



Traders' aggressive practices which give a false impression to the consumer that he has already won a prize, while he has to incur a certain cost in order to receive it, are prohibited

Those practices are prohibited even if the cost imposed on the consumer is minimal compared with the value of the prize or even if it does not procure any advantage for the trader

EU law¹ seeks to protect consumers' economic interests by prohibiting companies from adopting commercial practices which are unfair to consumers. It prohibits, amongst other things, companies from creating the false impression that the consumer has already won, will win, or will win on doing a particular act, a prize or other benefit, when in fact taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

The proceedings in the present case are between five British undertakings specialised in the distribution of mailings together with a number of people who have worked for those undertakings and the Office of Fair Trading (OFT), which is responsible, in the United Kingdom, for enforcing consumer protection laws, in particular regarding the practices used by the traders.

The OFT called upon those traders to stop their practices in the form of the sending of individually addressed letters, scratch-cards and other advertising inserts placed into newspapers and magazines, by which the consumer was informed that he had won a prize or equivalent benefit, the value of which could be either considerable or merely symbolic. The consumer was offered a number of options in order to discover his prize and obtain a claim number: he could call a premium rate telephone number, use an SMS service or obtain the information by ordinary post (the latter method being given less prominence). The consumer was informed of the cost per minute and the maximum duration of the telephone call but was unaware that the company responsible for the promotion took a certain sum from the cost of the call.

By way of example, certain promotions proposed cruises in the Mediterranean. In order to receive that prize, the consumer had to pay inter alia the insurance, a supplement to obtain a one-bed or two-bed cabin and, during the voyage, the cost of food and drink, plus the port fees. Thus, two couples would have had to pay £399 per person in order to participate in that cruise.

As explained by those traders in their observations submitted to the Court of Justice, it is important for them to have up-to-date databases listing participants likely to be interested in responding to prize promotions, data which can be used to offer other products to consumers or licensed to other companies who wish to offer their own products.

The Court is asked to rule on the compatibility with EU law of such practices and in particular on the question whether the traders may impose a cost, even a minimal cost, on a consumer who has been informed that he had won a prize.

In its judgment delivered today, the Court holds that EU law prohibits **aggressive practices which give the consumer the impression that he has already won a prize, while he is obliged to**

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 (OJ 2005 L 149, p. 22).

pay money or incur a certain cost in order to be informed of the nature of that prize or to take certain action to acquire it.

The Court makes clear that such practices are prohibited **even if the cost imposed on the consumer is minimal** (such as that of a stamp) **compared with the value of the prize or where it does not procure the trader any benefit.**

In addition, those aggressive practices are prohibited even if a number of methods are offered to the consumer in order to obtain the prize and even if one of those methods is free of charge.

The Court answers finally that the national courts must assess the information provided to the consumers targeted by those practices by reference to its clarity and comprehensibility.

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 European Union law or the validity of a European 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 a similar 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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