

M-commerce and the relevance of the 1999 Guidelines on E-commerce

Note from Finland

So far mobile commerce market has developed in Finland and the market size has increased while some disadvantages have emerged. Internet-connectable third-generation (3G) mobile phones have multiplied this year. Also users of internet-based services and transactions through mobile phones are increasing. For the time being consumer complaints and problems relate mostly to SMS text message-based commerce.

The Finnish Consumer Ombudsman/Consumer Agency finds that the 1999 OECD E-Commerce Guidelines does not cover all mobile commerce issues adequately. The Guideline's focus is on the traditional web-based sale of goods and services. Mobile commerce has potential for new services and new technologies are evolving rapidly. New services, such as financial services are being offered via mobile phones. Also cross-border mobile commerce targeted at Finnish consumers has increased and complaints from consumers have become more common.

The rise of mobile commerce necessitates further policy guidance. Regulation of mobile commerce requires both government initiatives and business self-regulation using technology. The 1999 OECD E-Commerce Guidelines are not sufficient to resolve all mobile commerce issues. Guidelines apply to m-commerce, but it is needed to consider the consumer issues raised by m-commerce in order to address the special circumstances of m-commerce and enhance consumer trust needed to ensure the development of m-commerce.

At this stage a useful step is a complementary document that provides guidance as to how best to apply the existing principles to mobile commerce. **The most important issues are protection of minors (e.g. authentication/age verification, filtering and blocking), sufficient information disclosure via mobile phones (e.g. problems with limited information on small screen) and security of payments. The general principles should be specified taking into account new developments in the m-commerce field.**

Herein the 1999 Guidelines on E-commerce are to a certain extent followed and the need for modifications and additions are reflected. It should be noted that for example issues relating to financial services and authentication do not properly fall under the structure of the principles. Restructuring in tandem with amendments would be needed.

1. Transparent and effective protection

Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.

Consumer protection in mobile commerce should not be less effective as in other forms of e-commerce or any other commerce. Medium neutrality should form the point of departure. It is claimed by business that, among other things, technical difficulties prevent improving the situation.

The exceptional status of a minor as the target of marketing or a contracting party is not taken into account when minors pay for or order products and services with mobile phones. Technical solutions associated with identifying the contracting party are primary targets for development measures. In order to protect minors from material which is harmful to them or from making contracts that exceed their legal capacity, service providers must ascertain the age of the contracting party.

Also the information disclosure requirements are not met the same way as in other forms of e-commerce due to the limited capacity in m-commerce. In addition the same level of protection should be provided between different payment schemes.

2. Fair business, advertising and marketing practices

Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.

The Consumer Agency of Finland has drawn the attention of business to their responsibility for the security of the systems they use as well as to compliance with current legislation. In order to make it at all possible to provide services using mobile devices, technical solutions must be developed.

The properties of a means of communication are not sufficient reason to fail to provide consumers with the information essential for their economic security. Issues relating to limited capacity (e.g. small screen and memory) are dealt with in the next sections.

Concerns relating to adequacy of information such as the terms and conditions of the transactions should be addressed.

The current concerns of mobile commerce in Finland relate for example to the SMS instant loans and subscriptions of mobile content services. With regards to SMS instant loans a significant target and user group, young people, are often in a weaker position than the average customer. The biggest attraction of an instant loan may be that it can be obtained quickly and easily.

Businesses should take special care in advertising or marketing that is targeted to children, the elderly, the seriously ill, and others who may not have the capacity to fully understand the information with which they are presented.

The formulation of the principles is not sufficient for this part. The exceptional status of minors as being the target of marketing or a contracting party is not taken into account properly. Disadvantages of m-commerce concern inappropriate marketing to minors (for example material unsuitable to children or deceptive practices) and over-consumption by minors.

Children use mobile phones as a daily life's communication device. It is quite common for seven-year-old children starting at school to have a mobile. Even if parents have acquired a phone primarily to enable their children to make phone calls and send other kinds of messages (and also for safety reasons), today's mobile phones can be used to make many different kinds of purchases and service subscriptions. **Technical solutions (for example age verification, filtering and blocking) should be invented so that children's special position would be better taken into consideration also in m-commerce.**

With regards to SMS text message –based commerce the Finnish Communications Regulatory Authority defines barring categories for telecommunications, which have the aim of preventing disadvantages associated with providing and using telecommunications services. Connection subscribers can themselves determine what kinds of additional-cost services they want to block calling or texting to.

