

# Contractual and liability issues with bundled products

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# Bundling in German case law

- Bundling of telecommunication services and router
- Bundling of telecommunication services and pay TV
- Bundling of mobile phone contracts and mobile phones
- Bundling of energy supply and telecommunication services
- Bundling of a magazine and sunglasses
- Bundling of a skiing holiday and skiing equipment

# Legal problems

- Uncertainty about applicable consumer law provisions
- Price intransparency and intransparency when it comes to the obligation to pay for a part of the bundle
- Potential avoidance of sector-specific protection
- Blurring the lines between universal service obligations (and protection thereof) and other services

# Legal uncertainty in goods + services bundles

## Article 9 Consumer Rights Directive 2011/83/EC:

(2) (...) the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days from:

- (a) in the case of service contracts, the day of the conclusion of the contract;
- (b) in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods (...).

- German law: Application of the rules on goods unless the goods only play a minor role in the contract
- Preferable: Cherry picking approach – always the more consumer-friendly rule

# Application of sector-specific protection?

## § 46 para. 8 sent. 3 Telecommunications Act:

If the consumer moves house, the provider of telecommunication services is obliged to continue to fulfil the contract at the new domicile. (...) If the service is not available at the new domicile, the consumer can terminate the contract with a period of three months to the end of the month.

- Does this rule apply to a bundle of services including telecommunication and pay TV?
- Preferable solution: ‘Cherry picking’: Protection extends to all elements of the bundle
  - See Article 107(2) of the European Electronic Communications Code

# Price transparency

- The law does not normally require information on the prices of the individual parts of the bundle
- Example: Mobile phone contract + mobile phone
- Problem 1: Consumer credit law
  - Credit contract as the phone is paid for through the monthly fees
  - But application of consumer credit law only for credit of 200 Euros
- Problem 2: Early termination of the contract
  - May lead to the obligation to pay the pro rata temporis value of the mobile phone
  - Intransparent if the consumer is not informed in advance about the value of the phone
- Solution: Specification of the value of the individual parts

# Access to essential services

§ 19 para. 3 Regulation concerning the general conditions for the supply with electricity of household customers:

The supplier of last resort must not disconnect a customer who is in delay with his payment obligations unless the amount due exceeds 100 Euros.

Problem: Delay of 120 Euros with a bundle?

Solution: Any payment must first be related to the service of general interest. Debts with other parts of the bundle must not lead to disconnection.

Precondition: Clarity as to the price of the part of services of general interest within the bundle