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Unfair commercial practices in the Nordic retail markets for electricity

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Preface

NordREG, a cooperation between Nordic energy regulators, has for several years been devoted to the work of developing the Nordic electricity market. NordREG has focused on establishing joint recommendations to achieve a harmonized Nordic electricity retail market. The Nordic countries have, and still are, making substantial changes to their national electricity markets to make them coherent. Such measures include supplier centric market processes, development of data hubs and, in recent years, a harmonized implementation of the Clean Energy for all Europeans package that come into force 2021.

In recent years, Nordic countries have seen an influx of suppliers that have unfair commercial practices. NordREG provides an important platform for information exchange and sharing of best practices. This report is a mapping of unfair commercial practices in order to increase NRAs' knowledge and allow for better regulation.

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Chair of NordREG

Stockholm, June 2022

Executive summary

Unfair commercial practices are a problem in all Nordic retail markets for electricity, where a few suppliers cause many complaints to the NRAs and consumer authorities.

NordREG's definition of unfair commercial practices is when a customer's behavior is affected by omitted or misleading information by a seller or a supplier. Unfair commercial practices may also be practices and contract terms that do not fully comply with the intentions of the national Electricity Act and general consumer protection.

Concrete examples are contract terms that are unfair or changed during the contract period, prepayment that is not refunded, customers that are switched without consent and very short introductory offers that lead to less favorable contracts without customers noticing.

Suppliers that use unfair methods often target vulnerable customers, for example elderly people, consumers with poor language skills or small businesses not covered by the same legislative protection as household consumers.

NordREG recognizes that it is challenging to monitor suppliers that use unfair methods. NRAs, that often are the public body that receives complaints, often lack jurisdiction and authority to punish those using unfair commercial practices. In all Nordic countries, the responsibility of monitoring suppliers' compliance with legislation is split between NRAs and consumer authorities.

Some of the controversial suppliers are also connected to each other, with the same people running one problematic supplier, then starting another company, even after folding the current company. Suppliers are also sometimes difficult to get a hold of, making monitoring time-consuming and resulting in cases taking longer to resolve.

The fact that no single authority has full jurisdiction in this area, makes legal action more difficult. NordREG believes that good cooperation between the responsible public bodies is crucial. Coordinated activities between the various authorities are necessary but difficult, due to incoherent methods, priorities and mandate. It is also important that the Nordic NRAs continue to share experiences and best practices regarding unfair commercial practices, monitoring and successful remedial actions.

This report gives examples of concrete measures already taken or suggested by public bodies and NRAs across the Nordics. In Finland, the Consumer Ombudsman has proposed banning the use of prepayment in the electricity retail market¹. In Norway, the NRA has proposed measures for more information on invoices and improved price information to consumers. In Sweden, changes to the law and practices were recently analyzed by the NRA, giving concrete suggestions that were published in early 2022. In April 2022, the Swedish NRA was given a government assignment to draft legislative proposals for unfair commercial practices. The report will be submitted to the government in February 2023.

¹ The proposition is recognized in the legal draft of implementation of CEP, currently underway.
<https://www.kkv.fi/ajankohtaista/tiedotteet/kuluttaja-asiamiehen-aloite-sahkon-ennakkolaskutus-kiellettava-ja-puhelinmyynnin-saantoja-tarkennettava/>

1. Introduction

NordREG has worked towards a harmonized electricity retail market since August 2005, when the Nordic energy ministers set the objectives for further development of the Nordic electricity market.

NordREG's Retail Market Working Group (RMWG) aims to follow the situation and share experiences regarding Nordic end-user markets, in order to promote harmonization of rules and regulations. In recent discussions, it has become clear that all Nordic countries are experiencing a growing number of suppliers that use unfair commercial practices. These practices are illegal, operate in a grey-zone or use loopholes in the legislation. They are generally harmful to the consumers and result in a less harmonized end-user market.

Unfair commercial practices are in this report defined as when a customer's behavior is affected by omitted or misleading information by a seller or a company. Unfair commercial practices may also be practices and contract terms that do not fully comply with the intentions of the national Electricity Act and general consumer protection.

Scope and objective

This report maps the situation regarding unfair commercial practices in the four Nordic retail markets for electricity. The main purpose is to provide an overview of experiences regarding unfair commercial practices in the Nordic countries through case studies in each country. The report also compares how responsibility in the electricity market is split between different public bodies and the protection of small businesses.

2. Finland

Tabel 1, Basic facts about the retail market for electricity in Finland

Number of customers; total/household	Number of suppliers	Switching rate/renewal rate	Most common contract
3.6/3.15 million	77	13.9 %	Fixed price

There are approximately 3.6 million electricity customers in Finland, of which about 3.15 million are household customers.

Public bodies that regulate the retail market and help customers

The Energy Authority (Energiavirasto)

The Energy Authority's (EV) role is to monitor compliance with both national and European Union natural gas and electricity market legislation and promote the functioning of a competitive electricity market in accordance with the Finnish Electricity and Natural Gas Market Supervision Act. For the retail market, this means that EV monitors electricity market participants' compliance with their obligations under electricity market legislation.

EV, on the other hand, cannot monitor the parties' compliance with obligations arising from an electricity sales agreement or the industry's own guidelines and recommendations. Jurisdiction over issues regarding these, lie with The Finnish Competition and Consumer Authority (KKV).

EV's supervision is ex post. This means that the Energy Authority cannot issue binding preliminary interpretative opinions on the legality of operations or, for example, grant a permit for a particular course of action. The Energy Authority can only issue a legally binding decision on a decision based on an investigation. The Energy Authority also advises consumers and other parties with queries regarding the electricity market, when relevant.

Investigations are initiated at the Energy Authority either as an own initiative investigation, or based on a request for an investigation submitted to EV. When a matter is brought to the NRA, the Energy Authority investigates whether the retailer has acted in violation of the Electricity Market Act, or the provisions issued on the basis thereof. The Energy Authority shall impose the infringing party to correct its violation or omission, if necessary, with the threat of a fine. The Energy Authority may also, in certain cases, impose the retailer to reimburse customers for incorrectly charged fees.

Competition and Consumer Authority (Kilpailu- ja kuluttajavirasto) and Consumer Ombudsman

The Finnish Competition and Consumer Authority (KKV) safeguards the functioning of the market. Competition controls remove competition barriers in the market, leaving consumers with competing alternatives. Consumer protection, on the other hand, ensures that consumers have access to sufficient and correct information needed to make choices, and that procedures used by businesses in marketing and customer relations are appropriate and contract terms reasonable.

The main task of the Consumer Ombudsman is to monitor compliance with the Consumer Protection Act and several other laws provided for consumer protection. Supervision focuses, in particular, on the legality of marketing and contract terms. The purpose of supervision is to enable companies to cease or change their illegal marketing or unfair contract terms.

Generally, the Consumer Ombudsman does not deal with individual disputes in which the consumer seeks redress for a defect in a good or service. These cases are dealt with by consumer advisers and the Consumer Disputes Board (described later).

However, the Consumer Ombudsman may, at his/her discretion, assist the consumer in resolving an individual dispute if its resolution is important legally and in the general interest of consumers, or if the trader fails to comply with a decision made by the Consumer Disputes Board.

The Consumer Ombudsman may also refer matters as a group complaint to the Consumer Disputes Board and take group actions.

The Consumer Disputes Board

The Consumer Disputes Board is an impartial and independent dispute resolution body. It provides recommendations for resolving legal disputes between consumers and businesses. Recommendations are not legally binding.

It should be noted that Article 26 of the Clean Energy Package (directive 2019/944), states that EU Member States shall ensure that customers have access to simple, fair, transparent, independent, effective and efficient out-of-court mechanisms for the settlement of disputes concerning rights and obligations established under this Directive, through an independent mechanism such as an energy Ombudsman or a consumer body, or through a regulatory authority. The Finnish government is currently planning on introducing a new disputes board for business customers.

Court and Police

Electricity retail market matters are usually handled outside court or without police involvement. Consumers have the option of taking matters to the Consumer Disputes Board, which is usually the easiest, as well as being far cheaper. In cases where suppliers ignore decisions made by the regulator or the Consumer Disputes Board, the consumers' final option is to take the matter to court themselves. In business-to-business contracts and transactions, it is not possible to involve the Consumer Disputes Board and, therefore, the only option to resolve a dispute between businesses, is in the general courts.

Protection of microenterprises

Microenterprises and other businesses do not currently have much protection against unfair commercial practices when it comes to electricity market legislation. Most of the contractual legislation in the Electricity Market Act is only binding when it is between a supplier and a consumer. In business-to-business contracts, legislation is mostly non-binding, which means that the parties can have a contract that does not coincide with minimum standard legislation. For example, a supplier and a microenterprise can have a contractual clause stating that the supplier is not obliged to inform the customer about a price change. This is not possible when it comes to a contract between a supplier and a consumer.

Therefore, the NRA generally does not have jurisdiction when it comes to disagreements between two businesses. These issues mostly come down to a contractual disagreement, and the only way to resolve this is by taking the matter to court. It should be noted, however, that the upcoming changes to the electricity market legislation will introduce an Alternative Dispute Resolution Board, to which microenterprises can take their matters. This is new legislation that was previously only for consumers. However, the Clean Energy Package has made it mandatory to include businesses as well.

Complaints about unfair commercial practices 2020

Complaints to The Energy Authority (EV)

The most common complaints from customers to the NRA were about disagreements with the contract. This in itself includes a majority of what falls under unfair commercial practices in Finland. For example, a number of complaints were about having a contract made without consent, or not sending a final bill after the contract period was over. In most cases however, EV is not the right public body to handle complaints such as this, and

in most cases the NRA informs the person making the complaint that the correct public body to investigate this is The Finnish Competition and Consumer Authority (KKV).

