

European case law - consumer rights vs privacy protection

Charlotte Pham looks at how the European Court of Justice has addressed the conflict between consumer protection legislation and privacy.

A recent decision from the European Court of Justice (ECJ) (*European Commission vs Austria*) considered the possibility of a tension between European legislation protecting consumer rights and legislation protecting individual privacy. The ECJ clarified that EU data protection legislation does not of itself preclude telephone operators from producing itemised bills that identify each individual call separately. The decision could be interpreted as a victory for consumers, since itemised billing free of charge enables them to verify their call charges. Or perhaps it

The European Commission contended that Austria's Federal Law on Telecommunications, which implemented the directive, failed to comply with Article 14 by only requiring charges to be presented in a manner that breaks down the amounts according to the type of charge rather than individual itemised calls. For example, a basic Austrian bill would contain a summary of how many calls have been made on each tariff and the total amount spent, but no details about individual calls made. A greater level of itemisation, showing individual call details, was available but only for the

legislation governing the protection of privacy and personal data, even though it seems that such additional details were already available, albeit for the payment of an additional charge. The ECJ held that the Austrian government entirely failed to support its assertion and found in favour of the Commission. It should also be noted that the potential for a conflict in this area is virtually eliminated by the privacy issues arising from itemised billing being specifically dealt with in the Privacy and Electronic Communications Directive (2002/58/EC). Article 7(1) requires that subscribers should have the right to receive non-itemised bills. In other words, the Voice Telephony Directive gives subscribers the right to request itemised billing, whereas the Privacy and Electronic Communications Directive gives subscribers the right not to receive an itemised bill.

Accordingly, Austria could have satisfied the requirements of both directives by requiring subscribers to be provided with a sufficiently detailed itemised bill free of charge, together with the right to receive a non-itemised bill, should they wish to preserve their privacy by not revealing to others who may see the bill and the numbers of those to whom they have made calls.

The Austrian government argued that the inclusion of further information on bills would result in a disclosure of information contrary to legislation governing the protection of privacy and personal data.

could be interpreted as an example of data protection arguments being raised as an excuse, albeit unsuccessfully in this particular case.

The ECJ case considered whether or not Austria had correctly transposed into national law the Voice Telephony Directive (98/10/EC), Article 14 of which effectively requires that itemised bills be provided upon request, showing a sufficient level of detail to allow subscribers to verify and control the charges incurred using public telephone services. It also requires that such itemised bills be provided free of charge. This requirement is expressed to be subject to the relevant legislation on the protection of personal data and privacy.

payment of a charge.

Although the directive does not specify the minimum level of information that is necessary to satisfy Article 14, the Commission argued that simply being able to identify how many calls have been made within a certain cost bracket and the total value of these calls did not fulfil those requirements because it did not enable a subscriber to check the date on which the call was made and the number called. The implication is that it is these last two pieces of information that are necessary to satisfy Article 14 of the directive.

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FURTHER READING:

The ECJ ruling on case C-411/02 can be found at: <http://curia.eu.int/index.htm>