1. INTRODUCTION

“Those enterprises which make those television programs accessible or ensure the usage of telephone or Internet access (that is, so called electronic communications service providers) have become integral parts of our lives. We cannot really find such consumers in Hungary who would not use some kind of electronic communications service, hence, consumer protection has an especially significant role in this area.”

First of all, let us practice some self-criticism: clearly, we consume practically everything, especially what is fashionable, multifunctional, intelligent/smart (even more than us) broadband or is made according to the latest technology. We are as greedy as uninformed and incautious, hence, later (to a great extent) complainant. “Informed customers” demand is a category repeated till boredom in relation to general consumer protection and together with it in all of its specific branches. Strategies and projects worked out for this objective are mostly high quality and catchy works, however, their realization is less developed. More precisely, the effect of becoming informed consumers fails to succeed, which main reason, I believe, is that there are not any adequate communication channels for the information’s transmission.

With writing this study, my main objective is to call the attention to problems and represent the legal relations’ subjects in

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1 Electronic communication (telecommunication), http://nfh.hu/magyar/hasznos/hirkozles [cit. 2014-01-01].
their natural light, point out their mistakes and last but not least, find appreciable (and effective) solutions.

Besides that in many cases (contractual) legal relation is already wrong at the starting point, during its accomplishment (provision, requisitions of services) we can find sources of conflicts and areas of injuries. We can mainly trace them in billing disagreements, increasing tariffs, quality of services and in their contents, one-sided (provider) modification of contracts, terminations, limitation of services, handling of complaints, troubleshooting, etc. After the inconveniences, the following question comes up: who should complainants turn to, through what kind of process can they get "gratification", or which bodies, authorities are entitled to remedy consumer complaints?

Most answers can be found in the legislation, in SCCs (Standard Contractual Clauses), therefore, these are not unanswered questions, only their public knowledge is missing. Our task is to somehow inform the public on this extremely important information and create general practices from them such as the application of TANTUSZ-program, the process which precedes and helps purchase, hence, in one word; we need to create informed customers! I would like to suggest such strategies which do not regard the above mentioned objectives as utopia but with simple and greatly aimed solutions can even achieve them!

However, we must not forget one thing (it may seem obvious but still...) consumer protection is mainly intended to create a balance system between the market relation's two parties; the consumer and the producer-retailer (in our case, communications provider) so that consumers have their optimal decision opportunities and their interests are realized in the most efficient way. This supportive-assisting function is tried to be carried out with the help of education, the right to be informed and the right to legal protection, the right to legal remedy and law enforcement, however, 

\[\footnote{FAZEKAS, JUDIT: Fogyasztóvédelmi jog, 2007, Complex Kiadó, Budapest, 71.}\]
it always supposes a circumspect, deliberately acting consumer who wants to get information.

2. FOUNDATION

2.1. Communications and consumer protection – encounter of legal areas

At first, we have to give a definition to communications as a whole: we can understand it as a general definition, a generic term which includes various forms of the transmission, storage and processing of news and information, hence telecommunications services (including public and private, wired and mobile telephones and data transfer), radio and television broadcast, program distribution and program division and postal services. Among the frames of my current study, I mainly concentrate on electronic communications, which can be defined as the followings:

Electronic communications service is a service mostly done for somebody else for a remuneration, which service fully or partly consists of the transmission of signals (signaling, writing, motion, sound, etc.) through electronic communications networks and where

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3 Consumer protection aspects of communications regulation have been dealt with since telecommunication act was enacted in 1993, these two areas' mutual set as a special cooperation area is part of the scientific work dealing with communications administration – says Koppányi Szabolcs, who described the mutual regulation objective and authorities' way of cooperation. See KOPPÁNYI, SZABOLCS: Hírközlési jog az európai közösségben és Magyarországon [Communications Law in the European Community and in Hungary], 2003, Osiris, Budapest, 326-329.


5 Electronic communications networks are such equipment and other resources which serve for the controlling of transmission systems and signals which make transmission of signals possible between given
it is understandable, also of its control. The activity ensures the transmission of the above mentioned signals through electronic communications networks to one or more consumers. Regarding its essence, it is some kind of a mediator activity.

Electronic communications services can be divided into three big categories:

1. telephone service (localized to a place – wired and mobile);
2. radio and television broadcast, program distribution and program division;
3. internet access service.

The three great mobile phone companies (T-Mobile, Telenor and Vodafone) together with cable television companies, companies providing satellite broadcast, enterprises providing wired phone and internet subscription, furthermore, providers performing IP-based (Internet-Protocol) telephone service or program distribution belong to the group of the most well-known electronic communications providers.

It marks the importance of cooperation between electronic communications and consumer protection that the act on electronic communications lists among its key concepts, if not marks the protection of consumer interests as the most important issue in connection with its relationship held with all members of the endpoints through cables, electromagnet way, hence, satellite networks, wired and mobile networks below the ground, cable television services.

