies, but supervisory expenses arising solely from investigations into potential infringements.

2 Burden as a result of lodging an administrative appeal or appeal, justified or otherwise, against a decision or petition by the Netherlands Consumer Authority

In calculating the administrative burden in this category, two cases have been taken: one before the district court of Rotterdam (administrative enforcement) and one before the Court of Appeal of The Hague (enforcement under private law) in which the ruling retrospectively found in favour of businesses against which the Netherlands Consumer Authority had taken enforcement action. Cases in which an administrative appeal is filed or an appeal to a higher court is lodged against a decision of the Netherlands Consumer Authority and where the ruling is in favour of the Netherlands Consumer Authority, are not included in calculating the administrative burden.

In two cases in 2009, the Netherlands Consumer Authority declared the administrative appeals submitted partly well-founded. This involved a small administrative burden, which was however much less than had been taken into account with the introduction of the Consumer Protection (Enforcement) Act.

European requests

Received

- 31 alerts
- 28 enforcement requests
- 20 information requests

Sent

- 1 alert
- 1 enforcement request
- 23 information requests

Handled

- 18 enforcement requests
- 30 information requests

(incl. requests remaining from 2008)

The Netherlands Consumer Authority in figures

Supervision

National

Investigations started in 2008 and continued in 2009	50
Investigations stated in 2009	65
Investigations ended due to lack of / insufficient severity of breach	21
Investigations ended due to breach ending following intervention by the CA	25
Reports	4
Regulations submitted	14
Total number of national investigations completed	67

International

Alerts received in 2009 from EU member states	31
Alerts sent in 2009 by the Netherlands	1
Enforcement requests received in 2008 and continued in 2009	15
Enforcement requests received from EU member states in 2009	28
Enforcement requests from EU member states dealt with by the CA	18
Enforcement requests sent by CA	1
Information requests received in 2008 and continued in 2009	10
Information requests received from EU member states in 2009	20
Information requests dealt with from EU member states	30
Information requests sent by CA	23
Total number of international investigations completed	48

Enforcement

Undertakings	3
Sanction decisions	5
Decisions on administrative appeals following advice from the Administrative Appeals Advisory Committee	4
Other decisions on administrative appeals	3
Decisions on petition proceedings	3
Injunctions	1
Rulings by the Board of Appeal of the Advertising Code Authority	3
Decisions under the Government Information (Public Access) Act (WOB)	1
Opinions by the Council of State	1

ConsuWijzer in figures

telephone calls	75,000
e-mails	30,000
letters	2,000
website visits	2,000,000

Downloads

example letters	328,000
complaint forms	27,500
Tele-Checklists	18,000
EnergieWijzer comparisons	203,000

Enforcement requests from EU member states

Basis	2009
Doorstep selling	
e-commerce	15
Guarantee	
Distance selling	1
Timesharing	
Misleading advertising	3
Unfair conditions	
Package tours	
Pricing	
Unfair commercial practices	9
Total	28

Information requests from EU member states

Basis	2009
Doorstep selling	
e-commerce	1
Guarantee	
Distance selling	
Timesharing	
Misleading advertising	5
Unfair conditions	2
Package tours	
Pricing	
Unfair commercial practices	12
Total	20

Enforcement requests from the Netherlands Consumer Authority to other EU member states

Basis	2009
Doorstep selling	
e-commerce	
Guarantee	
Distance selling	
Timesharing	
Misleading advertising	
Unfair conditions	1
Package tours	
Pricing	
Unfair commercial practices	
Total	1

Information requests by the Netherlands Consumer Authority to other EU member states

Basis	2009
Doorstep selling	2
e-commerce	
Guarantee	
Distance selling	
Timesharing	
Misleading advertising	
Unfair conditions	19
Package tours	
Pricing	2
Unfair commercial practices	
Total	23

Colophon

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Information line for consumers: (088) 070 70 70
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Copywriter

Walstra tekst en advies

Editor

The Netherlands Consumer Authority

Photography

Hans Oostrum Fotografie

Art direction and design

Rooduijn communicatie & design

Print

Vijfkeerblauw



consumentenautoriteit