Figure 1, Number of complaints from consumers to Energy Authority (EV) in 2020

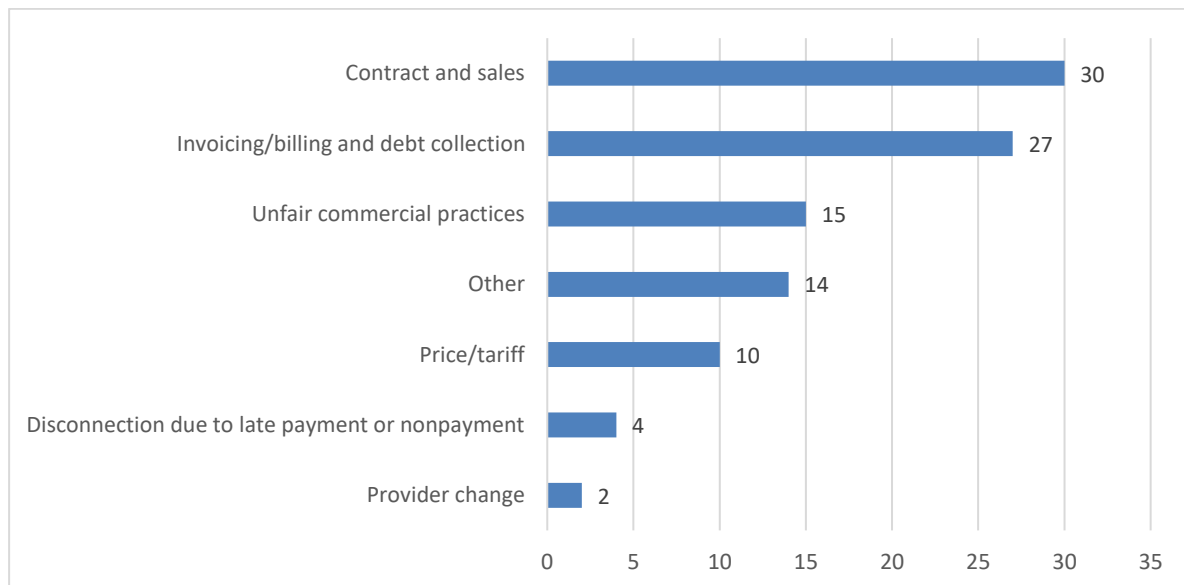


Figure 1 is based on 102 complaints in 2020

In 2020, EV received 120 complaints or inquiries about the electricity retail market. Figure 1 above, shows that the most common complaints were regarding contractual disagreements (contract without consent, the supplier not complying with the contract, issues with billing or price, etc.)

In 2020, EV started 13 cases against suppliers. The most common reason for investigation concerned issues with billing and providing necessary information before signing a contract. A major issue in 2020, was also when a supplier refused to send the final bill to the consumer after the contract expired.

The Energy Authority has received numerous complaints about a single electricity retailer regarding unusually large pre-payment bills, failure to provide a final closure account and changes of contract terms without notifying the customer. However, this conduct did not amount to a breach of the provisions of the Electricity Market Act (588/2013). These unfair commercial practices instead fell under the Consumer Authority's (KKV's) mandate (see section below and case study 1 for more information).

Complaints to The Finnish Competition and Consumer Authority (KKV)

The Finnish Competition and Consumer Authority (KKV) has received a significant and rising number of complaints regarding electricity suppliers in recent years. In 2018, KKV received 2076 complaints, in 2019, 2469 and 3338 in 2020 (only concerning electricity suppliers). Half of the complaints or inquiries were based on just a few suppliers.

KKV has noticed that the most common complaints can be divided into three areas.

1. Telemarketing

Ambiguities as to whether the consumer has accepted a contract over the phone, misleading or incomplete information provided in marketing, problems related to the cancellation of the contract (e.g., because the contract confirmation came late or not at all).

Actions:

KKV has instructed consumers that the seller has the burden of proving the conclusion of a contract in telemarketing situations in an appropriate manner (must have the consumer's expressed consent, provide correct and sufficient information about the contract and check the call recording if necessary). If the consumer has not accepted the contract or the contract confirmation has not been provided within the time required by law, KKV has instructed consumers to exercise their right to contest the validity of the contract, in which case the network operator will not enforce the contract. The Ombudsman's supervision has also addressed certain marketing and other procedures that violated the EU/Finnish Electricity Market Act and the Consumer Protection Act.

2. **Prepayment**

The consumer has not been clearly informed in marketing about pre-invoicing, excessive estimates, non-delivery of compensatory invoices, delays in final invoices and refunds.

Actions:

Consumers have been instructed by KKV to complain about excessive advances and failures to submit compensation invoices and final invoices. Under supervision of the Ombudsman, one company was taken to the Market Court and an injunction applied for illegal pre-invoicing procedures. The Ombudsman also assisted consumers in collecting final invoices.

3. **Practices for changing contract terms without notifying the customer**

A consumer has not received prior notice required by law about a price change, the change made by the seller has meant a material change to the contract, a procedure where the seller markets the contract at a low price but increases the price soon after the contract comes into effect without a clear reason.

Actions:

The Ombudsman has filed an injunction to the Market Court on one supplier.

Below follow three case studies that describe typical problems reported by consumers to the NRA, the Consumer Authority or other public body. The focus on these case studies is, however, mostly from the perspective of the NRA.

Case study 1 - Contract without customer consent

In 2020, the most common complaints regarding unfair commercial practices came from consumers that were put on a contract without their consent. EV received 30 complaints about contracts and marketing of electricity contracts in 2020. About half of the complaints were about suppliers creating a contract without the consumer's consent. A common complaint was that they had received a telesales call about an electricity contract, but had refused to sign or agree to a new contract. Despite declining, the supplier had started the contract nevertheless.

Is it within the NRAs authority to impose measures to terminate the practice?

No, this boils down to a contractual disagreement between parties. The NRA does not have any jurisdiction concerning whether a contract has been entered into or not.

When EV receives such complaints, we explain that we are unfortunately unable to monitor these types of unfair commercial practices concerning contract sales, and that the consumer must contact KKV. EV also explains that under electricity market legislation, consumers are able to stop the switch and return back to

their previous supplier². The NRA also makes sure that the consumer understands that this does not mean that the contract in itself is void. Stopping the switch and returning to the previous supplier are two different matters and does not deem the contract void.

Case study 2 - Prepayment and not refunding when necessary/No final bill in time

By the end of 2019 and the start of 2020, the Energy Authority received numerous queries and complaints concerning a single electricity retailer. The queries/complaints concerned unusually large pre-payment bills, many of which did not reflect the consumption estimate provided by the customers' DSO, the retailer's failure to send the required number of invoices based on actual consumption, including sufficient information on the invoices, failure to provide a final closure account within six weeks of supplier switch and unilateral changes to terms and conditions of the supply contract, including prices.

The supplier's conduct did not amount to a breach of the provisions of the Electricity Market Act (588/2013) (note that this does not mean the conduct was acceptable according to other legislation, in most cases, and the persons making the complaints were advised accordingly). Towards the end of 2019, two investigations concerning retailers were opened with a further five investigations in the first quarter of 2020. This trend continued into the first half of 2021.

In 2020 especially, one supplier used a prepayment clause in the contract, stating that consumers should pay 20% of the annual estimated consumption in advance. This 20% prepayment is then to be returned to the consumer on their last bill (before they end the contract). This kind of prepayment is unusual and can be considered unreasonable for the consumer.

The NRA has also previously issued decisions against a supplier that regularly bills their customers for 10% of their estimated annual consumption per month in advance. This leads to the problem where customers get billed 120% of their annual consumption per year. After EV's decisions against this practice, we have noticed a decrease in this unfair practice.

There have also been major issues with suppliers not providing consumers with their final bill within the legal timeframe of six weeks. EV has started three cases concerning this practice.

Most of these issues have been brought up by customer complaints to EV. These over exaggerated prepayments have caught EV's attention during investigation of cases regarding final bills.

The prepayment clause of 20% is a contractual clause, which the NRA cannot monitor or have any jurisdiction over. It is up to KKV to decide if this is an unreasonable contract term or not. However, the NRA can and have focused on issues where the supplier refuses to send the final bill. EV has issued multiple fines to a supplier that refused to send final bills even after EV's decision. This has not stopped the supplier from continuing this practice. KKV has also taken this issue to Market Court, where the court issued an injunction to the supplier concerned.

Because of the NRA's jurisdiction, EV cannot handle the actual situation, which is the prepayment itself (except in some cases). EV can, however, make sure that consumers get their final bills (where, in practice, the prepayment should be refunded). The particular supplier that has been the worst culprit, has ignored the decisions and fines issued by the NRA.

It should also be noted that, recently the Ombudsman has argued that prepayment should be stopped altogether when it comes to electricity contracts. Prepayment is rarely used in electricity supply contracts, but

² This is carried out by informing the new supplier and the DSO that the customer has not agreed to a contract and is refusing to switch supplier. The DSO must stop the switch to the new supplier and return the customer to the previous supplier.

there are a lot of issues and complaints regarding this, since it is mostly the companies using this that have other issues with unfair commercial practices already.

Case study 3 - Changing the price or other material changes to contracts

According to the Electricity Market Act, a supplier cannot change the terms of a contract unless it has been specified in the contract. Even when a supplier has the right to change contract terms, they must notify the customer of the change one month before doing so.

In recent years, the KKV has received complaints about suppliers changing the material terms of electricity contracts. Such changes include price changes or changing the contract type to a completely different contract (fixed price to a market priced contract, for example).

Based on complaints from customers, the NRA has monitored similar types of issues in the past, where changes have mainly been to contract prices. While the NRA does not have the jurisdiction to investigate whether such a change has been made according to the contract or not, the Electricity Market Act states that the customer must be notified before such a change. The NRA has, therefore, issued several decisions after finding that the supplier had not notified the customer before the price change.

The NRA does not have the jurisdiction to stop anyone changing the price or the terms of the contract, but the NRA can obligate the supplier to send a notification before doing so. The Consumer Authority can investigate whether changes to the terms are valid or not. As explained earlier, KKV noticed this issue in 2020 and, therefore, filed an injunction to the Market Court. The matter was resolved in early 2021, where the Market Court issued an injunction against an electricity supplier.

When the NRA receives complaints about a supplier regarding this kind of unfair commercial practice, the consumer is notified that the relevant authority is the Consumer Authority and they can also receive help from is the Consumer Advisory Board. However, EV has started several investigations on its own when it comes to a change of contract price where the supplier had not informed the customer in advance. Investigations were made in 2019 and 2020, where the NRA deemed the actions as breaches against the Electricity Market Act. As a result, suppliers changed their behavior or the products themselves. One supplier has complained to the Market Court regarding one of EV's decision, and the matter is still unsolved.