6 Act C of 2003 on electronic communications (hereinafter: Eht.) Art. 188. para. 13.
7 Content service or services practicing editorial control on such contents and enterprises providing mobile-service and electronic commerce are not classified as electronic communications services.
8 In case of phones sounds, in case of television picture and sounds, in case of Internet, volumes of data.
9 IP is a standard ensuring the communication of intersections connected to the Internet (computers, network tools, web cameras, etc.).
communications market: in relation to the existence of services according to entitlement, free choice among services and service providers, public visibility of services and resorting to them on the smallest available price and highest quality, providing up-to-date information and protection of consumers’ interests from service providers.\(^{11}\)

The most important body which is responsible for the coordination and controlling of communications (and media) – and the protection of consumer interests – is the National Media and Infocommunications Authority – Hungary (I am going to mention it in detail in chapter III on the proceeding authority.) Let us see the other half!

*Consumer protection* is an emphasized, horizontal area of the economic policy and primarily aims at creating balance between consumers and sellers of products so that consumers’ rights are realized to the fullest possible extent, more precisely, validation of consumer interests is ensured in front of manufacturers, retailers and service providers.\(^{12}\) The legal area was comprehensively regulated in Act CLV of 1997, which, according to the consumer protection policy of the European Union, marks those five principles which are cardinal points of consumer interests’ protection. These are the followings: protection of consumers’ health, safety and economic interests, providing information and education for consumers, justification of consumer needs and finally, consumer representation.\(^{13}\)

Mainly the *Hungarian Authority for Consumer Protection (HACP)* and its regional branches are responsible for carrying out

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\(^{11}\) Eht. Art. 2. point b).
\(^{12}\) Description of consumer protection authority. Available at: [http://www.nfh.hu/magyar/informacio/bemutatkozas](http://www.nfh.hu/magyar/informacio/bemutatkozas) [cit. 2014-01-01].

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consumer protection tasks. Among its spheres of competences\textsuperscript{14} it proceeds in frames of other services in case of consumer trespasses related to communications services:

1. operating customer service;
2. process and handling subscription bill complaints on the side of service providers;
3. bill content;
4. among regulations referring to information of subscribers from service providers.

The investigation of requirements referring to the content of SCCs and unique subscription contracts, the revision of SCCs do not belong to HACP’s sphere of competence\textsuperscript{15} These tasks are carried out by the Department of Communications Supervision of National Media and Infocommunications Authority – Hungary (NMIAH), for which they sign a cooperation agreement which is annually revised by the authorities.

The increased need of consumer protection is justified by two things in the sphere of communications: on the one hand, the information asymmetry between the parties, on the other hand, or strongly connecting to it, the vulnerability of consumers in the following relations: in this sharp market race service providers are developing more and more complex, complicated products (roaming tariffs), which essence, economic and legal background and possible risks (for instance consequences of breaching loyalty contracts) are not understandable by general consumers; not transparent pricing and costs; inadequate information of consumers (not clearly understandable, deliberately misunderstandable information suitable for deceit, withholding of risks or simply lack of giving


information). Having regard to these circumstances, too, we investigate these two legal fields’ mutual set.

The Parties signed the cooperation agreement in January 2008 based on provisions of Eht., in this study I am reviewing the priorities of the authorities’ cooperative work based on the currently operative – 4th June 2012 – cooperation. They set mutual tasks according to five principles: providing information, consultation; mutual action for protecting consumer rights; authority decisions, sending summaries, providing information on authority decisions; providing information for the public and consumers; keeping contacts.

Criticism formed in connection with the Agreement: there are only a few obligations and many possibilities! Concretely fixed obligations would be necessary for flexible, still, coordinated work, furthermore, strictly demarked tasks and spheres of competences, procedural entitlements, compulsory consultations and inspections are needed.

As regards the mutual sending of revision plans, I do not believe that it is by all means necessary as they can influence each other’s practice. It is more practical if both authorities carry out the revision process according to their own practice – because they investigate upon their own perspectives – and they inform each other on its results and consequences, implying obligatory consultation

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16 VERES, ZOLTÁN: A pénzügyi fogyasztóvédelem alapjai [The Basis of the Financial Consumer Protection] (manuscript), 2012, Budapest, 3. In the referenced source’s ternary listing the Author marks persistence of information asymmetry in financial sphere and consumer vulnerability. I believe that the mentioned problem issues succeed in the field of communications market, as well.

17 Eht. Art. 21. rules on the cooperation requirements of the two authorities in issues relating to the electronic communications market and services connected to the information society’s services and cases related to consumers.

afterwards. Ideas coming from different aspects can lead to more worked-out results.

Disadvantageous consequences of the lack of concrete distribution of spheres of competences are shown in practice, too, especially in the case of complaints regarding billing. Approximate anchorage of the two authorities’ spheres of competences is futile, demarcation is not obvious.

