

CLIENT ALERT

EU Court Affirms Harmonization Laws Governing Price Reductions Offered to Consumers

Sep.18.2014

In its judgment of July 10, 2014¹, the EU Court of Justice reaffirmed the consequences of the complete harmonization of the laws of the EU Member States resulting from EU Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market² (the Unfair Commercial Practices Directive or UCPD).

The UCPD indeed fully harmonizes the rules relating to unfair business-to-consumer commercial practices in the EU. Accordingly, Member States may not maintain or adopt stricter rules than those laid down in the directive, even where such measures are designed to ensure a higher level of consumer protection.

In the case at hand, the national legislation of Belgium imposed the following restrictions upon retailers announcing price reductions: (i) any announcement of a price reduction must refer to the lowest price applied throughout the month prior to the announcement of the price reduction; (ii) the price may not be announced as a reduced price for more than a month; and (iii) announcements of price reductions may not last for less than a day.³

This national legislation had the effect of prohibiting the announcement of price reductions whenever the strict conditions contained in that legislation were not met, even where such practices would not, when examined individually, be considered misleading or unfair within the meaning of Directive 2005/29.⁴

However, the UCPD establishes, in its Annex I, an exhaustive list of 31 commercial practices which are regarded as unfair 'in all circumstances.' Consequently, only these commercial practices can be deemed to be unfair without proceeding to an assessment of their actual impact on consumers.

Annex I of the UCPD did not include the practices relating to price reductions referred to in the Belgian legislation. The Court therefore concluded that, national rules of this nature, which provide for a general prohibition of practices not listed in Annex I, without requiring an individual analysis whether the practices are 'unfair', are unlawful and contrary to the objective of complete harmonization of the laws of the Member States pursued by the directive.

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This ruling is in line with previous decisions of the EU Court of Justice, in which the Court similarly ruled that national *per se* bans on practices such as combined offers,⁵ sales with bonuses,⁶ and sales at a loss⁷ were prohibited by EU law.

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¹ Judgment of the Court (Third Chamber) of 10 July 2014, *European Commission v Kingdom of Belgium*, Case C-421/12.

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

³ Articles 20, 21 and 29 of the Belgian Law of 6 April 2010 on market practices and consumer protection.

⁴ A commercial practice is unfair if it is contrary to the requirements of professional diligence and materially distorts, or is likely materially to distort, the economic behavior of the average consumer with regard to the product. In particular, commercial practices shall be unfair which are misleading as set out in Articles 6 and 7 UCPD, or aggressive as set out in Articles 8 and 9 UCPD.

⁵ Judgment of the Court (First Chamber) of 23 April 2009, *VTB-VAB NV v Total Belgium NV (C-261/07) and Galatea BVBA v Sanoma Magazines Belgium NV (C-299/07)*, joined Cases C-261/07 and C-299/07.

⁶ Judgment of the Court (Grand Chamber) of 9 November 2010, *Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG v "Österreich"-Zeitungsverlag GmbH*, Case C-540/08.

⁷ Order of the Court (Sixth Chamber) of 7 March 2013, *Euronics Belgium CVBA v Kamera Express BV and Kamera Express Belgium BVBA*, Case C-343/12.

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