

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
AZ EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 31/09

23 April 2009

Judgment of the Court of Justice in Joined Cases C-261/07 and C-299/07

VTB-VAB NV v Total Belgium NV and Galatea BVBA v Sanoma Magazines Belgium NV

**COMMUNITY LAW PRECLUDES NATIONAL LEGISLATION WHICH, WITHOUT
TAKING ACCOUNT OF THE SPECIFIC CIRCUMSTANCES, PROHIBITS ANY
COMBINED OFFER MADE BY A VENDOR TO A CONSUMER**

*Member States may not adopt measures that are more restrictive than those defined by the
Directive on unfair commercial practices, even in order to ensure a higher level of consumer
protection*

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 likely to distort consumers' economic behaviour. It also lays down rules on misleading or aggressive commercial practices. Furthermore, Annex I thereto contains a list of commercial practices which are unfair in all circumstances.

Since early 2007, Total Belgium, a subsidiary of the Total group, the primary business of which is the sale of fuels at filling stations, has been offering free breakdown services for a period of three weeks to consumers who are Total Club cardholders with every purchase of at least 25 litres of fuel for a car or at least 10 litres for a motorcycle. VTB, an undertaking which operates in the breakdown-service sector, brought an action before the national court by which it sought an order requiring Total Belgium to discontinue that commercial practice on the ground that it constituted, inter alia, a combined offer prohibited by Belgian law.²

A separate dispute has arisen between Galatea, a firm which runs a lingerie shop in Schoten (Belgium), and Sanoma, a subsidiary of the Finnish Sanoma group, which publishes a number of magazines, including the weekly magazine 'Flair'. The issue of *Flair* of 13 March 2007 contained a voucher entitling the holder to a reduction on products sold in various lingerie shops. Galatea brought an action seeking an order prohibiting that commercial practice, submitting that Sanoma had infringed Belgian law.

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).

² Article 54 of the Law of 14 July 1991, *Belgisch Staatsblad*, 29 August 1991.

In those circumstances, the Antwerp Commercial Court, seised of both cases, decided to refer a question to the Court of Justice for a preliminary ruling. The national court asks, essentially, whether the Directive is to be interpreted as precluding national legislation, such as the Belgian Law, which, with certain exceptions, and without taking account of the specific circumstances, imposes a general prohibition of combined offers made by a vendor to a consumer.

As a preliminary point, the Court points out that combined offers constitute commercial acts which clearly form part of an operator's commercial strategy and relate directly to the promotion thereof and its sales development. It follows that they do indeed constitute commercial practices within the meaning of the Directive³ and, consequently, fall within its scope.

Next, the Court notes that the Directive fully harmonises the rules on unfair commercial practices at Community level. Accordingly, **Member States may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection.**

In that regard, clearly, by establishing a presumption of unlawfulness of combined offers, national legislation such as that at issue in the main proceedings does not meet the requirements of the Directive.

The Belgian legislation lays down the principle that combined offers are prohibited, notwithstanding the fact that such practices are not referred to in Annex I to the Directive. That annex exhaustively lists the only commercial practices which are prohibited in all circumstances and accordingly do not have to be assessed on a case-by-case basis.

Finally, it should be added that such an interpretation cannot be called into question by the fact that the Belgian Law provides for a number of exceptions to that prohibition of combined offers.

Accordingly, the Directive must be interpreted as precluding national legislation, such as that at issue, which, with certain exceptions, and without taking account of the specific circumstances, imposes a general prohibition of combined offers made by a vendor to a consumer.

³ Article 2(d) of the Directive.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES DE EL EN FR IT HU NL PL PT RO

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-261/07>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

*For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*

*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

*L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249
or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956*