The result will be the back and forth movement of complaints – besides the mutual information of customers – which, in a not condemned way will result in the decrease of consumer trust towards the authorities.

2.2. Subjects of legal relation

Differentiation among consumers-subscribers-users with regards to person, objective and contractual relation:

Consumer, whether we refer to wider or narrower subjects’ circle, can only be a natural person\(^{19}\) who resorts to services for private aims. In consequence, besides being natural persons, both subscribers and users can be legal persons, economic companies or other organizations without having legal personality, who, besides private aims can proceed for business aims, too. What serves as the differentiation of the last two categories is the contractual legal relation which is exclusively the inherent of subscriber nature. The user only uses, resorts to the given electronic communications service. In most cases, the two categories of course overlap each other. We can see that in this circle the user is the smallest subjective category.

Service providers: Those enterprises belong to the circle of electronic communications services which provide and carry out phone service (wired and mobile), Internet service and radio-

\(^{19}\) In case of accomplishing the contract and besides it breaching obligations connected to the quality of the service, it became possible for small and mid-enterprises to have that type of protection for which customers are entitled to.
television division, broadcast and distribution. The list of service providers is incredibly long (currently there are 917 operating/active service providers in Hungary), based on their size and income, they present a really wide scale.

Among service providers, we must mention universal electronic communications service providers and (JPE) providers possessing significant market strength.

3. CONSUMER PROTECTION IN COMMUNICATIONS

Consumer protection tasks connected to communications are mostly carried out by the Department of Communications Supervision but the Media- and Communications Commissioner also has significant part in the area (true, with a unique legal status). Previously (before 2010), the remedy of allegation of injuries based on incoming complaints was the task of RCCR.

The first and most important body is the National Media and Infocommunications Authority – Hungary, which is a self-regulatory body existing since 11th August 2011, based on Act LXXXII of 2010 on modifying acts that regulate media and communications.

But before investigating the now existing institution, it is worth looking at the precursor institution called National Communications

20 During program distribution, signals produced by the service provider get to radio and television broadcast channels and program division networks through wired (cable) networks, furthermore above ground or satellite systems in unchanged content.
21 Broadcast is a one-sided telecommunications process carried out by above ground or satellite systems for transmitting sounds, pictures and other signals.
22 Simultaneous, unchanged transmission of produced broadcasting signals to the receiver in an electronic way. (Communications-statistical database.) Available at: http://webext.nmhh.hu/hirk_stat/definiciok.nhh?&fejezet=8&nyelv=0 [cit. 2014-01-01].
Authority (NCA), which, besides the protection of interests, formation and maintenance of efficient competition and supervision of service providers’ lawful behavior, also laid significant importance on consumer information as the first (preventive) aspect of protection of interests, which is especially significant from our theme’s point of view. In the frame of this strategy, various educational, informational materials have been published, just like Raising consumer consciousness in electronic communications markets or What, where, how? Useful information on communications services and consumer rights. The establishment of TANTUSZ portal was significant. It is a (still actively) working, continuously updated information website which helps users in choosing the most advantageous mobile-, wired-, Internet or cable TV service based on individual consumer habits. It provides information on roaming prices and offers of companies providing broadband Internet-access. Hence, the search engine of the portal concentrates on two main areas: tariff comparison and service location. Making authorities’ customer service modernization, protection against accidental roaming, web information on service providers’ quality traits, free-access spam-filter programs and softwares for the detection of spy-programs available is not negligible, either. The ideas and their realization is praiseworthy, very spectacular, easily understandable and direct, with one deficiency (which was the obstacle of reaching the final aim): it was not “advertised”. Only few percentages of people visited the website of the authority and few people knew where to get information from. Knowing all these, let us see how the prosecutor works!

In its communications-controlling activity NMIAH controls the appointed certificate organization, carries out general control and market control in the area of electronic communications, makes annual inspection and supervision plans, then, after carrying out the

\[24\] See http://nmhh.hu/dokumentum/1747/fogy_tudatossag_kiadvany_v5.pdf [cit. 2014-01-01].
investigation, makes an account on their results, calculates and “collects” supervision charges and calls then obligates service providers to fulfil their data-providing obligations. Building authorization means a separate part of its tasks, during which it carries out procedures of inspection of constructions and authorization procedures. Regarding our study, market inspection\textsuperscript{26} and its general inspection procedures have great significance as they (may) greatly affect consumer-, subscriber-, user rights.