The NRA's over-all conclusion about unfair commercial practices in Finland

Overall, it is clear that the NRA and the Consumer Authority receive similar complaints about electricity suppliers. However, how the two organizations deal with matters varies significantly. The Consumer Authority has a large advisory service that mainly helps consumers figure out the best course of action to fix problems, whereas the NRA can issue decisions and fines to enforce any decisions, if the supplier acts against legislation.

If the measures do not work, the Consumer Authority can file injunctions to the Market Court and the Ombudsman can also take the matter to the Civil Court and represent consumers on their behalf. The major difference when it comes to the jurisdiction of the NRA and the Consumer Authority, is that the NRA does not have jurisdiction regarding contractual disputes. This is a problem in itself, since most actions considered unfair commercial practices ultimately fall into the category of contractual disputes.

EV mainly advises consumers to contact Consumer Authority for matters that it does not have jurisdiction over but the Consumer Authority does. EV rarely sends cases directly to the Consumer Authority, since it should be the consumers choice whether they want matters investigated by them or not.

There are only a few suppliers that cause most of the problems regarding unfair business practices in Finland. The majority of the suppliers handle their business according to legislation and the NRA rarely gets any

complaints about them. The few suppliers that do use unfair commercial practices still cause a lot of work for the regulatory agencies such as EV and KKV.

This topic has also been in the media picture a lot in 2021, as well as also being recognized by the Parliament. For example, recently the Consumer Ombudsman issued a formal petition to remove prepayment from electricity sales.³ The Ombudsman stated that prepayment for electricity is rare, but it has caused so many inconveniences that the Ombudsman considers it justified to be removed altogether. This ties into similar issues where consumers have been overcharged and there have been long delays and a lot of ambiguity in refunds.

The NRA has also noticed an increasing trend in problems regarding refund of prepayments, when it comes to the issue of the final bill (as stated in case study 2).

Recently, the issues culminated in a situation where suppliers that are the main cause of all the complaints regarding unfair commercial practices were forced to stop supplying electricity altogether. These suppliers no longer had a Balance Responsible Party⁴ and were, therefore, not able to supply electricity under Finnish legislation. The NRA and the Consumer Authority issued a notification to all concerned customers of these suppliers, notifying them to change their supplier or risk the electricity being cut off.

From the NRA's perspective, there is a lack of jurisdiction in contractual disputes. Most of what is considered unfair commercial practices is not in the monitoring jurisdiction of the NRA, as this mainly comes down to a contractual disagreement between the consumer and the supplier. EV has also noticed that suppliers that usually are involved in these kinds of unfair commercial practices are almost impossible to get hold of. This is a common problem from a consumer perspective as well, since customers cannot reach their supplier when there are issues.

These kinds of unfair commercial actions do not stop after formal decisions are made, and it is time-consuming for the NRA or the Consumer Authority to have these issues brought up in court. By this time, most suppliers have ended their business and moved on to founding another one, starting over with the same practices.

Suggested solutions (or examples of planned actions to address the problem)

As stated above in the case studies, most of the unfair commercial practices that occur in the electricity market sector, happen when contracts are entered into or when the supplier unilaterally changes a contract without informing the customer. Issues with prepayment and refunding are also common to these suppliers.

The Consumer Ombudsman has recently introduced a couple of suggestions that may help combat these issues. In the upcoming changes to the Electricity Market Act, due to the implementation of the Clean Energy Package, the Consumer Ombudsman suggested that prepayment should be completely removed. One of the issues discovered in the market, is that the suppliers that make use of unfair commercial practices, mostly require their customers to pay the electricity bill in advance. There are several issues where customers have either paid a lot more than their annual estimated consumption indicates, or where suppliers go out of business, leaving the customer to pay for electricity that they have never even consumed.

This change to legislation would mostly eliminate this kind of practice as well as mitigate any actual losses that the customer might have. The legislation does have certain clauses specifying that prepayment could still come in question, i.e., when customers have issues with paying their bills, etc.

³ <https://www.kkv.fi/ratkaisut-ja-julkaisut/aloitteet-lausunnot-ja-kannanotot/2021/4.6.2021-aloite-sahkomarkkinalainsaadannon-kehittamiseksi/>

⁴ BRPs are financially responsible for maintaining the balance between supply and demand of energy within their portfolio

Another possible solution is to focus on telesales. Recently, the Consumer Ombudsman suggested changes to telesales in Finland. With the Omnibus-directive⁵, the Ombudsman has suggested how to mitigate consumer risk during telesales. Some of the suggestions are, for example, an opt-in system, where telesales can only be used for consumers that have given their explicit consent prior to the phone call. Another solution that has been suggested, is that a contract cannot come into effect until the consumer has explicitly agreed to it after the phone call, by signing the contract electronically, where all the relevant information (that was mentioned in the phone call) is found.

When it comes to the NRA, there is not a lot to be done without completely changing the system of monitoring the electricity market. Since most of the issues focus on contractual issues, where the regulatory agency does not have jurisdiction, there is not much that can be done to resolve these issues. Another common issue when dealing with suppliers that participate in these kinds of unfair commercial practices, is that the NRA hardly has any means of actually curbing the supplier's conduct. While the NRA may issue decisions and fines to force a change, these practices do not work if the supplier in question ignores them.

Communication between the relevant government authorities is also crucial. In Finland, the relevant authorities try to keep an open line of dialogue and regularly have meetings focusing on specific issues when necessary. All in all, communication between government authorities should be kept transparent and where possible, enhanced.

From a customer perspective, it would also be useful to have open and clear information on which government authority actually has jurisdiction to monitor any issues. A lot of time and resources are used to inform the consumer which agency is the correct place to take their matter to.

In this context, it is worthwhile mentioning the importance of an Alternative Dispute Resolution (ADR). While Finland has had a separate Alternative Dispute Resolution Board for consumers for a long time, a new ADR has been established, focusing on business customers' issues, once the Clean Energy Package has been implemented. This will give more consumer rights, giving them the possibility to have their problems resolved, without having to take matters to the general courts, which can be very expensive and time-consuming. Since this is new legislation, information should also be made easily available for any business customers to find.

⁵ The new Enforcement and Modernisation Directive 2019/2161, more commonly known as the 'Omnibus Directive' (the Directive), aims to strengthen consumer rights through enhanced enforcement measures and increased transparency requirements.

3. Norway

Table 2, Basic facts about the retail market for electricity in Norway

Number of customers; total/household	Number of suppliers	Switching rate	Most common contract
3.3/2,7 million	155	21.6 %	Dynamic price contract (75.9 %)

There are approximately 3.3 million electricity customers in Norway, of which about 2.7 million are household customers.

Public bodies that regulate the retail market and help customers

The Norwegian Energy Regulatory Authority (NVE-RME)

The Norwegian Energy Regulatory Authority (NVE-RME) is the regulatory authority for the electricity market in Norway. The main statutory objective is to promote socioeconomic development and an environmentally sound energy system with efficient and reliable transmission, distribution, trade and use of energy. NVE-RME ensures that suppliers, producers, and grid operators comply with national energy legislation and supervises the retail market in accordance with provisions under the Energy Act and adjoining regulations. This includes information on the invoice, settlement between consumer and supplier in the retail market. NVE-RME is responsible for complaints or reports about companies that fail to comply with the national energy regulation provisions. NVE-RME can issue legally binding decisions based on an investigation or complaint.

NVE-RME is also the supervising authority for the national data hub, Elhub, which facilitates switching and data regarding consumption.

The Norwegian Consumer Authority (Forbrukertilsynet)

The Norwegian Consumer Authority is an independent administrative body tasked with supervision in the market, enforcing consumer protection laws and advising suppliers on how to observe the regulatory framework. The Consumer Authority is responsible for consumer protection laws regarding terms and conditions of contract, marketing and price information. The Consumer Authority prevents and stops illegal marketing, unfair contract terms and other forms of illegal commercial practices targeted towards consumers, so that they can make informed decisions. This is achieved by offering guidance, entering into dialogue with traders, effective use of economic sanctions and providing information.

In 2021, NVE-RME and the Consumer Authority started a working group to solve issues in the electricity market and introduced measures to increase information provided to consumers.

The Norwegian Consumer Council (Forbrukerrådet)

The Norwegian Consumer Council is an independent interest body that assists consumers in disputes with suppliers and seeks to influence authorities and suppliers in a consumer-friendly direction. The Norwegian Consumer Council gives advice and information regarding the electricity market. In 2021, about 2025 consumers contacted the Consumer Council with questions regarding electricity.⁶

The Consumer Council is responsible for operating the Norwegian Price Comparison Tool (Strømpris.no) for electricity contracts. Here, the Consumer Council is responsible for collecting information from all suppliers

⁶[Forbrukerrådet – Tredobling i spørsmål om strøm i 2021](#) (article in Norwegian)

that sell electricity in the retail market and presenting it on the comparison tool. NVE-RME is responsible for the legislation that requires all suppliers to report active contracts to the price comparison tool.

The Consumer Council and NVE-RME have frequent meetings regarding the price comparison tool.

The electricity appeal board (ADR Body) (Elklagenemda)

The Norwegian Electricity Appeal Board (ADR Body) handles unsettled complaints from consumers to suppliers and/or the DSO, related to contracts for network connection, network use and/or electricity supply. All companies that have received a trading license from NVE-RME under the Energy Act, are included in the scheme. The ADR consists of two representatives appointed by the Consumer Council and two representatives appointed by the electricity industry.

Before a complaint is sent to the ADR, the issue must be tried to be resolved between the two parties. If the two parties do not reach an agreement, the complaint may then be sent to the ADR. The ADR handles complaints which often fall outside the authority of NVE-RME or the Consumer Authority.

