

# Joined Cases C-34/95, C-35/95 and C-36/95

**Konsumentombudsmannen (KO)**

**v**

**De Agostini (Svenska) Förlag AB and  
TV-Shop i Sverige AB**

(References for a preliminary ruling  
from the Marknadsdomstol)

(‘Television without frontiers’ Directive — Television advertising broadcast  
from a Member State — Prohibition of misleading advertising —  
Prohibition of advertising directed at children)

Opinion of Advocate General Jacobs delivered on 17 September 1996 ..... I - 3847  
Judgment of the Court, 9 July 1997 ..... I - 3875

## Summary of the Judgment

1. *Freedom to provide services — Television broadcasting — Directive 89/552 — Television advertising — Monitoring of compliance with the directive — Monitoring to be carried out by the Member State from which broadcasts originate — National legislation on the protection of consumers against misleading advertising — Measures taken against an advertiser in relation to television advertising broadcast from another Member State — Whether permissible — Condition — Retransmission, as such, of television broadcasts from that Member State must not be prevented*  
(Council Directives 84/450 and 89/552)

2. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Concept — Obstacles resulting from national provisions regulating selling arrangements in a non-discriminatory way — Inapplicability of Article 30 of the Treaty — Television advertising — Legislation on misleading advertising — Measures taken against an advertiser in relation to television advertising broadcast from another Member State — Whether permissible — Conditions*  
(EC Treaty, Arts 30 and 36)
3. *Freedom to provide services — Restrictions — Television advertising — Legislation on misleading advertising — Measures taken against an advertiser in relation to television advertising broadcast from another Member State — Justification based on grounds of general interest — Conditions*  
(EC Treaty, Arts 56 and 59)
4. *Freedom to provide services — Television broadcasting — Directive 89/552 — Television advertising — Monitoring of compliance with the directive — Monitoring to be carried out by the Member State from which broadcasts originate — National provisions specifically designed to control the content of television advertising with regard to minors — Application of such provisions to broadcasts from other Member States — Not permissible*  
(Council Directive 89/552, Arts 16 and 22)

1. Directive 89/552, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, does not preclude a Member State from taking, pursuant to general legislation on protection of consumers against misleading advertising, measures such as prohibitions and injunctions against an advertiser in relation to television advertising broadcast from another Member State, provided that those measures do not prevent the retransmission, as such, in its territory of television broadcasts coming from that other Member State.

broadcasts coming from other Member States on grounds relating to television advertising and sponsorship, it does not have the effect of excluding completely and automatically the application of rules other than those specifically concerning the broadcasting and distribution of programmes and, in particular, of national rules which have the general aim of consumer protection, provided that they do not involve secondary control of television broadcasts in addition to the control which the broadcasting Member State must carry out.

Although the directive provides that the Member States are to ensure freedom of reception and are not to impede retransmission on their territory of television

Moreover, Directive 84/450, relating to the approximation of the laws, regula-

tions and administrative provisions of the Member States concerning misleading advertising, which provides in particular in Article 4(1) that Member States are to ensure that adequate and effective means exist for the control of misleading advertising in the interests of consumers as well as competitors and the general public, could be robbed of its substance in the field of television advertising if the receiving Member State were deprived of all possibility of adopting measures against an advertiser and this would be in contradiction with the express intention of the Community legislature.

of provisions of its domestic legislation on misleading advertising, measures against an advertiser in relation to television advertising broadcast from another Member State, provided that those provisions affect in the same way, in law and in fact, the marketing of domestic products and of those from other Member States, are necessary for meeting overriding requirements of general public importance, such as fair trading and the protection of consumers, or one of the aims laid down in Article 36 of the Treaty, are proportionate for that purpose, and those aims or overriding requirements could not be met by measures less restrictive of intra-Community trade.

2. National measures restricting or prohibiting certain selling arrangements are not covered by Article 30 of the Treaty, so long as they apply to all traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States. Legislation which prohibits television advertising in a particular sector must be regarded as concerning such selling arrangements for products in that sector in that it prohibits a form of promotion of a certain method of marketing products.

It follows that, on a proper construction, Article 30 of the Treaty does not preclude a Member State from taking, on the basis

3. On a proper construction of Article 59 of the Treaty, a Member State is not precluded from taking, on the basis of provisions of its domestic legislation on misleading advertising, measures against an advertiser in relation to television advertising broadcast from another Member State. However, it is for the national court to determine whether those provisions are necessary for meeting overriding requirements of general public importance, such as fair trading and the protection of consumers, or one of the aims stated in Article 56 of the Treaty, whether they are proportionate for that purpose and whether those aims or overriding requirements could be met by measures less restrictive of intra-Community trade.

4. Directive 89/552, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, is to be interpreted as precluding the application to television broadcasts from other Member States of a provision of a domestic broadcasting law which provides that advertisements broadcast in commercial breaks on television must not be designed to attract the attention of children under 12 years of age.

Directive 89/552 contains a set of provisions specifically devoted to the protection of minors in relation to television

programmes in general and television advertising in particular, the observance of which must be ensured by the broadcasting State. Although they do not have the effect of prohibiting application of legislation of the receiving State designed in general to protect consumers or minors provided that this does not prevent retransmission, as such, in its territory of broadcasts from another Member State, those provisions preclude the receiving State from applying, to broadcasts from other Member States, provisions specifically designed to control the content of television advertising with regard to minors, thereby adding a secondary control to the control which the broadcasting Member State must exercise under that directive.