Authority procedures based on requests are complaint handlings’ “most efficient methods”. (After the service provider has previously fulfilled\textsuperscript{27} its tasks regarding the investigation of consumer complaints and announcements.\textsuperscript{28,29}) The service provider has 30 days to investigate written consumer requests. It is obliged to send the result of the investigation to the client in written form, in case of rejection, explain it. If the service provider very likely violated rules on electronic communications or SCS, the consumer, in form of a request, can turn to the Authority for carrying out authority inspection procedure. If the client’s request adheres to the

\textsuperscript{26} Market inspection aims at the controlling and enforcement of defined and undertaken obligations in legal provisions referring to electronic communications, authority provisions, directly applicable EU acts, general contractual conditions. See http://nmhh.hu/cikk/727/Tajekoztato_az_elektronikus_hirkozlesi_piacfelugyeleti_eljarasrol [cit. 2014-01-01].

\textsuperscript{27} In case of bug reports, the fastest solution is when the complainant’s announcement is made to the service provider’s customer service on their bug report number, with providing identification client number. The service provider is obliged to investigate the problem within 48 hours and inform the subscriber on the modes of fixing the problem.

\textsuperscript{28} Eht. Art. 138.

\textsuperscript{29} It is the service provider’s legal obligation to operate a dial-up customer service with personal availability and Internet accessibility for the handling of subscriber and user announcements, investigating and remedying complaints. Subscribers have to be informed on the conditions and modes of complaints and announcements, deadline of investigation and in case of settlement of disputes, consumer protection bodies, authorities and courts that have the right to carry out procedures.
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formal and content obligations (one has to hand in the request exclusively in writing or through client portal, on such form or blank of the Authority which was especially written for this aim, obligatory contents of the requests besides clients’ identification data and the description of the grievance), a first instance procedure starts according to the rules of Ket., during which procedure the requester is regarded as a client, hence, clients’ rights and obligations behoove to them. The fee of the communications general authority procedure is 3000 Ft which has to be paid via transfer before handing in the request. The authority’s administration deadline according to main rule is 45 days, which, in a reasonable case, can be extended with 30 days at one time.

The authority, during the application of legal consequences has to follow the principles of equal treatment, gradual steps and proportionality. As a legal consequence, it orders service providers to cease and stay away from unlawful behavior and to attest legitimate behavior. The Authority can ban the certification of unlawful behavior, it can determine obligations, apply further legal consequences or enter into authority contracts. As the most important (and most frequently applied) sanction, it can determine fines according to conditions set in law, however, in every case it has to be in the value which is suitable for the retention of further unlawful acts.

The client has the right to appeal against the first instant authority decision of the Authority (exclusively those who participated in the first instance case) to the President, who, based on

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30 Eht. Art. 32.
31 See http://nmhh.hu/cikk/2788/Hogyan_nyujthat_be_kerelmet [cit. 2014-01-01].
32 5/2011. (X. 6.) NMIA regulation on administration service fees and modes of payment of the National Media and Infocommunications Authority - Hungary’s certain procedures, Art. 9.
33 Eht. Art. 31. para. (1)-(2).
34 Eht. Art. 48-49.
35 Eht. Art. 44. para (1)-(2).
Mttv. 112. § (2), delegated second instant authority decisions’ power to the vice-president, and in whose name the second instance decision-preparing department acts. The investigation of resolutions made here can be requested with an action from the court carrying out administration tasks, for which only the Metropolitan Court of Budapest is competent. In the contentious procedure the Authority is represented by the NMIAH’s directorate of law.

With market inspection procedures started upon requests, hence, in connection with the handling of complaints, the question whether real legal remedy, therefore, insuring the possibility of appealing within the Authority is really needed or not may arise. With taking the published resolutions into account, in most cases confirmation and the request’s rejection, in certain cases confirmation but (confirming certain points of the request or regardless of appealing) alteration of the first instance resolutions (in one or two cases obligatory/calling orders such as appointing delivering delegate in case of foreign service provider) were born. Order for starting a new process barely happens/has happened. That is exactly why it is questionable that whether besides making the process longer, it substantively contributes to the successful carrying out of the case or not. Perhaps the “dropping” of second instance, hence, real legal remedy (appeal) against Authority resolutions could be advisable, hereby making direct court investigation possible with regards to market inspection procedures started upon requests. This solution is not without precedent, the then Hungarian Financial Supervisory Authority’s (HFSA) authority procedure operated in similar one instance procedure, against its resolutions court investigation could be used. One the one hand, this solution would be reasonable in order to simplify procedures, on the other hand, it would serve the decrease of second instances’ workload.

Readers surely recognize the relevant difference between the two authorities’ (precedent and successor) description. This is not by chance. Obviously – as being a public administration authority –, the

36 Act CLXXXV of 2010 on media services and public communication (hereinafter: Mttv.).
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carrying out of investigation procedures and the handling of complaints meant integrant, if not the most important parts of NCA’s tasks but besides these (as the brochure on raising consumer consciousness shows, too) improving consumer protection was its strategy’s priority, as well. Compared to this, we can feel recoil in the present situation. Besides that both the Authority, the President and the Media- and Communications Commissioner are the committed invokers of consumer protection, their manifestation in the outside world is not seen (enough). What has happened? Where have the previous ambitions and objectives gone? Unfortunately, we cannot say that compliance is the reason of the relative “silence”. It is sad that the program set forth by NCA has not found followers.