Court and Police

In the majority of cases, consumers do not need to go to court to have a dispute settled. Consumers usually handle cases by contacting the different authorities, or the ADR. The NRA has in some instances reported companies to the police for breaking the law. In most cases, this only applies to business customers, not private consumers. Consumers in Norway are covered by consumer laws and regulation provides consumer protection. Business customers do not have the same laws protecting them and must resolve issues in court. Involving the court is usually a costly affair. Issues are, however, usually resolved before taken to court.

Protection of microenterprises

Norwegian laws and regulations have little protection towards small businesses/microenterprises, the majority protect private consumers. Contract terms for contracts between a business consumer and a supplier are usually a private agreement. Since these contract terms are not regulated, they might be different from a household consumer's. Microenterprises have a certain amount of protection regarding supplier switching and settlement, but there are no general laws for terms, marketing and invoice, as is the case for consumers. Usually, disputes between microenterprises and suppliers are settled through mutual agreement or in court, as the NRA, Consumer Authority and ADR do not have the jurisdiction to resolve such cases.

Complaints about unfair commercial practices

In 2020, the most common complaints from customers were about contracts and sales (359 complaints). The complaints varied and were often connected to marketing and telesales. A common complaint is that consumers are contacted even though they have reserved themselves against telemarketing in the central marketing exclusion register. Other complaints are related to marketing of contracts. Because communication is verbal, usually in the form of a phone call, it can be difficult to get proof of unfair commercial practices.

Figure 2, Number of complaints from consumers to authorities in Norway in 2020

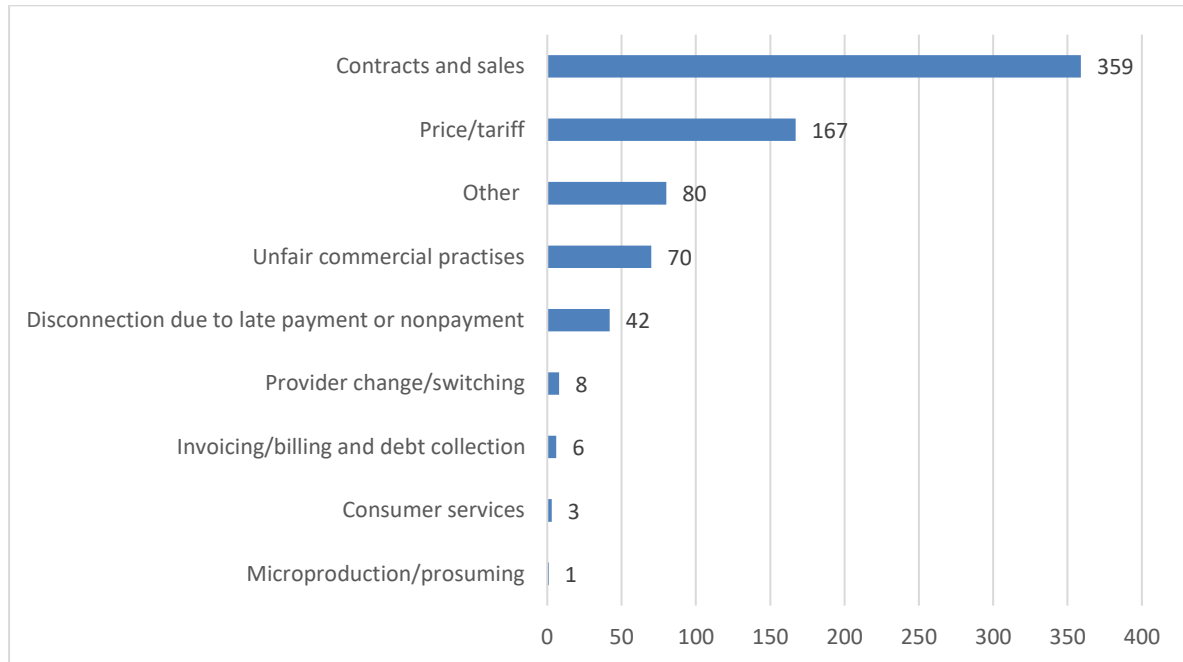


Figure 2 is based on 736 complaints in 2020

All authorities combined received a total of 70 complaints regarding unfair commercial practices in 2020. This is an increase from 56 complaints in 2019. Complaints regarding unfair commercial practices are related to misleading and unreasonable consumer marketing, unfair terms of contracts and binding periods. In such cases, the Consumer Authority is the correct public body to investigate the complaints.

Below follows three case studies that describe unfair commercial practices. Focus on these case studies is, however, mostly from the perspective of the NRA.

Case study 1 - Customers receive an introductory offer and are then moved to a more expensive contract without notice

Some suppliers offered contracts which had a very low price for the first few days (normally 14 days, sometimes even shorter). After that, the consumer is moved to a more expensive contract, or the contract terms changed, without the customer noticing it.

In some cases, the consumer was notified via the power supplier's website, a notification not easily seen and able to react upon. The consequence is that active consumers, that regularly switch contracts, can benefit from contracts with low prices, while inactive consumers get a less beneficial contract than they originally agreed to.

The situation was drawn to the NRA's attention by the Consumer Council and the price comparison tool. Suppliers used the price comparison tool to promote contracts and compete about the top spots. This led to a situation where the contracts on top of the comparison tool only lasted for 14 days before they became more expensive. The contracts often require electronic and automatic billing. In some cases, automatic or electronic billing can only be applied after the first invoice is sent to the consumer. Thus, if a consumer forgets to change its billing method or does not actively contact the supplier beforehand, they can be moved to another contract without notice, perhaps entailing an increase in price.

Since this is an issue regarding contract terms the NRA lacks authority in this area and, therefore, forwards such customers to the Consumer Authority.

The NRA regulates reporting of contracts to the Norwegian comparison tool. To make sure that all contracts that are reported to the portal are correct, the NRA has focused on faster and stricter handling of cases where suppliers are found to report misinformation to the price comparison tool. If a contract's terms and conditions stray from the law, the case is handled by the Consumer Authority.

The Consumer Council operates the price comparison tool. Misinformation or contracts which are not according to law are reported to either the NRA or the Consumer Authority and can be unpublished from the price comparison tool.

The Consumer Council has made changes to the price comparison tool to ensure that contracts that guarantee the price for at least 12 months are shown at the top of the front page of the comparison tool. If the contract has a duration of 6 – 12 months, it is shown after the contracts that last for at least 12 months; contracts with a shorter duration, are moved to bottom of the frontpage on the comparison tool. This allows consumers that want contracts with a short price guarantee to find them, but it incentivizes the suppliers to offer contracts that last over a longer time span.

Case study 2 - Suppliers sell a contract where the consumer pays a flat rate each month

In 2017, The Consumer Authority contacted NVE-RME regarding flat rate contracts.

Power suppliers have offered contracts where the consumer pays a flat rate each month, unaffected by electricity usage. The suppliers then calculated the difference between what the consumer paid and what they owed for actual consumption. There was a yearly settlement, where the consumer had to pay the difference or get money back from the supplier. If the consumer owed money, they could be charged a higher price than the market price. The consumer also paid a fixed amount for the contract each month.

This type of contract was meant to create a predictable situation for the consumer, allowing them to plan their economy. The contracts could be complex and offer little verifiability for the consumer. It sometimes also results in consumers having less control and understanding about their consumption. Some contracts came with a high interest rate in addition to electricity costs. An invoice should have a clear connection between electricity consumption, and these deals contributed to making the retail market for electricity confusing for some consumers.

To avoid too large amounts of debiting/crediting at the year-end settlement (31 December), the supplier was free to adjust the monthly rate up or down during the settlement period. This meant that consumers were not guaranteed to pay the same flat rate each month, if prices of electricity increased or decreased over a longer period.

The Consumer Authority notified the NRA about the contracts, after having discovered the agreements during an investigation of supplier's contract terms. In a letter to the NRA, they highlighted some of the issues and presented examples of felonious agreements.

The NRA concluded that flat rate offers are illegal, since the settlement was not carried out according to rules and regulations specifying that

- 1) There can be maximum three months between completed settlements
- 2) Payment in advance is restricted up to 10 weeks

- 3) All settlements should be based on actual metered values for the actual period of settlement

The NRA issued a decision, specifying that such deals had to be discontinued and that any remaining settlements must be finalized. The affected parties complained about the decision, and it was sent to the independent appeals body. They concluded that the NRAs decision should be upheld. A few of the power suppliers notified the NRA that they would take their cases to court. On 25 January 2022, the court decided that the NRAs decision was to be upheld in the case between the NRA and three suppliers.

Case study 3 - The seller pretends to know about the consumer's contract and usage

In 2021, the NRA was informed that salesmen from suppliers called consumers about their electricity contract, pretending to know about their yearly power consumption and current supplier contract. In doing this, they could enhance their own sales by making the consumers believe that this was their current power supplier or making it seem that they were able to offer a better contract.

The salesmen claimed that they got information from the datahub (Elhub) or from the network company. This is not possible, since Elhub and network companies do not give out information regarding consumers registered with other suppliers.

This practice is considered unfair because contracts are sold based on wrong information. By claiming to possess information that you do not have, a seller confuses the consumer and might make them act based on wrong information. It also confuses customers as to the availability of their data.

The Consumer Authority can act upon illegal sales practices. The NRA does not have the authority to impose measures on a company's sales policies. The Consumer Authority is responsible for legislation regulating sales practices and marketing from electricity suppliers.

The NRA was contacted by a Norwegian newspaper, that wrote an article about the practice. The NRA clarified that suppliers do not have this data or information before entering deals with consumers. The article contributed to giving information to consumers that were unaware about the practice. Cases regarding misinformation in a telesale can be challenging to resolve, because information is verbal and difficult to verify. Increasing awareness about this type of practice can help consumers experiencing similar situations make more informed decision.

The NRA's overall conclusion regarding unfair commercial practices In Norway

There are issues of unfair commercial practices in Norway, which result in making it more difficult for the consumer to navigate the retail market. Unfair commercial practices can affect inactive consumers in the electricity market. Such practices can reduce the trust consumers have towards suppliers and result in a less efficient market. If consumers do not trust suppliers, they may experience difficulty in navigating the market, which can lead to more inactive consumers or consumers that makes decisions based on misleading information.