A problem in Finland is that, for example, barring a certain category of services blocks all services which belong to the category in question. Subscription packages aimed at children could be one alternative, if they were implemented in a way that allowed consumers to define what services and features they would like to have included in their package. In the long run, however, it would make more sense to focus on procedures for identifying the contracting party than to create ad hoc solutions applicable only to unique circumstances.

In Finland, interactive TV games have been one source of problems. These games are typically played by sending text messages; usually, the price of one message ranges from one to two euro. To do well in the game, however, requires players to send several messages. Additionally, the presenters entice viewers to play or participate in various competitions. These games are often broadcast at times when children are home alone after school. Players have spent up to €3,000 playing these games. Another example is soft drink vending machines which accept payment via mobile phones. In one case, a pupil had treated the entire class to soft drinks.

The marketing of games and mobile content services (e.g. logos, ring tones, etc.) may also be problematic. The provisions of the Finnish Consumer Protection Act prohibit exploiting children's gullibility and lack of experience in marketing targeted at them. It is more difficult for a child to understand how costs accumulate when the money spent on purchases and orders is invoiced later than would be the case if cash pocket money were involved. When participating in TV games and other games that are played via mobile phones, children easily become excited about the game and fail to notice and understand how expenses are accumulating. For this reason, it is important that marketing practices are the focus of special attention.

So-called standing subscriptions have become more widely used by mobile content service providers. A monthly invoice is sent for a certain amount of logos, ring tones and other types of content. These services are also widely sold across borders within the European Community. Misleading marketing of these standing subscriptions has caused problems; "free" or cheap ring tones, etc., are used to entice subscribers. It is especially easy for children, who lack an adult's capacity to question the message of an advertisement, to miss the small print in the lower corner of a commercial message stating that by ordering these "extraordinarily inexpensive" services they commit to a standing, chargeable subscription.

In addition to monetary losses, another worrying aspect involves services ordered with mobile phones that are, due to their content, not suited for minors. In Finland, it has been possible to, for example, order an adult entertainment movie for viewing on a personal computer, even though the Act on the Classification of Audiovisual Programmes prohibits making these kinds of movies available to minors.

The Consumer Agency of Finland has been drawing the attention of electronic service providers to their responsibility for the security of the systems they use as well as to compliance with current legislation. In order to make it at all possible to provide services using electronic communications devices, technical solutions must be developed in such a way that takes account of the status of minors as required in legislation.

In Finland, self-regulation by the industry is inadequate. The Consumer Ombudsman has managed to negotiate improvements to the status of minors as subscribers to mobile services, but with regard to TV games, for example, the situation has been unsatisfactory for quite some time. Now, because of demands from the Consumer Ombudsman, operators and service providers have at last initiated work to find technical and other solutions as well as to take the status of minors better into account. Possible

improvements include various technical solutions which limit the accrual of expenses, increasing the amount of information provided to parents and gamers, and, with respect to TV, more appropriate scheduling of broadcast times.

The Finnish Consumer Complaints Board has also recently decided on the responsibility of service providers in a case involving TV games played with text messages. The service provider was found to have received unfounded gains. That a parent had given a child the use of a telephone did not in itself make the child competent to enter into an agreement on a service such as the TV game in question. According to the ruling, the consumer was eligible to a refund of the service provider's share of the telephone bill.

3. Online disclosures

Business should provide

- a) *accurate, clear and easily accessible information about themselves;*
- b) *accurate, easily accessible and sufficient information describing the goods or services offered and*
- c) *sufficient information about the terms, conditions and costs associated with a transaction*

The general principles in the Guidelines are applicable, but the limited size of mobile screen raises practical difficulties. Also the limited capacity of the mobile devices makes it impossible to provide all details in a text message. The properties of a means of communication are not sufficient reason to fail to provide consumers with the information essential for their economic security.

Merely giving an Internet address in an advertisement or a SMS text message does not satisfy legal requirements. Not all consumers have free Internet access. Inadequate information disclosure and limited information available on the screen should be addressed with regards to m-commerce. **The way to secure consumers possibilities to maintain an adequate record of information about the transaction should be taken into account. Mobile devices are equipped with small memory at the moment.**

As mentioned SMS instant loans have caused concerns in Finland. SMS instant loans taken out on mobile phones have become more widely available in Finland; the actual annual interest rates of these loans can in the worst cases rise to over 700 percent. The problems associated with instant loans have involved for example the way instant loans are marketed. Companies do not necessarily display advance information and contract terms. Detailed information that is thoroughly explained does not reach consumers who are in a weak position when it comes to obtaining credit or who make a decision to borrow money on impulse, for example during the course of a night on the town.