The Media- and Communications Commissioner’s (regarding its legal status it is important that it does not have own authority competence or licences, one acts as official of the authority) status was created by Mttv. The need for this unique communications consumer protection-type carrying out of tasks and building out organizational frames for this is determined in the European Community’s frame regulation system on electronic communications, too. Hence, not only national needs but the obligation of law harmonization also justified the formation of this institution. The Representative of the Communications Consumer Rights’ (RCCR) mainly used “soft-law” tools in carrying out his/her activity: s/he cooperated and signed agreements with service providers, published offers, did mediator activities between the service provider and the user, in justified cases turned to the public with market phenomenon, problems and their solutions in order to provide more effective information.37 In short, one operated as informational and connectional centre between consumers, subscribers and other market parties that is service providers, authorities and other civil organizations. The representative could operate ex officio in cases of

complaints and recognition of unlawfulness. The representative was obliged to investigate requests handed to him and to apply actions regarded as expedient. He especially put emphasis on the information of consumers and expressed it in many calls and work plans which contained relevant parts of his program.

The Commissioner’s dual spheres of activity – coming from its name, too – follows NMIAH’s dual system. On the one hand, he proceeds in consumer grievances of electronic communications services and press and media services, and in connection with consumer information, too. His processes can only be started upon complaints and in subjects of such behaviour which are connected to providing electronic communications services, cases which are not regarded as the breaking of service rules and do not belong to the spheres of competences of the Media Council, the President or the Authority, but cause or can cause acknowledgeable grievance of users, subscribers, consumers who resort to services.38

We have to make an important differentiation between the two service branches as significant differences can be seen regarding authority tools applied during the handling of complaints (it has stronger entitlements in the communications branch). Hereby, we have to mention Resolution nr. 165/2011. (XII. 20.) AB, which is responsible for the inequality of procedural entitlements in the two areas of administration. According to the original regulation, the Commissioner had the same spheres of competences with relation to press and media services, could use the same authority tools (obligation to provide data, carrying outconciliation procedures, concluding agreements, making reports, determining fines) as in the communications branch. However, proponents wanted the annulment of the regulation because of violating constitutional requirements on the limitation of opinion and freedom of press. The Constitutional Court ruled that the Commissioner had such spheres of competences with which he could even investigate questions belonging to the sphere of editorial freedom. Behind his procedure the possibility of authority action and constraint is always there which means the

38 Mttv. Art. 140. para. (1).
limitation of the freedom of press. Relative provisions have been
annulled, hence, furthermore it is only represented in the field of
media administration as an institution having mediation part,
cooperating with service providers.\(^{39}\) Knowing this, we can question
the efficiency of the “2 in 1” concept. I believe that the previous
RCCR perfectly fulfilled the role what it was meant for, regarding
the handling of consumer complaints, information programs and
media representation (interviews, ask-answer in chat), they would
have only had to work on increasing efficiency. The plan to realize
this kind of protection in a contracted status on the field of media
administration, as we could see, bumped into constitutional limits,
resolutions referring to this were annulled by the Constitutional
Court. Hence, we can experience it in the current situation that plans
wanted to be achieved through contraction could not be realized but
resulted in “regression” on the field of communications, too. From
this point of view, we can talk about a quite disadvantageous
organizational action. As a further problem, (deficiency), the
disregard of the already well-known “information strategy” can be
mentioned. It is a great mistake as we could see that they created the
starting points and via carrying them on, the objectives could be
realized. It would need to use those tools that are applied by service
providers! NMIAH could call consumers’ attention to be mindful, to
the existence and applicational advantages of TANTUSZ portal and
locations of other information. Although previous projects could
have been perfect regarding their form and content, they did not
reach consumers. Using media could be the most useful and efficient
tool.

\(^{39}\) OROSI, RENÁTA: manuscript on the Commissioner.
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4. PROBLEM MAP: MOST FREQUENT CONSUMER COMPLAINTS AND GRIEVANCES (AND STEPS TAKEN FOR THEIR SOLUTION, PREVENTION)

The majority of consumer complaints come from the unmatched relation system. Dominant participants of communications services’ markets are obviously the well-known giant service providers whose most important interest lies in maintaining, widening the circle of clients and increasing income. They try to achieve it with greatly constructed marketing, colourful advertisements, imaginative tariff-names (Mozaik, Like, Fun, Kaméleon, Red, etc.) untransparent discount-sets (and hidden real tariffs and band widths). The tight competition’s and overbidding’s disadvantageous consequences however come quickly, mainly on the disadvantage of consumers.