Unfair commercial practices require consumer awareness and that they send complaints to the relevant authorities. Unaware consumers will most likely not be able to identify unfair commercial practices and, therefore, not send in complaints and make informed decisions. Since authorities often depend on consumers reporting irregularities, many unfair commercial practices will not be uncovered. Consumers are often contacted via phone, since this is verbal communication often with lack of proof and, as a result, it might be hard to verify unfair commercial practices.

Regulation is divided between the NRA and the Consumer Authority. For instance, the NRA does not have the authority to regulate terms and marketing. Consumers are not familiar with the different authorities'

responsibilities, and often send complaints to the wrong authority. This may result in the case taking longer to be resolved, since the consumer will have to send a new complaint to the correct authority. This shows the importance of good cooperation between authorities and the need for coordinated activities, which may be difficult due to different methods and legislation.

Suggested solutions

For a more efficient electricity retail market, authorities can increase inspection and information sharing. The Consumer Authority has increased its inspection of the electricity retail market and has investigated different cases of unfair commercial practices. Some examples are:

1. **Suppliers claiming to have the cheapest contract⁷**

The Consumer Authority has stated that a supplier selling a contract and claiming it is the cheapest, must have sufficient proof of this. The Consumer Authority has ascertained that there are many companies offering different contracts with frequent price changes, which result in it being difficult to justify which the cheapest contract is. In May 2022, the Consumer Authority fined three companies between NOK 400 000 – 1 500 000 for claiming to be the cheapest. Furthermore, two of the companies may also get another fine of NOK 500 000 for every week they claim to have the cheapest contract without sufficient documentation.

2. **Suppliers claiming to sell 'green' electricity⁸**

Companies cannot market 'green' electricity so that consumers interpret that they are guaranteed electricity produced by renewable sources. Suppliers can, however, buy guarantees of origins for electricity, but it is important that they explain that the electricity consumers get might not be renewable. The Consumer Authority investigated marketing activities with 26 suppliers, resulting in letters being sent to 17 companies, asking them to change their marketing or provide more information about their marketing.

3. **Suppliers that require consumers to have an automatic invoice deal to get a discounted price⁹**

Some suppliers that sell electricity have required consumers to use direct debit to qualify for discounts on their electricity contract. Direct debit can lead to loss of information regarding bills, usage or possible changes to the price or contract. The Consumer Authority has published an article on its website, stating that a consumer is free to choose if they want to use direct debit or not, and it cannot be a requirement in the contract terms in order to qualify for a discount or uphold the contract. The Consumer Authority also sent a letter to three suppliers with questions regarding their contract requirements.

In addition to general investigations/audits, the NRA continues investigation of illegal contracts in close cooperation with the Consumer Council regarding contracts reported to the public price comparison tool. The NRA has stated that companies that report contracts with missing information or errors to the price comparison tool can get a fine. The NRA started an investigation on energy certificates in 2014-2015. In all instances, suppliers had not specified the price of energy certificates in their price list. This resulted in contracts having a lower price during marketing, compared to after being entered into. Suppliers with illegal practices in the consumer market have declined significantly, with no cases in the consumer market in the last couple of years. The situation in the business market is slightly different, however, where the NRA has had a few cases in 2021/2022.

In February 2021, NVE-RME published an external report on the electricity retail market. The report recommended measures for a well-functioning retail market. One of the main findings in the report was that

⁷ [Forbrukertilsynet gir tre straumselskap gebyr for ulovlege billegastp standar](#)

⁸ [Forbrukertilsynet – «Gr n straum» er ikkje gr n straum i stikkontakten](#)

⁹ [Forbrukertilsynet – str mselskapene kan ikke kreve Avtalegiro for   gi rabatt](#)

consumers lack information on the electricity retail market and have difficulty navigating the market. The report states that there is asymmetric information between the consumer and supplier. The report suggested that public authorities should make current regulation clearer and increase enforcement of violations.

NVE-RME and the Consumer Authority established a working group to look at the measures suggested in the report more closely. Their findings recommended better collaboration between the authorities and legislation changes, to increase the efficiency of the electricity retail market. The conclusions from the working group were presented by NVE-RME in a letter to the Ministry of Petroleum and Energy, with eight recommendations. The Consumer Authority suggested similar measures in a letter to the Ministry of Children and Families.

The suggested measures involve legislation changes to increase information given on the electricity invoice, improved price information and increased information to consumers. Other suggestions included a comparable unit price for addons, definition of standard terms, obligation to offer of a certain type of deal, creating a common complaint platform and an information portal for consumers. The measures will most likely increase the information level for consumers.

The above-mentioned letters prompted an assignment for NVE-RME to begin working on a legislative change to improve obligatory billing information received by consumers. The proposed legislative change was sent to the Ministry of Petroleum and Energy in December 2021. The legislative changes have been on a joint hearing with proposed changes in the consumer legislations put forward by the Consumer Authority and the Ministry of Children and Families ending May 30, 2022.

4. Sweden

Table 3, Basic facts about the retail market for electricity in Sweden

Number of customers; total/household	Number of suppliers	Switching rate/renegotiation rate	Most common contract
	139	10%/24%	Open ended monthly variable (53.6%)

The Swedish electricity retail market has been subject to competition since 1996. There are approximately 5.5 million electricity customers in Sweden, 4.7 million of which are household customers.

In 2020, the most common electricity supply contract was a spot-based open-ended monthly variable price contract. The long-term trend has been that household customers abandon fixed price, fixed term contracts and so-called designated contracts (the type of contract for people that do not choose an electricity trading company) in favour of monthly variable price contracts.

Public bodies that regulate the retail market and help customers

The Swedish Energy Markets Inspectorate (Energimarknadsinspektionen, Ei)

The Swedish Energy Markets Inspectorate is the regulatory authority for the electricity, natural gas and district heating markets. Ei ensures that companies in those markets comply with national legislation and the EU's regulatory framework for the internal market.

Consumers can report companies failing to comply with the provisions of the Electricity Act. As the authority responsible for supervision, Ei can then examine whether companies have breached their statutory obligations. During 2020, 1,200 consumers contacted Ei, around half of those contacts were complaints.

Ei offers a comparison website for electricity contracts – elpriskollen.se. This site strengthens the position of customers (both household and non-household customers with a yearly electricity consumption up to 100 000 kWh). The website allows customers to compare prices, terms and conditions of contracts from all active electricity suppliers.

The Swedish Consumer Agency (Konsumentverket)

The Swedish Consumer Agency is responsible for general consumer legislation and monitors consumer affairs in more than 45 different consumer markets. In the electricity market, the Consumer Agency monitors marketing rules (including price information), sales and contract terms. Ei has regular meetings with the Consumer Agency where information is shared and issues connected to the electricity market are discussed.

Examples of activities are cases of long-term contracts and notice periods for monthly open-ended variable contracts recently taken to court. Those court processes resulted in a nationwide ban of contract binding and notice periods exceeding three months on such contracts.

A current activity is a lawsuit against a supplier.¹⁰ The Swedish Consumer Agency has received a lot of complaints about this particular supplier's selling methods, which the Agency deems to have been systematic

¹⁰ KO Stämmer Stockholms Elbolag <https://www.konsumentverket.se/aktuellt/nyheter-och-pessmeddelanden/pressmeddelanden/2021/ko-stammer-stockholms-elbolag/>

over a longer period. Some of their methods are misleading text messages, which have been used as consent to switching, demanding payments from consumers that have not ordered anything and asking for very high termination fees. The Swedish Consumer Agency, therefore, wants the Court to rule a fine of approximately EUR 100 000. The agency also wants the Court to find several of the people running the business responsible for their actions, in order to prevent them continuing with similar methods elsewhere.

The Swedish Consumer Energy Markets Bureau (Konsumenternas energimarknadsbyrå)

The Swedish Consumer Energy Markets Bureau is an independent bureau that provides advice and guidance to consumers. The service is free of charge. The bureau follows principles laid down by The Swedish Consumer Agency, The Swedish Energy Agency and The Energy Markets Inspectorate, together with the industry organizations Swedenergy and the Swedish Gas Association. The bureau is the national point of contact in the field of energy. Both Ei and the Consumer Agency forward relevant complaints to the bureau, in particular those regarding contractual rights and disputes.

The National Board for Consumer Disputes (Allmänna Reklamationsnämnden, ARN)

The National Board for Consumer Disputes is a public authority that functions like a court. The main task is to impartially resolve disputes between consumers and business operators. Claims are filed by the consumer.

Before a complaint is filed with ARN, the business operator must have rejected the complaint in part or in whole (or not having responded to the complaint at all). ARN submits recommendations on how disputes should be resolved, for example stating that the business operator must take remedial action. ARN's recommendations are not binding, but most companies adhere to their recommendations.

In the electricity market, ARN can settle disputes that Ei or the Consumer Agency cannot. An example is disputes between consumers and grid companies regarding compensation after power outages. Another example is disputes between consumers and suppliers regarding incorrect billing.

Court and Police

There are situations where consumers need to go to court to settle a dispute. However, that mostly applies to businesses, not household consumers, as they are not covered by general consumer protection and the free of charge dispute settlement that ARN offers. Involving the court is usually more complicated and connected to the risk of having to pay the counterpart's court costs, should the customer lose. There are also situations where customers are advised to contact the police. This can be the case if a supplier is suspected of having forged a signature, falsely claiming to represent a company, or using an invalid proxy.

Protection of microenterprises

Complaints and monitoring activities have revealed that microenterprises are particularly targeted by unfair commercial practices. That can in part be because it is easier for suppliers that use unfair commercial practices to target microenterprises. Microenterprises can be very consumer-like in their capabilities to dispute contracts and may be a much smaller party than the company that supplies their electricity. Microenterprises do, however, lack general consumer protection. Some of the legislation in the Electricity Act is also only applicable to consumers. When microenterprises get affected by unfair commercial practices, it can be expensive for them to be stuck with or terminate contracts they never wanted or did not live up to what was promised.

Complaints about unfair commercial practices 2020

In 2020, the most common complaint regarding electricity suppliers concerned unfair commercial practices (63% of all complaints regarding electricity suppliers). That is a rather dramatic increase from 2018 and 2019, when complaints regarding unfair commercial practices stood for 37% of all complaints regarding electricity suppliers.

