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UNFAIR COMMERCIAL PRACTICES

Examples from the perspective of the Bank of Lithuania

Minsk, 22 May 2019



EXAMPLE FROM THE PERSPECTIVE OF THE BANK OF LITHUANIA

I. Unfair practice example in mortgage credit

- ✓ Dispute resolution in the Bank of Lithuania
- ✓ Practice of the State Consumer Rights Protection Authority

II. Example in consumer credit

III. Public interest protection example: minority shareholders

IV. Unfair practice example in investment



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I. DISPUTE RESOLUTION IN THE BANK OF LITHUANIA

Situation

Consumer **concluded** mortgage credit agreement with **Bank B** in order to **refinance** the credit in Bank A

Content of the complaint to the Bank of Lithuania

- ✓ Bank acted in **bad faith, misled** the applicant and this had an **impact on the applicant's choice** to enter into a credit agreement with the bank. The applicant knew that banks are using different algorithms to create payment schedules.
- ✓ After a thorough analysis and **comparison** of different bank's offers, the applicant chose a Bank B offer and entered into a credit agreement.
- ✓ When the Bank refinanced the credit and submitted a payment schedule, it was made according to a **different algorithm** than the preliminary payment schedule.
- ✓ The Bank, knowing that different algorithms of the calculation of interest exists, provided **false information, deceived** the applicant and sold the service at a higher price than suggested at the beginning.



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I. DISPUTE RESOLUTION IN THE BANK OF LITHUANIA

Preliminary payment schedule

- The spreadsheet uses a **30-day month** instead of the actual number of calendar days
- There are 7 months in a year, comprising 31 days, 4 months 30 days, and one month with 28 or 29 days
- $52\,000 \times 1.800\% \text{ annual interest rate} / 360 = 2.6 \text{ Eur}$ interest for one day, and for **30 days** would be **78** Eur.

Factual payment schedule

- The **actual number of monthly calendar days** is used instead of 30 calendar days
- However, since 2017 May 16 until 2017 June 15 is **31 calendar days**
- $52\,000 \times 1.800\% \text{ annual interest rate} / 360 = 2.6 \text{ Eur}$ interest for one day, so the amount of interest payable is **80.6** Eur.

Request of consumer

Recommend the Bank B to apply the **payment schedule algorithm in the pre-contractual** offer, to redeem the payment schedule and to **repay the overpaid** interest to the applicant.



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I. DISPUTE RESOLUTION IN THE BANK OF LITHUANIA

Legal acts

- **Law on Real Estate Related Credit:** is applicable only for credit agreements concluded after 2017-07-01 when the law entered into force. Before that date general rules of Civil Code were applied.
- **Civil Code:** the parties must act honestly and in a pre-contractual relationship to disclose to each other the information known to them that is essential for the conclusion of the contract. In interpreting the contract, the actual intentions of the parties to the contract must first be examined, rather than merely referring to the literal interpretation of the text of the contract.
- **Law on Banks:** prior to concluding a contract on the provision of financial services, a bank must provide a client with detailed information on the terms of the provision of the financial services, price of the services, duration of the provision of the services, possible consequences thereof and other information which may influence the client's decision to enter into the contract.



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I. DISPUTE RESOLUTION IN THE BANK OF LITHUANIA

Final decision of the Bank of Lithuania

To **satisfy** the applicant's requirements and to **recommend** Bank:

- 1) apply **algorithm** and interest payable calculation method as was provided in the **preliminary payment schedules** submitted to the applicant;
- 2) **recalculate** the payment schedule for the applicant;
- 3) **repay the difference** between the interest due and paid from the date of conclusion of the credit agreement to the applicant.



Bank implemented this recommendation.

I. DISPUTE RESOLUTION IN THE BANK OF LITHUANIA

Grounds and basis for the decision

- ✓ the **bank acknowledged** that payment schedules prior to the conclusion of the credit agreement and after the conclusion (the methodology for calculating the interest) were **not identical**. So the bank was **aware** of the differences and **did not inform** the consumer about them.
- ✓ in the email sent to the applicant it was **not clearly indicated** that the payment schedules are **preliminary or inaccurate**. The applicant was informed that the payment schedules sent to him were preliminary due to the fact that the index rate (EURIBOR) may change during the execution of the credit agreement.
- ✓ the applicant has made sufficiently clear to the bank the **purposes** for which he requested the preliminary payment schedules - find out how **technically** monthly payment (installment) is **calculated**.
- ✓ the bank has **created the legitimate expectations** of the applicant, so the bank should expose the risks and costs associated with the applicant's legitimate expectations.