According to applications sent to RCCR (2009), the most frequent problems are the followings: 40 excuses in connection with Unique Subscriber Contracts and SCCs; complaints questioning adequate billing; unwanted incoming premium SMSs; questions on the pricing of mobile phone internet access; unintentional roaming; troubleshooting time; broad widths (data traffic speed); verbal entering into contract; clauses of loyalty contracts. Because of content limitations we are dealing with subscriber contracts among the above listed items.

4.1. Complaints in connection with SCC and Unique Subscriber Contracts, anomalies of loyalty contracts

We regard this category as the most comprehensive because it means the hotbed of most complaints. 41 It is obvious that contractual freedom based on juxtaposition has serious violations in such

41 See LAPSÁNSZKY, ANDRÁS: Hírközlési igazgatás [Communications Administration], in LAPSÁNSZKY, ANDRÁS (ed.): Közigazgatási jog – Fejezetek szakigazgatássaink köréből II. [Administrative Law – Chapters of Sectoral Administrative Law], 2013, Complex Kiadó, Budapest, 258.
markets where services are massively resorted to and legal relations are created just like assembly line made mass production (the market of communications is typically like this!). “Customers” sign pre-constructed contracts (written by service providers), hence, consensus is made via that subscribers’ accept the given conditions. This unequal situation – on the reason of civil protection (and obligation of legal harmony) – prompts law-makers to limit, regulate contractual conditions, have regulations on content and formal elements and determine the conditions of entering into, modifying or ceasing contracts. Law-makers partly fulfil it in form of acts (Eht.), partly via authorizing the President of NMIAH in form of provisions [6/2011 (X. 6.)].

Hence, resorting to services by all means lies on signing the subscriber contract, which always consists of a unique subscriber contract (can be entered into verbally, in written form or with behaviour referring to it) and SCCs in written form. We are talking about such civil law contracts which important elements are determined by rules referring to electronic communications and parties can only deviate from this with the same intention in unique subscriber contracts for the advantage of subscribers.42

SCC: The service provider providing subscriber services is by all means obliged to make a SCC referring to the given communications service, announce it to the Authority and make it accessible for public. It has to be easily understandable, consistent and transparent, advocating clients’ appropriate gaining of information. It is an important regulation that they have to send the unified, modified SCC to the Authority 30 days before the modification enters into force and have to inform clients on all modifications.

The Supervisory Department carries out investigation activity in relation to all SCCs, which, according to given criteria, happens via preserving around 140 important content elements; as regards acts, 

42 Ibid. 353.
relating regulations of Eht. and 6/2011. NMIAH regulation\textsuperscript{43} gives directions. Formal and content regulations also belong to the requirements. In the subject of SCC investigation the Authority rules in orders and calls service providers’ attention to modify, delete or supplement the disapproved points. With this activity, the organization carries out preventive activity as it goes ahead of grievances via the early cease of service providers’ trespasses.

In connection with SCC, I would like to call the attention to one more thing; this is being the fixed form of possibilities and conditions of one-sided modification of contracts from the part of service providers. Eht’s adhering regulation would assist the solution to the problem, which lists those cases in Art. 132. para. (2) when service providers may modify subscription contracts covering unique subscriber contracts in a one-sided way. Among these, points b) and c)\textsuperscript{44} give reasons for misunderstanding, widened interpretation in many cases. Regarding that in most cases one-sided modification of contracts manifests in the increase of tariffs, reasonably leading to lots of consumer complaints. Service providers as significant changes due to previously not seen circumstances “try” the most various reasons in order to legalize their one-sided modifications: decline in economic life, inflation, unexpected costs, technology- and system innovation constraint in order to keep the pace of the race, significant decrease in certain tariffs’ subscriber number, hence, specific costs of tariff-maintenance’s inevitable increase, introduction of telecommunications tax, etc. The Authority rejects appeals based on these arguments saying that all circumstances can be foreseen, costs and risks can be calculated, hence, these are not reasons for one-sided modification. Service providers consider the Authority’s such behaviour as clearing places of regulations, saying that they do not have consistent argument to which they can correlate based on which the nature of significant change in circumstances

\textsuperscript{43} 6/2011. (X. 6.) NMIAH regulation on rules of electronic communications subscriber contracts’ detailed rules (hereinafter: Eszr.).
\textsuperscript{44} b) Legal changes or authority decision. c) Significant changes in circumstances not seen at the time of entering into contract.
(clausula rebis sic stantibus) can be determined, hence, in practice, it seems that service providers are continually trying and the Authority rejects them in all cases (‘guess what’ phenomenon). To this, NMIAH’s answer is that the nature of significant change cannot be taxatively determined as all cases have to be separately investigated, all cases can set new, relevant circumstances, what is a significant element is that circumstances have to be not foreseeable, unavoidable and directly have to refer to a legal relation. However, consistent law-making and law-application desires the so-called reason-list, which would lay down those cases to which (and only to them) they can advert as reasons of one-sided modification of contracts. The existence of reason-list is not without antecedent, in the financial sphere the Bank Behaviour Codex\textsuperscript{45} of 2009 has similar content, which is also substantively applied. Regarding that service providers do not always leave the rejection of appeals without a word and ask for court revision, sooner or later an accepted court practice will be formed which will concretize the nature of significant change in circumstances, (too).

