



Press and Information

Court of Justice of the European Union

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Judgment in Case C-304/08

Zentrale zur Bekämpfung unlauteren Wettbewerbs eV v
Plus Warenhandelsgesellschaft mbH

Allowing customers to take part in a lottery free of charge following a certain number of purchases does not automatically constitute an unfair commercial practice

National law may not prohibit such a promotional campaign without taking into account the specific circumstances of individual cases

The European Unfair Commercial Practices Directive¹ is intended to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection. It establishes a general prohibition of unfair commercial practices that are likely to distort consumers' economic behaviour. It also lays down rules on misleading and aggressive commercial practices. Furthermore, Annex I to the Directive contains a list of commercial practices which are unfair in all circumstances.

A German retailer, Plus, launched the promotional campaign 'Ihre Millionenchance' ('Your chance to win millions') in which the public was invited to purchase goods sold in its shops in order to collect points. By collecting 20 points, customers could take part free of charge in certain draws held by the Deutscher Lottoblock (national association of 16 lottery undertakings). The German association founded to combat unfair competition considered that practice to be unfair within the terms of the German Law on unfair competition (the UWG), which lays down a general prohibition of combining a prize competition and lottery with the obligation to purchase goods. On application by the association, Plus was ordered at first and second instances to discontinue that practice. The German Bundesgerichtshof (Federal Court of Justice), which must decide on this case at final instance, is asking the Court of Justice whether the Directive precludes a prohibition such as that laid down by the UWG.

In its judgment delivered today, the Court holds that the Directive precludes national legislation, such as that contained in the UWG, which, without taking account of the specific circumstances of individual cases, provides for a prohibition in principle of commercial practices under which the participation of consumers in a prize competition or lottery is made conditional on the purchase of goods or the use of services.

As a preliminary point, the Court observes that promotional campaigns which enable consumers to take part free of charge in a lottery subject to their purchasing a certain quantity of goods or services constitute commercial acts which clearly form part of an operator's commercial strategy and relate directly to the promotion thereof and to its sales development. It follows that they do indeed constitute commercial practices within the meaning of the Directive and, consequently, come within its scope.

The Court goes on to point out that the Directive fully harmonises at Community level the rules relating to unfair business to-consumer commercial practices. Accordingly, as the Directive

¹ 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 (OJ 2005 L 149, p. 22).

expressly provides, Member States may not adopt stricter rules than those provided for in that directive, even in order to achieve a higher level of consumer protection.

With regard to the practice at issue in the present case, the Court notes that it is not listed in Annex I to the Directive, which exhaustively lists the only commercial practices which can be prohibited without a case-by-case assessment. Accordingly, that practice cannot be prohibited without an assessment, having regard to the facts of each particular case, as to whether it is 'unfair' in the light of the criteria set out in the Directive. Those criteria include the question whether the practice materially distorts, or is likely materially to distort, the economic behaviour of the average consumer with regard to the product concerned.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Union law or the validity of a Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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