Figure 3, Most common household complaints to the NRA regarding electricity suppliers in 2020

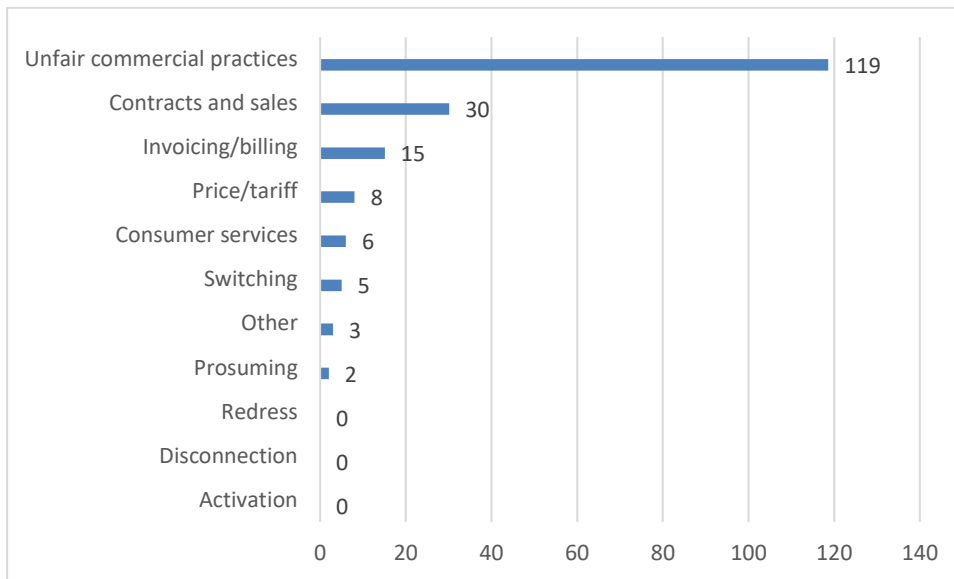


Figure 3 is built on data from 188 complaints in 2020.

Ei received 118 complaints regarding unfair commercial practices in 2020. Figure X below shows what the complaints were about. The most common complaints regarding unfair commercial practices concerned negative selling methods (43%) and discontent in connection to telemarketing (29%).

Figure 4, Most common household complaints regarding unfair commercial practices to the NRA regarding electricity suppliers in 2020.

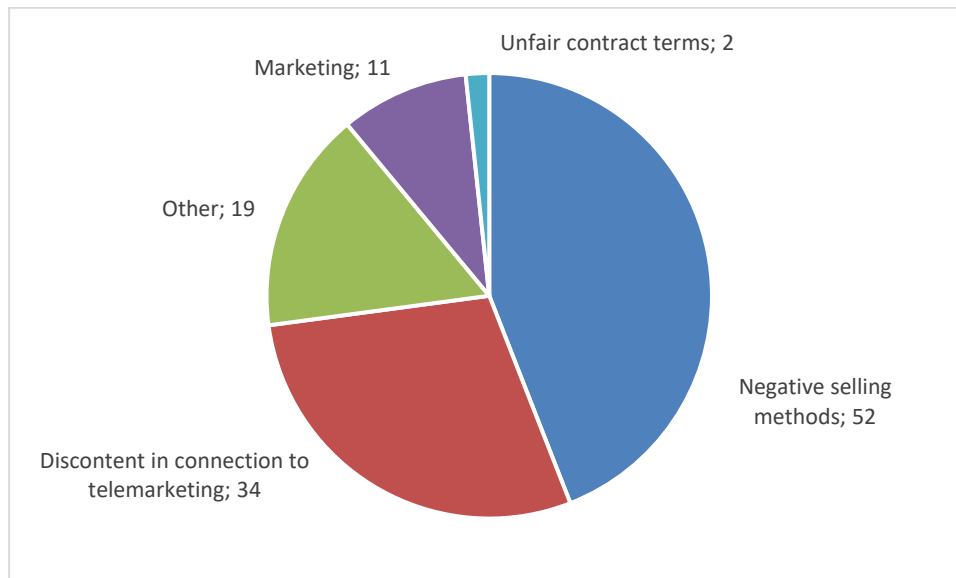


Figure 4 is based on 118 complaints in 2020.

Examples of **negative selling methods** are suppliers that send confirmation of a contract or a bill to a customer that has not signed or accepted a contract. This form of contractual binding is prohibited, and the Consumer Agency monitored suppliers using this method in 2019. Other examples are suppliers that use invalid or outdated proxies.

Complaints regarding **discontent in connection to telemarketing** is often about sellers that push customers into accepting a contract. On 1 September 2018, a law came into force requiring suppliers to get written consent on all contracts. This reform, entailing the physical action of signing, gives the customer time to reflect. The Consumer Agency has monitored several suppliers regarding the law of written consent.

Examples of complaints regarding **unfair contract terms** have in the last couple of years been about long notice periods and high termination fees. Both notice periods and termination fees have been monitored by the Consumer Agency. Few complaints were in this category in 2020.

The Swedish Consumer Energy Markets Bureau received 1720 complaints about electricity supply in 2020. Approximately 1080 of those complaints were regarding unfair commercial practices. The bureau describes that they received more concerning complaints in 2020 than in previous years. Some of the more severe complaints from customers about suppliers were about practices regarding fraudulent bills, threats of involving bailiffs, threats of disconnection and incorrect claims of valid contracts.

Case study 1 - Customer switched without consent

There have been many examples of customers being switched without their consent. On many occasions the seller fabricated confirmation that the customer had given their consent to a switch. An incident reported to Ei and the Energy Markets' Bureau, involved a customer agreeing to receiving more information about their

contract, but in the fine print it stated that a confirmation to receive more information entailed that the customer agreed to the contract and a switch.

There are a few examples of small businesses claiming that telemarketing has been used to switch without any form of written consent. Certain telemarketing companies edited recordings made during conversations, so that if the word 'yes' was used, it was made to sound like they agreed to a new electricity contract. Swedish law states that written consent must be given in telemarketing sales, but that it is only applicable to consumers.

Switches have also taken place in cases where terms have included a proxy stating that the contract may be passed on to another supplier. These switches do not technically occur without the customer's consent, as the fine print in the contract terms stated that the customer gives their consent to future switching after signing. However, whether it still might be considered an unfair commercial practice can be discussed, as many customers have been unaware of what these proxies of future switching mean, or that they even are part of the contract terms.

This information and knowledge have been brought to Ei's attention through customer complaints. It is not in Ei's mandate to impose measures on this practice. These complaints are mainly a form of contractual disagreement, meaning that when it affects consumers, it is a question for the Consumer Agency or ARN. When businesses are affected, other forms of resolution are required, for example bilaterally or in court.

DSOs can refrain from switching, as they are the ones that undertake the actual switch. However, they generally do not want to interfere with the switching process, as they do not necessarily have the mandate to do so, and it is not in the DSOs or the suppliers' interest that DSOs verify reported switches. The spirit of the legislation is that switching should be carried out easily and quickly.

Since the NRA lacks authority in this area, it forwards complaints to the Swedish Consumer Energy Markets Bureau. The Consumer Agency has conducted supervision in this area, where the supplier is required to prove that these switches have occurred with a correct agreement and the consumer's consent. The consumer can contest the contract's validity. It is the seller that must prove the contract's validity and that the consumer has agreed to the contract.

Case study 2 - The seller pretended to work for the customer's current supplier or DSO

Contact and recordings of sellers falsely claiming that they work for or cooperate with a customer's current supplier or DSO have occurred. Central to all the reported cases, is that they have happened during telemarketing. The seller tends to promise cheaper electricity prices than the customer's current contract provides. If a customer questions whether the salesperson is cooperating with their current supplier or DSO, they confirm that that is the case.

What the situations mentioned above may lead to, differ. Either the customer agrees to the terms or ends the call. In some cases, the customer wants to read the terms before deciding.

No matter what the situation leads to (the customer may not actually be dissatisfied with the new contract or supplier), it is fraud if a seller acts on false pretences. It is misleading and misuses the customer's trust. There have been many instances where misled customers are tied to an unbeneficial contract.

This information has reached Ei through customer complaints. However, Ei cannot act on or terminate these methods. Selling methods are a matter for the Consumer Agency, and actual fraud is a matter for the police.

Ei often forwards such complaints to The Swedish Consumer Energy Markets Bureau, which can offer guidance on how to proceed. There are various ways in which to proceed – terminate the contract, contest the contracts

legitimacy (where it is the supplier that must prove a contract's legitimacy), file a complaint to another authority, and so forth.

Case study 3 - Contracts with a 24 month notice period

Contracts with very long notice periods, up to 24 months, have been discovered, and may be deemed unfair for various reasons. Prior to signing such a contract, customers may have been assured by the seller or on the supplier's website, that there is no contractual tie-in period, and they are free to switch to another contract or supplier whenever they want.

Long notice periods can be considered unfair, especially in situations where such contracts are marketed by the supplier or seller as having no tie-in period. The value of the freedom to switch is diminished by the long notice period.

This of course hinders the customer's opportunities in the electricity market. If they are dissatisfied with the contract and want to opt out regardless of the notice period, they may have to pay a termination fee due to a breach of contract.

This practice was drawn to Ei's attention through customer complaints, but Ei cannot do anything with regard to complaints or methods used. It is the Consumer Agency that has authority in this area. The Consumer Ombudsman (which is a function at the Consumer Agency) was somewhat successful in taking incidents with long notice and binding periods for variable spot-based contracts to court in 2020. Regarding variable contracts, with a notice period or tie-in period of 12 months, the court ruling stated that variable spot-based contracts cannot have a notice or binding period for more than three months.

Any complaints that Ei receives regarding the above are forwarded to the Swedish Consumer Energy Markets Bureau.

The NRA's overall conclusion about unfair commercial practices in Sweden

There are a few suppliers that frequently appear in complaints regarding unfair commercial practices in Sweden. These suppliers also often target elderly people, those that lack language skills or small companies that do not have consumer rights.

