

# CLIENT ALERT

## Contracts & E-Commerce

Jul.09.2008

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*Recent developments regarding Call TV emerged both on the national and the regional level. On the national level, Jo Vandeurzen, the Belgian Minister of Justice, announced his plans to reform the current rules for Call TV. His proposed reforms are intended to offer consumers more protection by targeting volume callers and ensuring honest games. On the regional level, the Flemish Media Regulator and the Media Regulator of the French Community decided that Call TV should be qualified as "teleshopping," following a preliminary ruling of the European Court of Justice. As a result, broadcasters of Call TV will also have to respect the provisions regarding teleshopping set forth in the Regional Media Decrees.*

### I. Introduction

Belgian television viewers are well acquainted with the concept of Call TV: a presenter attempts to entice as many viewers as possible to call the show and participate in a quiz.

Both on the national level and the regional level, interesting developments have emerged.

### II. National Level

Given the relatively large number of consumer complaints and the fact that allegedly not all producers would play the game by the rules, the Belgian Minister of Justice, Jo Vandeurzen, has drafted a proposal to reform the Royal Decree of 10 October 2006, setting forth the regulatory framework for Call TV. The proposed new rules are set forth below.

#### Rules Targeting Volume Callers

First, additional obligations will be imposed on the producers in order to avoid so-called "volume callers," i.e. consumers that sometimes place up to a hundred calls during one single broadcast. These volume callers allegedly represent 3% of all callers during the game, but 30% of all calls made.

According to the proposal of the Minister, players calling for an amount of 50 euros per day or more have to receive a written notification of the organizer, including a folder from the Gaming Commission, making the players aware of their problem. Television channels will also have to broadcast commercials focusing on gambling addiction.

### **Play by the Book**

Second, additional rules are imposed in order to ensure the correct and honest course of the game. Wrong answers have to be shown continuously on the screen to avoid unnecessary calls and the presenter will have to identify and provide the answer to questions that remain unsolved at the end of the game.

Moreover, the presenter will clearly and repeatedly have to explain how the players are selected. Callers will also have to be redirected more often to the live broadcast in order to increase the odds. According to the Gaming Commission, only 0,3 to 6% of all calls are currently redirected which makes it very difficult to actually participate in the game. The reformed Royal Decree will therefore provide a "redirection average" to make sure that at least a minimum number of players is redirected.

Furthermore, a "minimum payment percentage" will be introduced. This will ensure that during each session, a minimum amount is distributed among the players. This amount will be related to the value of the prizes that can be won.

### **Gaming Commission**

Finally, the reform will provide the Belgian Gaming Commission with increased means and staff to enforce compliance to the Royal Decree. In order to allow the monitoring by the Gaming Commission, television channels will have to store the number of callers and their telephone number for eight weeks.

### **Further Steps**

The Belgian Gaming Commission has repeatedly insisted that Call TV should ultimately be integrated in the Act on Games of Chance and should have to obtain a license, which would allow the Gaming Commission to withdraw the license when infringements occur.

According to Minister Vandeurzen, his proposed regulatory reform of Call TV would be just a first step. A broader debate on the Act on Games of Chance would follow in a next phase.

Minister Vandeurzen is currently discussing his draft with the sector, after which it will be submitted to the Conseil d'Etat for advice.

## **III. Regional Level**

### **Judgment C-195/06 of the European Court of Justice**

In its judgment of 18 October 2007, the European Court of Justice issued a preliminary ruling regarding the question whether Call TV should be qualified as "teleshopping" or "television advertising" in the meaning of Directive 89/552/EEC of 3 October 1989 ("Television Without Frontiers").

The Court decided that a broadcast, during which viewers are offered the opportunity to participate in a prize game by means of immediately dialing a premium rate telephone number, has to be qualified as teleshopping if that broadcast represents a real offer of services having regard to:

- the purpose of the broadcast of which the game forms part,
- the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole,

- the type of questions which the candidates are asked.

### **The Regional Media Regulators**

Following this judgment, the Flemish Media Regulator and the Media Regulator of the French Community issued their position on this matter. According to the Media Regulators, Call TV fulfills the conditions regarding teleshopping set forth in the decision of the Court of Justice and has to be qualified accordingly.

As a result, when broadcasting Call TV, broadcasters will not only have to respect the provisions of the Royal Decree of 10 October 2006, but also those of the Regional Media Decrees (Flemish Decrees of 4 March 2005 and the Decree of the French Community of 27 February 2003) that provide for specific rules regarding teleshopping, such as the duration and frequency of the broadcasts.

Although the rules regarding Call TV have been relaxed by Directive 2007/65/EC of 11 December 2007 amending Council Directive 89/552/EEC, this Directive has not yet been implemented in the Regional Media Decrees.

### **Links:**

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0195:EN:HTML>
- [www.vlaamseregulatormedia.be](http://www.vlaamseregulatormedia.be)
- [www.csa.be](http://www.csa.be)

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