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I. STATE CONSUMER RIGHTS PROTECTION AUTHORITY

The bank got a **warning** for the **violation** of Art. 3(2)(1) and Art. 6(1)(1) of the Law on the **Prohibition of Unfair Business to Consumer Commercial Practice**.

Art. 1(2): Law shall apply to commercial practices **before, during and after** entering into a transaction in relation to a product with a view to protecting the economic interests of consumers.

Art. 3(2)(1): A **commercial practice shall be unfair** if it is contrary to the requirements of **professional diligence** and if materially distorts or is likely to materially **distort the economic behaviour** of an **average consumer** with regard to the offered product.

Art. 6(1)(1): One of the actions that cause or are likely to cause the **average consumer** to take a transactional decision that he would not have taken otherwise shall be considered as **misleading omissions** – not disclosure of material information that the average consumer needs to take an informed transactional decision.



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I. STATE CONSUMER RIGHTS PROTECTION AUTHORITY

Arguments of the Bank

- ✓ The actual payment schedule is in line with the contractual terms specifying interest calculation. Besides that customer usually gets a project of credit agreement.
- ✓ Preliminary payment schedule (as an example) is not considered as final offer.
- ✓ Bank has a right, not an obligation to submit a preliminary payment schedule. So therefore it is more an exception rather than a regular practice.
- ✓ Consumer did not provide evidence about other bank's offers, so he chose the Bank B for contractual terms offered, but not for the preliminary payment schedule.
- ✓ The consumer has a good knowledge in credits so he is above average consumer.
- ✓ 2017-08-31 the Bank changed the credit agreement with consumer, compensated losses (implemented the recommendation of the Bank of Lithuania).
- ✓ Implemented new standard information form.
- ✓ It was individual employee mistake (due to lack of experience) to disclose information incorrectly, so it is not the matter of wrong procedures.
- ✓ It was single (individual) case, therefore does not show the systematic nature of the activity. There were no other similar complaints.



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I. STATE CONSUMER RIGHTS PROTECTION AUTHORITY

- The provision of a credit refinancing service is to be regarded as a commercial activity.
- According to the Law, not only the economic interests of a particular consumer but also of other consumers are protected.
- Unfair commercial practices include not only actual misleading of the consumer but also the possibility of confusion (rulings of ECJ and case law of Lithuanian courts).
- Activities does not have to distort the consumer's economic behavior, it is enough to determine the possibility of an impact.
- There is no dispute for the fact that information was different. The Bank new the purpose of the information asked by consumer and the non-disclosure of information misled the consumer. It was a real fact of distortion of the economic behaviour of consumer.
- Information about the price (changes of interest) of the service is essential to the consumer so has a decisive impact on consumer's choice.
- A smart and attentive entity is responsible for the actions of its representative. As Bank is one of the biggest banks in Lithuania, it is subject to greater professional diligence requirements.
- Nevertheless the damage was not serious and the compensation of loss does not deny that the consumer's behavior was distorted.



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I. ADMINISTRATIVE COURT

The **Bank appealed** the decision of the State Consumer Rights Protection Authority to the Administrative **Court** and requested to **cancel it**.

Whereas the bank stated that the situation is due to misunderstanding (insufficient highlighting of information), so the bank has confirmed that it did not inform the client that the payment schedules were preliminary.

The case was examined in a public court session. Administrative Court adopted the decision to **rejected** the bank's complaint **as unfounded**.

II. BANK OF LITHUANIA PRACTICE IN CONSUMER CREDITS

Creditworthiness requirements

- 40 % DSTI rule (Consumer Credit Law and BoL Resolution).
- When calculating the consumer credit monthly payment amount payable by the consumer, the creditor shall assess the consumer's expenses that are and/or might be known to the creditor and shall **take into account income remaining** after repayment of the credit by the consumer (BoL).