It is sometimes difficult to come across proof of unlawful practices, other than what those affected report in phone calls or emails to the NRA. The NRA often lacks the authority to punish those with unfair commercial practices and need to find other ways to target the suppliers, because the Electricity Act generally does not cover sales. What is considered unfair commercial practices is also in many instances not illegal, but rather a form of contractual disagreement. Such practices may, however, be deemed unfair as customers' behaviours are affected by omitted or misleading information by a seller or a company.

There is no single authority with a mandate in this area, which makes action more difficult. There are instances where coordinated activities between the various authorities would be useful, but can also pose problems due to different methods, legislation and priorities.

Suggested solutions (or examples of planned actions to address the problem)

In January 2022, Ei published an external report on the retail market for electricity.¹¹ The report described some of the most common and serious problems that face customers in the electricity retail market and

¹¹ *Oschyssta affärsmetoder på elhandelsmarknaden* (Unfair commercial practices in the electricity retail market)

recommended measures against unfair commercial practices and for a well-functioning retail market. Here are some of the in all 11 proposals in the report:

- 14 days withdrawal period for microenterprises
- Rules in the electricity act that affect the relationship between suppliers and customers should also be applicable for third party actors that act as suppliers
- Customers should be able to pause switches and return to the previous supplier in the event of a dispute (as in Finland) Standardised proxies
- Contractual binding and notice periods should not exceed one month
- Clearer practices regarding disconnection

The report also describes that measures regarding telemarketing for the electricity retail market need to be further investigated and that extended cooperation between the different authorities would be of great value.

Ei is of the opinion that there are several improvements that can be made to current legislation and practices, which could improve consumer rights, make it more difficult to use unfair commercial practices and improve the market's function. Many of the solutions directly or indirectly address the cases described in this subchapter. If microenterprises are entitled to a withdrawal period, they will have greater abilities to withdraw from undesired contracts. If it is possible to pause switches, customers can return to their previous supplier while they contest switches they have not given their consent to. If proxies are standardised, there will be fewer switches without the customers' knowledge. Shorter contractual and notice periods would mean more active customers, not being bound to contracts for a long time, unless they choose to.

Some of the solutions may be more intervening than others, but the combination of all of the solutions is what may be most effective. Ei also believes that other authorities, and the industry as a whole, could be important factors in implementing the improvements. Many of the suggestions require changes in primary and secondary legislation. Ei wants to continue working with the measures that aim to be implemented through the Electricity Act in 2022. In April 2022, Ei was given a government assignment on drafting legislative proposals for unfair commercial practices. Of the proposed measures presented by Ei in the report on the retail market for electricity, Ei considers the following measures to be covered by the government mandate:

- Microenterprises shall have a withdrawal period of 14 days when signing electricity trading contracts remotely or outside the business premises of the electricity trading company
- Customer regulations in the Electricity Act shall apply not only to electricity trading companies, but also to intermediaries operating in the electricity trading market. Electricity trading companies and intermediaries in the electricity trading market are obliged to notify their activities to Ei
- An electricity customer can pause an electricity trading company switch in situations where the customer does not consider that a new electricity trading contract has been concluded. Proxies must be clearly separated from other contractual terms in an electricity trading agreement. Proxies also need to be approved separately by electricity customers
- The length of notice for an electricity trading contract may not exceed one month

The report will be submitted to the Swedish government no later than 28 February 2023.

5. Denmark

Table 4, Basic facts about the electricity retail market in Denmark

Number of customers; total/household	Number of suppliers	Switching rate/renewal rate 2020	Most common contract
3.41 (usage up to 100.000 kWh per year) million	50	8.3 %	Fixed price (57%) contracts and variable price contracts (43%)

There are approximately 3.47 million electricity customers in Denmark, of which about 3.41 million are household customers and consumers with usage up to 100.000 kWh per year.¹² In 2020, the most common contracts were fixed price contracts, where the price is given for a period of at least three consecutive months.

Public bodies that regulate the retail market and help customers

The Danish Utility Regulator (Forsyningstilsynet)

The Danish Utility Regulator (DUR) is the regulating authority in the supply sectors of electricity, gas and central heating in Denmark. As of the 1st of July 2018, DUR took over all the regulating authority responsibilities that previously belonged to Energy Supply DK, which has ceased to exist.

It is DUR's duty to ensure the interests of the consumers in the supply sectors by working to guarantee high efficiency, the lowest possible consumer prices (both in the short and long term), a secure and stable supply of energy as well as a cost-effective development of technology and a cost-effective transition to renewable energy sources.

The objectives of DUR's management of its duties as a regulating authority is to:

- Administer the regulation and supervise the supply sectors in accordance with legislation in the supply sector laws
- Analyze and monitor the supply sectors with the aim of facilitating transparency in the supply sectors
- Ensure that regulation of the supply sectors contributes to realizing the objectives set out in the sectoral laws, providing a stable framework for energy suppliers
- Create effective, integrated markets for supply of energy in accordance with national legislation and the EU regulation

The Danish Consumer Ombudsmand (DCO)

The Danish Consumer Ombudsmand is an independent regulatory body that monitors the consumer market in order to ensure that Danish businesses and corporations comply with the Danish Marketing Act, the E-Commerce Act, the Tobacco Advertising Act, the Legal Advice Act, along with a number of consumer protection

¹² Data from Datahubs Market report (February 12th, 2021), DataHub Markedsrapport nr 12.pdf

rules in the Payment Act, and laws on services in the internal market. The DCO also has certain influential powers in the financial sector.

The DCO is based on the negotiation principle of the Danish Marketing Act. In cases where a satisfactory outcome cannot be achieved through negotiation, the DCO can utilize legal measures. The DCO is a fact-based, credible and effective regulatory body that serves consumers as well as businesses. The head of the DCO is appointed by the Minister of Finance even though the DCO as a body is an independent regulator.

The Energy Supplies Complaint Board

The Energy Supplies Complaint Board (Ankenævnet på Energiområdet, ANE) is an independent private complaint board that processes consumer complaints against energy companies established in Denmark. The areas covered are supply of electricity, gas and district heating, as well as other related goods and services. ANE's Board is approved by the Danish Minister of Industry, Business and Financial Affairs, in accordance with the Danish acts and legislations pertaining to consumer complaints.

Examples of complaints include disagreements over invoicing and bills, terms of contract, energy consumption, etc. A consumer is required to first file a request with their respective energy supplier. If the request is rejected, then the consumer can file a written complaint to ANE. The Energy Supplies Complaint Board does not handle complaints if the consumer is not a direct customer of the supplier. The typical complaint that ANE processes is complaints that involve a dispute regarding money.

Court/police

If the dispute between a customer and an electricity company cannot be processed by any of the above, a customer can take the case to a civil court.

Protection of microenterprises

Most complaints and enquiries that DUR receives come from household customers. Small businesses and microenterprises do not enjoy the same level of legal protection as household customers. Small businesses and microenterprises are, therefore, potentially an easier target for unfair commercial practices.

Parts of the Danish regulation governing the electricity market, apply to both household customers and businesses, but, generally speaking, household customers are better protected. They also enjoy extra protection under the Danish Consumer Protection Act. There have been cases where microenterprises entered agreements that turned out to be very expensive with onerous contract terms such as lengthy tie-in periods.

Under Danish law, certain kinds of legal protection are aimed especially at small businesses (and household customers). In Executive Order 2648 of 28 December 2021, governing the duties and legal obligations relating to the supply of electricity (Elleveringsbekendtgørelsen), certain protection only applies to household customers and small businesses. Pursuant to the definition of small businesses contained in the Executive order, a business that employs less than 50 people and has an annual turnover and/or a total annual balance of no more than DKK 10 million is a small business. By way of example of a protective measure, an electricity supplier can only charge a termination fee if household customers or small businesses voluntarily terminate a fixed-price electricity contract before their expiry. This has been introduced into Danish law in EU directive number 944 of 2019 on common rules for the internal market for electricity.

Complaints about unfair commercial practices

The nature of complaints and enquiries that DUR receives cover a wide variety of topics. The most common enquiries relate to invoices and billing, e.g. invoices not received, complaints and questions regarding prices

quoted in an invoice, questions about tie-in periods and product prices quoted by suppliers. DUR also receives a goodly number of enquiries relating to or arising out of the price comparison tool (elpris.dk).

Case study 1 - Inconsistent information on suppliers' website and elpris.dk

By law, suppliers are required to ensure that all relevant information about their products is available on their website. The information includes prices, terms of contract, whether the product is an introductory offer and whether it has a fixed or variable price.

Suppliers must also report all product information to the Danish price comparison tool, Elpris.dk. Elpris.dk is a price comparison tool that DUR is responsible for. DUR monitors Elpris.dk by comparing the information about products and prices published on Elpris.dk and the supplier's website. DUR frequently receives enquiries about inconsistencies between information about products on Elpris.dk and on supplier's websites.

If DUR becomes aware of discrepancies, they will check whether there are any inconsistencies between information on the sites. If there are, DUR will contact the supplier. If the supplier does not correct the information, DUR can write a decision on injunction and send to the supplier.

In most cases, the supplier rectifies any incidents and DUR can close the case, but DUR has experienced, that not all suppliers adhere to injunctions and, therefore, has to send a decision to the supplier. If a supplier grossly or repeatedly breaches its obligation, DUR informs the Minister of Energy, Utilities and Climate. If the supplier does not comply in accordance with a decision from the Minister, the Minister can deprive the suppliers right to be registered in the datahub.

It can be difficult to evaluate or prove whether a supplier has entered wrong information by mistake or intentionally. On elpris.dk, the cheapest price is at the top of the list, so that could be a possible initiative for the supplier to report wrong information. Customers can end up with a price or contract different than expected if prices and information on elpris.dk are not correct and updated.

Case study 2 - Problems with the invoice and other billing issues

Executive Order number 1696 of 25 November 2020 regarding suppliers' bills, invoicing and billing information (faktureringsbekendtgørelsen) contains rules about suppliers' invoices and required billing information. Specific information is required to be included in the invoices for example information about prices, subscription fees, name and contact details of the suppliers. DUR has the authority to write a decision regarding the supplier's compliance with the Executive Order.

