Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

7 July 2016 *

(Reference for a preliminary ruling — Directives 98/6/EC and 2005/29/EC — Consumer protection — Advertisement containing an indication of price — Concepts of 'offer' and 'price inclusive of taxes' — Obligation to include in the price of a motor vehicle the additional costs necessarily incurred in connection with the transfer of the vehicle)

In Case C-476/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 18 September 2014, received at the Court on 27 October 2014, in the proceedings

**Citroën Commerce GmbH**

v

**Zentralvereinigung des Kraftfahrzeuggewerbes zur Aufrechterhaltung lauteren Wettbewerbs e.V. (ZLW),**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 30 September 2015,

after considering the observations submitted on behalf of:

— Citroën Commerce GmbH, by L. Pechan and J. Croll, Rechtsanwälte,

— the Zentralvereinigung des Kraftfahrzeuggewerbes zur Aufrechterhaltung lauteren Wettbewerbs e.V. (ZLW), by B. Ackermann, Rechtsanwältin,

— the Hungarian Government, by M. Fehér, G. Szima and M. Bóra, acting as Agents,

— the Austrian Government, by G. Eberhard, acting as Agent,

— the European Commission, by M. van Beek and M. Kellerbauer, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 16 December 2015,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1 and Article 3(1) of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ 1998 L 80, p. 27) and Article 7(4)(c) of 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 ('the Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

2 The request has been made in proceedings between Citroën Commerce GmbH and the Zentralvereinigung des Kraftfahrzeuggewerbes zur Aufrechterhaltung lauteren Wettbewerbs e.V. (ZLW) (Automotive Trade Central Association for the Preservation of Fair Competition) concerning an advertisement for motor vehicles made by Citroën Commerce.

### Legal context

*EU law*

Directive 98/6

3 Recitals 6 and 12 to Directive 98/6 provide:

'(6) … the obligation to indicate the selling price … contributes substantially to improving consumer information, as this is the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and hence to make informed choices on the basis of simple comparisons;

…

(12) … Community-level rules can ensure homogenous and transparent information that will benefit all consumers in the context of the internal market …'

4 Article 1 of that directive states:

'The purpose of this Directive is to stipulate indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.'

5 Article 2 of that directive provides:

'For the purposes of this Directive:

(a) selling price shall mean the final price for a unit of the product, or a given quantity of the product, including [value added tax] and all other taxes;

(b) unit price shall mean the final price, including [value added tax] and all other taxes, for one kilogramme, one litre, one metre, one square metre or one cubic metre of the product or a different single unit of quantity which is widely and customarily used in the Member State concerned in the marketing of specific products;

…

(d) trader shall mean any natural or legal person who sells or offers for sale products which fall within his commercial or professional activity;

(e) consumer shall mean any natural person who buys a product for purposes that do not fall within the sphere of his commercial or professional activity.'

6 Article 3 of the directive provides:

'1. The selling price and the unit price shall be indicated for all products referred to in Article 1, the indication of the unit price being subject to the provisions of Article 5. The unit price need not be indicated if it is identical to the sales price.

…

4. Any advertisement which mentions the selling price of products referred to in Article 1 shall also indicate the unit price subject to Article 5.'

7 Article 4(1) of Directive 98/6 is worded as follows:

'The selling price and the unit price must be unambiguous, easily identifiable and clearly legible. …'

8 Under Article 5(1) of that directive:

'Member States may waive the obligation to indicate the unit price of products for which such indication would not be useful because of the products' nature or purpose or would be liable to create confusion.'

9 Article 10 of that directive provides:

'This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable as regards consumer information and comparison of prices, without prejudice to their obligations under the Treaty.'

Directive 2005/29

10 Recitals 6 and 10 to Directive 2005/29 state:

'(6) This Directive … approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which directly harm consumers' economic interests and thereby indirectly harm the economic interests of legitimate competitors. …

…

(10) … This Directive … applies only in so far as there are no specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products. …'

11 Under Article 2 of that directive:

'For the purposes of this Directive:

(a) "consumer" means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

(b) "trader" means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

…

(d) "business-to-consumer commercial practices" (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;

(e) "to materially distort the economic behaviour of consumers" means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise;

…

(i) "invitation to purchase" means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;

…

(k) "transactional decision" means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;

…'

12 Article 3 of the directive provides:

'1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

…

4. In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.

…’

13 Article 5 of the directive, under the title ‘Prohibition of unfair commercial practices’, provides:

‘1. Unfair commercial practices shall be prohibited.

2. A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence,

and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

…

4. In particular, commercial practices shall be unfair which:

(a) are misleading as set out in Articles 6 and 7,

…’

14 Article 7 of Directive 2005/29 provides:

‘1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

…

4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

…

(c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

…’

*German law*

15 The Gesetz gegen den unlauteren Wettbewerb (Law against Unfair Competition) of 3 July 2004 (BGBl. 2004 I, p. 1414, ‘the UWG’) transposed Directive 2005/29 into German law.

16 In accordance with the second situation in the first sentence of Paragraph 1(1) of the Preisangabenverordnung (Regulation on the Indication of Prices, BGBl. 1985 I, p. 580, 'the PAngV'), anyone who, as a supplier of goods, advertises to consumers, giving an indication of the price, must indicate the final price to be paid, including the (VAT) and other price components.