Taking the broad content of SCC and its complicated legal language into consideration, it would be desirable to oblige certain service providers to issue a SCC extract. The idea is not new,\textsuperscript{46} it can be traced on some service providers’ website, however, based on individual experiences, these cannot be found in any service providers’ stores, even if its role in customers’ information cannot be doubted. The 6-7 pages long extract would definitely reduce the number of complaints with its most important points – rights and obligations – of conclusion, entering into, modifying, ceasing contracts, tariffs and loyalty contracts.

Even issuing a chart containing certain points of SCC or the given service providers’ tariff options (and their most important

\textsuperscript{45} See http://www.mkb.hu/dl/media//group_463afc792a1fd/item_2545.pdf [cit. 2014-01-01].

\textsuperscript{46} 16/2003 (XII. 27.) IHM regulation (repealed) Art. 4. para. (4) ascertains that the service provider is obliged to prepare its extract number determined in SCC.
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points) as “General brochure prior to entering into loyalty contract”\textsuperscript{47} would also serve consumers’ choice.

As regards unique subscriber contracts, usually entering into contract verbally or via such behaviour’s disadvantages cause the complaints. Entering into contract verbally can be regarded as complete on the day of the phone call, however, regarding the short time of consideration and interpretation, the subscriber can cease the contract without reasoning within 8 days with such constraint that if before the expire of withdrawal period the service provider started the compliance with the consent of the subscriber, the right of withdrawal cannot be practised.\textsuperscript{48} Entering into contract with implied conduct (real act), is significant in connection with supplementary services or increased charge services in the field of communications, hence, it supposes a subscriber contract on an already existing electronic communications service.\textsuperscript{49} Displeasing situations can be avoided with the extreme attention of subscribers.

Lawmakers tend to regulate the cessation of contracts via termination having regard to the formation of balance situation. They fulfil this in such a way that they ensure the maximum of 8 days (or even immediately) termination period for customers without legal consequences and reasoning with regards to all three types of termination groups (general-, one-sided contract modification-, and exceptional termination). This right behoves service providers in all cases besides their justification obligation and with longer deadline (60 or 15 days). The right of termination’s content is different with relation to determined and indeterminate contracts in all termination groups.

Loyalty contracts: We are talking about such clauses of subscriber contracts upon which the service provider gives such

\textsuperscript{47} The idea of applying an information chart comes from the financial sector, too, based on Act CLXII. annex nr. 1 of 2009 on credit provided for customers.

\textsuperscript{48} 17/1999. (II. 5.) Government decree Art. 5. point a).

\textsuperscript{49} ARANYOSNÉ – LAPSANSZKY – SPAKEVICS: op. cit. 370-373.
discounts\textsuperscript{50} for customers having regard to that he/she assumes such obligations\textsuperscript{51} during the period of using the service which infringement is followed by determined legal consequences set in the contract. Discounts relating to loyalty contracts encourage consumers to choose without thinking, however, it is worth knowing what we undertake with the (mostly two-year) commitment: by all means more limited procedural possibilities regarding the termination of the contractual legal relation. The fix period subscriber contract ceases with the expiry date of the given contract, prior to this, subscribers can only use extraordinary termination if the service provider has not repaired the announced default belonging to its sphere of interest within 30 days, or if one-sided contract modification contains disadvantageous consequences on the part of the subscriber.\textsuperscript{52} In this case service providers are not entitled to claim the so far used discounts. Regarding subscriber termination of other fix period contracts before the expiry date, the used discounts can be claimed by the service provider but they cannot apply any other disadvantageous legal consequences.\textsuperscript{53}

\textsuperscript{50} Total or partial release of enrolment fee, discount of subscription fee in comparison with indeterminate contract, discount relinquishment or selling of terminal equipment needed for the requisition of service is considered to be reduction.
\textsuperscript{51} Obligations in particular: based on reasons coming from their own interests, subscribers do not start the termination of the contract, suspension of service, such modification of the contract which is not made possible by the clause within loyalty time; with their contract breaching behaviour they do not form a legal basis for the service provider’s termination or the service’s limitation.
\textsuperscript{52} However, if the modification of the contract does not affect the resorted reduction, the subscriber is not entitled to terminate it without disadvantageous legal consequence. If the modification affects the discount and the subscriber terminates the contract, the service provider can legally demand the so far used discounts.
\textsuperscript{53} How to terminate subscriber contracts? See http://nmhh.hu/cikk/2757/Hogyan_mondhatja_fel_az_elofizetoi_szerzodeset [cit. 2014-01-01].
5. INCREASING CONSUMER CONSCIOUSNESS: PROVIDING INFORMATION, COMPARISON AND CHOICE