If consumers believe they are being overcharged or have any other economical dispute with their supplier, they can file a complaint with the Energy Supplies Complaint Board (*Ankenævnet på Energiområdet*). DUR frequently refers consumers to the Energy Supplies Complaint Board, if a complaint falls outside the scope of authority assigned to DUR. The Energy Supplies Complaint Board can only handle complaints from household customers, it does not handle complaints from businesses that have a problem with their supplier.

In 2021 the Energy Supplies Complaint Board received 174 complaints, 88 of which were complaints about bills or consumption.¹³

Case study 3 - Illegal telesales

The Danish Consumer Ombudsmand and the Energy Supplies Complaint Board often receives complaints about telesales. Such complaints often include problems with sales personnel cold-calling consumers without their

¹³ The Energy Supplies Complaints Board Annual report 2021, ane-2022.pdf (energianke.dk)

prior request or consent as well as complaints that the sales personnel have misled the consumer. Danish consumer protection legislation prohibits cold-calling consumers without the prior consent.

Pursuant to the Danish Consumer Protection Act, a salesperson is required to obtain consent from a consumer before contacting the consumer by phone. If no such consent has been given, then any agreement entered into will not be legally binding. The Danish Consumer Ombudsmand has filed reports against several companies with the police because of illegal telesales in cases where the consumer had not given his/her prior consent to being contacted by the salesperson.

A consumer will not be under a legal obligation to pay for electricity delivered by a supplier under an invalid agreement that has been concluded as a result of an illegal phone sale.

There have also been some cases of suppliers contacting the consumer by e-mail without prior consent or request. Pursuant to the Danish Marketing Act, companies are not permitted to contact anyone by e-mail for marketing purposes without the recipient's prior consent. In a specific case, the supplier also had misled the consumers by stating that they could get 'free electricity' but failed to inform the consumers that they would be required to pay fees. The Danish Consumer Ombudsman reported the supplier to the police and the supplier also accepted a fine.

There are also problems with suppliers that mislead consumers during telesales. Sales personnel frequently mislead consumers by claiming to call from the consumer's current electricity supplier or by telling consumers that they are entitled to a refund of e.g., excess payments. In some cases, sales personnel have falsely informed consumers, that they have won a competition, and that they therefore can get an extra cheap deal.

Under the Danish Marketing Act, it is illegal for a salesperson to give false information or to mislead consumers in any other way. As in the case of a lack of prior consent, agreements that have been made based on misleading information will often not be binding.

The Danish Consumer Ombudsmand has reported many suppliers to the police because of illegal telesales. Many of the suppliers have been reported several times, which goes to show that this is an ongoing problem, as well as one that is not easily solved. Suppliers can be fined for violating the rules, but given that many of the companies continue their illegal telesales regardless of the fines and police reports, it might suggest that these measures do not have the desired effect.

The NRA's overall conclusion about unfair commercial practices In Denmark

Unfair commercial practices can have a negative effect on the transparency in the electricity market, as well as customer's trust towards the market and suppliers. In Denmark, there are certain problems with suppliers that practice unfair commercial practices, which can make it more difficult for the customers to navigate the electricity market.

It can be difficult for consumers to find out where they can seek help regarding unfair commercial practices. The NRA does not have authority to handle complaints regarding civil disputes. The Danish NRA can proceed with cases and make decisions on its own initiative within the NRA's competence. The Energy Supplies Complaint Board can handle complaints regarding civil disputes between a consumer and a supplier. It can be confusing for consumers to know which authority they can complain to, and this may have an impact on the electricity market's transparency and trust towards the market. Some contractual matters are, for example, handled by the NRA and others by the Danish Consumer Ombudsman. Confusion is caused by not knowing which authority handles each of the different aspects.

Good coordination between the different authorities is important when handling complaints and monitoring unfair commercial practices. The Danish NRA often coordinates with the relevant authority regarding specific cases and can refer consumers to the right authority. The Danish NRA also frequently has meetings with other authorities to be updated and discuss topics.

It would be beneficial to have a system where customers easily see which authority has the jurisdiction to monitor and handle specific problems or cases. This would be helpful for both the authorities and customers and shorten the length of proceedings.

Some complaints regarding unfair commercial practices are more frequent than others.

The Danish Consumer Ombudsman handles many complaints regarding illegal telesales and can report suppliers to the police and issue fines. Some suppliers have been reported to the police several times, which indicates that they continue their business regardless. This indicates that the current sanctions are not effective enough.

6. Conclusions

The overall conclusion is that the Nordic countries have a similar, but not identical, set of public bodies to help electricity customers affected by unfair commercial practices.

The NRAs are the principal public authorities for the retail market. However, since other regulations apply, i.e., general contract law, distance selling law and consumer protection law, NRAs have shared jurisdiction with other government agencies, or public bodies, on some retail market issues.

In Finland for example, the Finnish Competition and Consumer Authority has a shared jurisdiction with the NRA regarding specific retail market issues, namely contractual matters. This is also partly the case in the other countries, for example, both the consumer and the competition agency are responsible for parts of the Swedish and Norwegian retail market.

This split responsibility can, from a consumer's perspective, sometimes be seen as ineffective, confusing, and unfortunate. Customers may have to contact several public bodies before they can report a complaint or get advice and help. A consequence of this may be that complaints do not reach the right authority and unfair commercial practices are not dealt with.

Similar complaints in several Nordic countries

Nordic electricity customers seem to complain about similar unfair commercial practices. However, how they are handled and investigated by public bodies, sometimes differs. Here follow three examples of similar complaints and remedial actions of the principal public bodies.

Switching without the customer's consent. In both Finland and Sweden, the NRAs received complaints about suppliers that switched customers without their consent. Here, neither of the NRAs have legal mandates to investigate this practice and, therefore, do the following:

- The Finnish NRA asked customers to contact the Consumer Agency, and also explained that they can stop the switch and return to their previous supplier. However, it did not mean that the contract was void.
- The Swedish NRA advised customers to contact the Consumer Agency or the Alternative Resolution Body (ARN). The Consumer Agency conducted supervision in this area, where the supplier was required to prove that the switches occurred with the consumer's consent. Customers can contest a contract's validity. It is the seller that must prove the contract's validity, and that the customer has agreed to the contract. Finally, the DSOs can refrain from performing the switch, but they generally do not want to interfere with the switching process.

Change of contract terms without customers noticing. In both Finland and Norway customers complained about suppliers changing contract terms in a way that customers did not notice or expect. In both countries, the Electricity Market Act requires that a change must be specified and notified to the customer before it is made.

- In Finland, the NRA does not have the jurisdiction to investigate whether a change has been made according to the contract or not. However, the NRA has issued several decisions where they have found that the supplier had not notified the customer before changing the price.

- In Norway, certain suppliers have offered contracts with very low prices. But, after a short time, the consumer was moved to a more expensive contract, or the contract terms were changed without the customer noticing it. Since this is an issue regarding the terms of contract, the consumer had to contact the Consumer Authority. The NRA regulates reporting of contracts to the Norwegian price comparison tool (PCT). The Consumer Council operates the PCT and has made changes to the price comparison tool, to ensure that contracts that guarantee the price for at least 12 months are ranked the highest on the frontpage of the comparison tool. Contracts with a price guarantee of 6-12 months are ranked higher than shorter contracts.

Sellers pretending to call from the customer's supplier or DSO. In both Norway and Sweden, the NRAs received complaints about suppliers that pretended to work for the customer's current supplier or DSO.

- In Norway, salesmen from suppliers pretended to know the customers yearly power consumption and current supplier contract. In such cases, it is the Consumer Authority that can take action against illegal sales practices, while the NRA does not have the authority to impose measures on a company's sales policies.
- In Sweden, the NRA received complaints about suppliers falsely claiming to be or that they cooperated with the customer's current supplier or DSO. This is considered fraud, but Ei cannot act on or terminate such methods since selling methods are a query for the Consumer Agency and fraud is a query for the police. The NRA, therefore, often forwards these complaints to the Swedish Consumer Energy Markets Bureau, which can offer guidance on how to proceed.

Challenging to monitor and punish suppliers using unfair practices

The examples of unfair commercial practices shown in this report reflect that it is challenging to monitor suppliers that use unfair methods. The NRAs, that many times are the public body that receive the complaints, often lack jurisdiction and authority to make decisions regarding these practices. In all Nordic countries, the responsibility to monitor supplier's compliance with legislation is split between the NRA and the Consumer Authority. To counter this, a good measure is to have good communication and information flow between the various authorities. Sharing information and experiences between authorities can give a better understanding of complaints and lead to faster complaint resolution. Better information flow between authorities can also ensure that more unfair commercial practices are uncovered.

To pave the way for a well-functioning retail market, it is important that consumers are in possession of correct and up-to-date information. Better information can counter unfair commercial practices by making consumers more cautious, which might lead to misleading sales methods and unfair commercial practices being less effective.

Four problematic issues and suggestions for possible future actions

To sum up, table 5 on the next page illustrates Four issues that are problematic in all or most Nordic countries. It also illustrates remedial actions already taken and suggests further possible action.

Table 5, Problematic issues and possible actions regarding unfair business practices in the Nordic countries

	Finland	Norway	Sweden	Denmark	Possible action
Legislation is divided between the NRA and the Consumer Authority	Yes Several unfair commercial practices are not within the NRAs authority	Yes Several unfair commercial practices are not within the NRAs authority	Yes Several unfair commercial practices are not within the NRAs authority	Yes Several unfair commercial practices are not within the NRAs authority	Coordinated activities between the NRA and the Consumer Authority
Several unfair commercial practices are not within the NRAs authority	Yes	Yes	Yes	Yes	Coordinated activities between the NRA and the Consumer Authority
Poor legislative protection for microenterprises	Yes Future legislation will include an ADR for microenterprises and other businesses	Yes	Yes Legislative proposals are being drafted - 14 days withdrawal period for microenterprises	Yes	Legislation changes to increase legislative protection for microenterprises. Some improvements with the implementation of the Electricity Directive
Problems connected to telemarketing	Yes	Yes Consumers can optout from telemarketing by registering in the central marketing exclusion register.	Yes 1 September 2018 a law came into force that required suppliers to receive written consent from consumers after any telesales	Yes Opt-in system, where telesales can only be used for consumers that have given an explicit consent prior to the phone call	Consider need for written consent and opt-in system.