Situation

Recently we get complaints that consumer credit is granted to the consumer and the remaining income amount to the consumer is extremely low, e. g. less than 100 Eur.

Soft regulation

Written letter to creditors that they should pay more attention to the income sum, remaining to a consumer, otherwise the Bank of Lithuania may recognize such practice as **irresponsible borrowing**.

Irresponsible lending = unfair commercial practice



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II. BANK OF LITHUANIA PRACTICE IN CONSUMER CREDITS

Situation

Consumer concluded a consumer credit agreement. In the application he checked het confirms that has no financial obligations.

Legislation

Art. 8(1) Consumer Credit Law: before the conclusion of the credit agreement, the creditor must, following the principle of responsible lending, assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.

Decision by the Bank of Lithuania

The creditor breached the principle of responsible lending, did not gathered sufficient information therefore **violated** the Law. Creditworthiness assessment is the **main duty** of the creditor, so he is obliged to collect evidence and the consumer's approval is not sufficient.



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II. BANK OF LITHUANIA PRACTICE IN CONSUMER CREDITS

Administrative courts

Creditors appealed the decisions of the Bank of Lithuania to Administrative court. Administrative court has always recognized the decisions of the Bank of Lithuania as justified and reasonable.

2014-12-18 judgment of the Court of Justice of the EU in case C-449/13

- National rules according to which the burden of proving the non-performance of the obligations of creditworthiness assessment lies with the consumer should be precluded.
- Mere declarations by the consumer are also accompanied by supporting evidence.

Consumer Credit Law amended

Assess the consumer's creditworthiness on the basis of sufficient information obtained from the consumer and on the basis of the **consultation of registers and information systems.**



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III. PUBLIC INTEREST PROTECTION EXAMPLE: MINORITY SHAREHOLDERS

Regulation:

Article 31 (1) of the **Law on Securities** states that a person acting alone or together with other acting persons who have acquired more than 40 per cent of the votes at the general meeting of shareholders of the issuer **must transfer the shares in excess of that limit or make official offer to buy the remaining voting shares.**

Infringement:

The obligation of Article 31 (1) of the Law on Securities **was not fulfilled.**

Public interest:

Protection of minority shareholders rights.

Claim to the Court by the Securities Commission (in 2011):

Oblige persons to submit a mandatory official offer to buy Company's shares for the just price of LTL 0.78 for one ordinary registered share of the „Company“ .

IV. UNFAIR PRACTICE EXAMPLE: INVESTMENT (1)

Product:

A unit-linked insurance is a product offered by insurance companies that, unlike a pure insurance policy, gives investors both insurance and investment under a single integrated contract.

Regulation:

Pursuant to the provisions of the **Law on Insurance** companies are obligated to invest **in the best interest of insurance policy holders, insured persons and beneficiaries.**

Infringement:

- the Company had invested part of its client assets in retail investment funds to whom higher asset management and distribution fees were applied than to identical institutional investor funds that Company in many cases could choose as well
- In such way investing clients' assets the Company was subject to asset management and distribution fee discounts and part of the invested funds returns. Company used the returned amounts to increase profits on its investment activity without allocating them or part of them to insurance policy holders.
- Consequently, the value of assets accumulated by insurance policy holders was lower than it could have been from investing in institutional investor funds.



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IV. UNFAIR PRACTICE EXAMPLE: INVESTMENT (2)

Decision of the Bank of Lithuania:

- The Insurance Company **did not ensure the interests of its clients in the best possible way** in investing their funds according to the unit-linked life assurance contracts and thus **violated the Law on Insurance**.
- The company was issued a **binding instruction to:**
- **prepare a plan** on corrections on identified breaches of law and provide it to the Bank of Lithuania.
- **to eliminate breaches** until 1 August 2018.

Actions of a company:

- Company **compensated current clients** for their asset value in the amount it has decreased due to an increase in the cost of investment.
- Company undertook to compensate for the injury suffered **by more than 50,000** unit-linked life assurance **clients** (compensated sum in total € 350 000).



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Thank you for your attention

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