According to results of the latest researches, conscious customer index shows gradual increase, which is the result of more circumspect choice, successful validation of guarantee rights; at the same time, regarding the areas of exact knowledge of consumer rights and particularly raising consumer consciousness, we have a lot more to accomplish. The expectation and need for the latter one is like an untouchable crust that surrounds us, it means a pressure on us. In many cases we even know what we should do, however, in practice we “do not have time” to adhere to this and we only strive to satisfy our need for service (and follow fashion) at the least possible price. This kind of consumer angle is well-known by service providers, who tailor their marketing activity accordingly. By all means we shall handle over-reduced prices with scepticism, let us have suspicion regarding their real nature. The procedure of “deceptive behaviour” is always service providers’ unique tool, which cannot be even regarded as unlawful as it presumes consumer thinking! For more efficient “increase of consciousness”, hence for the incitement of consideration and comparison we have to apply similar modes of service providers’, we have to make conclusions from actual consumer behaviour and emerging consumer trends and work out prevention strategies based on this.

*Consumer trends, consumer behaviours:* We basically have to focus on weak points, appoint wrong consumer behaviour types and via reflecting to those, appoint directions of correct thinking and behaviour. Whilst carrying out information programs, the focus point should basically be on the requisition of media with well-structured, colourful, direct, awareness raising sentences constructed with nice background music, we have to manipulatively effect consumers using marketing strategies, just like service providers (if we cannot walk other ways). When working out the program, we have to take the umbrella term of consumer category’s nature into consideration, ergo that we aim at a relatively heterogenic group regarding their
personality, social situation and age, as well. Obviously, tailor-made programs cannot be worked out but forming projects according to categories in various styles could be effective. At the time of working out of strategies, we have to pay special attention to functional consumption\(^{54}\) and call the attention of customers to emotional consumption's\(^{55}\) dangers, and the consequences of self-expressive, symbolic, “grandiose”, offers lacking practicality.

Consumer practice of Germany with relation to communications: first of all, we have to note that such central comparing and search system like TANTUSZ portal that covers all electronic communications services and service providers does not exist in Germany. General consumer protection portals\(^{56}\) (subject to payment of a fee) and smaller, freely accessible private portals\(^{57}\) give assistance for consumers who want to be informed in choosing the most suitable “package” for themselves. The general practice is that they read more free portals, gain information about the most suitable tariffs, services, then compare the given results and choose. Optimization is a general practice in Germany, programs’ utilization is very high, regardless of possible consequences.

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\(^{54}\) Rationally explainable consumption, purchasing such products, using such services which do not necessarily need explanation, regarding it is a phenomenon accepted on the given social-economic level. Using telephone and Internet services - regarded as primary from our point of view - can be listed here.

\(^{55}\) Symbolic consumption (which can be self-calming or self-expressive). See TÖRÖCSIK, MÁRIA: Fogyasztói magatartás – Insight, trends, vásárlók [Consumer Behaviour – Insight, Trends, Buyers], 2011, Akadémiai Kiadó, Budapest.

\(^{56}\) See http://www.verbraucherzentrale.de/ and http://www.test.de/ [cit. 2014-01-01].

\(^{57}\) Most advantageous offers given by these pages always have to be handled with precaution as there is no guarantee regarding their independency. It is possible that service providers who advertise on the given website pay extra for the website’s operator after signed loyalty contracts.
6. CONCLUSION

What shall that nation do which basically has different temperament, follows other forms of behaviour and thinks differently? As a consumer, it shall learn, get information, change behaviour, use assisting applications and last but not least, bear its own interests in mind! As a national, consumer protection body (NMIAH, HACP, Media- and Communications Commissioner, civil organizations) it shall do everything in order to artificially supplement its inefficiencies, educate, improve consumer consciousness, on the other hand, supervise, regulate its behaviour in its dominant position, oblige service providers to respect consumer rights and aim at efficient, quick and satisfactory remedy of possible grievances, and last but not least, create balance in the imbalanced power-relation!

Let us not forget: consumers are the incentives of the communications market’s improvement! Hence, their protection, information, education, and ensuring their right for remedy, recovery, representation of interests, hence, achieving satisfaction is everyone’s interest, besides, it is a national objective\(^58\) set in the Basic Law!

LIST OF REFERENCES

Books, chapters in a book, articles


\(^{58}\) According to Basic Law Art. M. para. (2), Hungary shall ensure the conditions of fair economic competition. Hungary shall act against any abuse of a dominant position, and shall defend the rights of consumers.
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Legal sources

[2] Act CLXXXV of 2010 on media services and public communication (Mttv.).

Electronic sources

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