Because of shortcomings, the decision to take out an instant loan is based not so much on important price and other information regarding contract terms as on the impression created by advertising of easily achieving one's dreams. These loans interest particularly young adults, so the indebtedness situation of young people is affected adversely by such quick financial fixes. The speed of instant loans is not something that should be taken for granted. It is also more difficult for consumers to compare different loans and their costs and to select the best option for their financial situation. If the loan period is less than three months, lenders do not according to legislation have to indicate the annual percentage rate of charge.

As mentioned so-called standing subscriptions have become more widely used by mobile content service providers. A monthly invoice is sent for a certain amount of logos, ring tones and other types of content. These services are also widely sold across borders within the European Community. Misleading marketing of these standing subscriptions has caused problems. Consumer miss the small print in advertisement stating that by ordering some content services they commit to a standing, chargeable subscription. It should also be pointed that ways to stop a subscription are different from other e-commerce and information on it is not always clearly given. Standardization of "opt-out commands" as a result of self-regulation should be encouraged.

According to the Guidelines consumers should be provided with information concerning restrictions, limitations or conditions of purchase such as parental guardian approval.

This part of the Guidelines concerns only obligation to provide information, but verifying age and parental consent should also be addressed. Issues relating to information and notices to parents and ceilings for services targeting minors should be taken into account. However, notices to parents and ceilings are not sufficient. Age verification and authentication of parental consent should be decisive.

Using a mobile phone children can in practice enter all kinds of contracts, despite the fact that the Finnish Guardianship Services Act says that minors may only perform transactions which are usual for their age and have little significance. Examples of problems are given above. Attention should be drawn on system maintainers' own responsibility for the system they use and compliance with existing legislation.

4. Confirmation process

To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.

The principles of the Guidelines apply, but it is needed to consider the special consumer issues raised by m-commerce. **The possibilities of consumers to retain an accurate record of the transaction has been a common problem especially in text message -based m-commerce. The limited capacity of mobile devices** makes it difficult to provide sufficient information in text messages. Also the capacity to store information of transactions on mobile devices is limited. Furthermore, it is not possible for all

consumers to print information received to their mobile device. Thus, consumers may not in all cases be able to retain any record of the transaction.

5. Payment

Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

Limitations of liability for unauthorised or fraudulent use of payment systems, and chargeback mechanisms offer powerful tools to enhance consumer confidence and their development and use should be encouraged in the context of electronic commerce.

Mobile phones are increasingly used as payment devices. There are at least three payment options in m-commerce. Businesses add the charge to the mobile phone bill, a payment or credit card is used or a subsequent invoice for the purchase is sent. The first option is mostly used in Finland and for example problems concerning clarity of billing and difficulties to complain about billing has emerged.

Authentication is a key development area for mobile payment. Children use mobile phones as a daily life's communication device. Today's mobile phones can be used to make many different kinds of purchases and service subscriptions. Technical solutions for age verification should be invented so that children's special position would be better taken into consideration also in m-commerce. Service providers claim that, among other things, technical difficulties prevent improving the situation and hold the view that the legally competent person who has made the subscription contract (usually a parent) is responsible for all of the costs created through the subscription. It has to be possible to give minors use of mobile phones; **the system must be designed in such a way that only allows children to enter into transactions for which they are competent.**

Problems of the actual identification of the contracting party have arisen with reference to SMS instant loans, too. Security gaps have been noted in systems and people have managed to take out an instant loan with a text message in another person's name by using this person's mobile phone and ID number. The system maintainer should take responsibility for reliability and the consequences of security gaps. Responsibility for gaps regarding risks and abuses in the system and their consequences should be addressed.

Allocation of liability is not at the moment in the same level as with other payment cardholder protection. **The payment liability issues should be examined in more detail with regards to m-commerce and its special characteristics. The same level of protection should be provided between different payment schemes.** The amendment to the Finnish Communication Market Act will allocate the liability for unauthorised use. It comes into force in March 2007.