

Consumer Protection Facing New Challenges

Presentation by Dr. Gerhard Hopf, Director General at the Federal Ministry of Justice
Summary

By way of introduction, Dr. Hopf transmitted the greetings of the Federal Minister Dr. Maria Berger who, unfortunately, could not attend the meeting due to commitments at the Justice and Home Affairs Council held in Luxembourg.

First addressing the topic of “competition policy”, Dr. Hopf briefly explained the consumer policy interest of well-functioning competition that was protected from abuse.

In this context, he outlined the reservations held by the Federal Ministry of Justice against the abolition of the Federal Cartel Attorney. Consumer protection, he argued, was after all one of the tasks assigned of the Federal Cartel Attorney.

As regards the demand for more competition and easier access to the liberal professions raised by the Federal Ministry of Economic Affairs, Dr. Hopf underlined that only rigorous education and training could ensure the high-level expertise which the members of the liberal professions undisputedly provided. According to the Federal Ministry of Justice, arguing for more competition and ensuing lower costs for services provided by the legal professions cannot be the only consumer policy interest meriting consideration. Comprehensive training of the members of the legal profession must be ensured by universities as well as through the practical training of candidates to the profession. In spite of the changed framework for university training brought about by the 2002 University Act, the public interest in a well-functioning administration of justice must remain one of the prime considerations of the judicial system.

Dr. Hopf went on to discuss the further development of consumer protection law in the light of European law requirements. With a view to protecting consumers, he spoke in particular about the need to reform contracts with property developers. As an example he mentioned loopholes in consumer protection which had been identified when the pre-financing of property development projects had turned problematic. The envisaged reforms will focus on the scope of application, in particular on the inclusion of payments made by the buyer to third parties, on the scope of mandatory contract clauses, on the specific design of the right of withdrawal, on better protection of buyers using the instalment plan method, on the adjustment of the instalment plan to modern requirements of building and construction, the relation between the property developers, buyers and mortgage financiers, and ultimately on the inclusion of the warranty risk. The primary aim was to ensure the best possible protection of buyers in this sensitive area. At the same time, the resultant additional costs should be kept at a minimum. The amendment will also affect the position and the interest of the legal professions. By laying down clear-cut statutory requirements, the reformed Act on Property Developer Contracts was eventually to minimise the liability risk of notaries and lawyers who draft contracts and act as trustees.

As more and more households and individuals were running into debt, the government programme called for a programme of action to be adopted in civil law.

The Federal Ministry of Justice was currently discussing a lowering of collection costs, protection of consumer credits, and the introduction of a clause on the crediting of repayments made by consumers in arrears in the Consumer Protection Act.

Dr. Hopf equally recognized a need for action when it comes to protecting consumers from Internet abuses. Such – preferably uniform - rules should be adopted at the European level.

Speaking about civil procedural law, Dr. Hopf outlined two legal policy initiatives affecting consumer interests. A draft law on introducing group/class actions had already been finalised. The advantage of this new procedural form was the possibility of uniform evidence proceedings and arriving at a uniform decision. As a group/class action would save costs as against several individual proceedings, the injured party would enjoy easier access to the law. Last but not least, this new form of action would serve the principles of legal unity and legal certainty consistent with the rule of law.

The second new procedural form is that of a test case. Associations referred to under Article 29 of the Consumer Protection Act would be given the possibility to clarify points of law which could be relevant for a multitude of claims, in one single action.

Speaking about European legislative activities, Dr. Hopf reported on the Green Paper on the Review of the Consumer Acquis which had been prepared by the European Commission and on the plans to reform the existing legislative provisions. Here he felt that a well-functioning single market required further harmonisation, at least in some areas.

Discussing the project to reduce administrative costs which has been launched by the European Commission, Dr. Hopf critically noted that the duties of information under civil law, and therefore duties of information under consumer law, were being evaluated and reviewed as to their costs. While there was no basic objection against reviewing the costs of duties of information, such review must not lead to specific interests, such as abolishing or cutting back formal requirements, being dealt with from a totally unclear economic perspective only. Vague assessments of administrative costs could in no way capture the benefits of information duties and of the substantive major macro-economic advantages of a legal base that was clear and certain, Dr. Hopf argued.

Dr. Hopf expressed his astonishment that the European Commission was creating duties of information in order to protect consumers, only to criticise them under the heading of “Better Regulation”.

By way of conclusion, Dr. Hopf briefly dealt with the major amendments envisaged for the Convention on the law applicable to contractual obligations (“Rome I”), in particular for Art. 5 which governs consumer contracts of a cross-border nature, and pleaded for a viable compromise between the interests of consumers and those of companies.