## The dispute in the main proceedings and the questions referred for a preliminary ruling

17 Citroën Commerce published, in the 30 March 2011 edition of the *Nürnberger Nachrichten* newspaper, an advertisement for a Citroën motor vehicle that contained the following information: 'e.g. Citroën C4 VTI 120 exclusive [deal]: [EUR] 21 800' and 'Maximum saving [EUR] 6 170[1]'. The superscript '1' referred to the following information placed at the foot of the advertisement: 'Price plus transfer costs of [EUR] 790. Offer open to private individuals for all Citroën C 4 … ordered by 10 April 2011 …'. The total price, including the costs of transferring the vehicle from the manufacturer to the dealer (Überführungskosten), which the customer had to pay in order to acquire such a vehicle, was not indicated in that advertisement.

18 The ZLW brought an action before the Landgericht Köln (Regional Court, Cologne, Germany), seeking an injunction ordering Citroën Commerce to discontinue that advertisement on the grounds that it did not contain the final price including the costs of the transfer.

19 By decision of 11 January 2012, the Landgericht Köln (Regional Court, Cologne) upheld the action.

20 Citroën Commerce brought an appeal against that decision before the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany). By judgment of 21 September 2012 that court dismissed the appeal.

21 Both the Landgericht Köln (Regional Court, Cologne) and the Oberlandesgericht Köln (Higher Regional Court, Cologne) held that, in failing to indicate the final price, the advertisement at issue infringed the provisions of the UWG and of the PAngV.

22 Citroën Commerce brought an appeal on a point of law (Revision) against the judgment of the Oberlandesgericht Köln (Higher Regional Court, Cologne) before the Bundesgerichtshof (Federal Court of Justice, Germany).

23 The referring court states that the public perceives the costs of transferring the vehicle from the manufacturer to the dealer not as an additional transport cost but as an integral part of the final price. Indicating those costs separately would be justified only when the customer can choose between collecting the vehicle from the manufacturer's factory in person or delivery to the dealer, or when the costs at issue cannot be determined, for they may vary case by case. According to the referring court, those conditions are not met in the case in the main proceedings.

24 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

'(1) Does an advertisement for a product which indicates the price to be paid for it constitute an offer within the meaning of Article 1 of Directive 98/6?

If the first question is to be answered in the affirmative:

(2) In the case of an offer within the meaning of Article 1 of Directive 98/6, must the selling price to be indicated in accordance with Article 1 and the first sentence of Article 3(1) also include costs necessarily incurred in connection with the transfer of a motor vehicle from the manufacturer to the dealer?

If the first or the second question is to be answered in the negative:

(3) In the case of an invitation to purchase within the meaning of Article 2(i) of Directive 2005/29, must the "price inclusive of taxes" to be indicated in accordance with the provision governing the first situation contemplated in Article 7(4)(c) of Directive 2005/29 also include, in the case of a motor vehicle, costs necessarily incurred in connection with the transfer of the vehicle from the manufacturer to the dealer?'

**The questions referred for a preliminary ruling**

25 By its questions, which it is appropriate to consider together, the referring court asks the Court, in essence, whether Article 1 and Article 3(1) of Directive 98/6 and Article 7(4)(c) of Directive 2005/29 must be interpreted as meaning that costs in connection with the transfer of a motor vehicle from the manufacturer to the dealer, which are payable by the consumer, must be included in the selling price of that vehicle indicated in an advertisement made by the trader.

26 As a preliminary point, it should be noted that, under Article 1 of Directive 98/6, the purpose of that directive is to stipulate indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.

27 In that regard, as stated in recital 12 to Directive 98/6, the purpose of that directive is to ensure homogenous and transparent information that will benefit all consumers in the context of the internal market.

28 In order to ensure homogenous and transparent information on prices, Article 3(1) of that directive requires the selling price to be indicated for all products offered by traders to consumers, the selling price being defined, under Article 2(a) of the directive, as the final price for a unit of the product, or a given quantity of the product, including VAT and all other taxes.

29 The applicability of Directive 98/6 with regard to certain aspects of advertising mentioning the selling price of products is made clear in Article 3(4) of that directive.

30 In that regard, it should be noted that, if that provision lays down no general obligation to mention the selling price, an advertisement, such as that at issue in the main proceedings, mentioning both the characteristics of the product on offer and a price appearing, to a reasonably well-informed and reasonably observant and circumspect consumer, to be the selling price of that product, in addition to a date until which the 'offer' made to private individuals remains valid, is nevertheless liable to be regarded by such a consumer as the trader's offer to sell the product on the conditions mentioned in that advertisement. In such a case, the price so indicated must satisfy the requirements of Directive 98/6.

31 In particular, that price must be the selling price of the relevant product, namely, its final price, within the meaning of Article 2(a) of Directive 98/6. The final price enables consumers to evaluate and compare the price of products indicated in an advertisement with the price of other similar products and thereby to make an informed choice on the basis of simple comparisons, in accordance with recital 6 to that directive.

32 It is for the referring court to ascertain whether all the conditions referred to in paragraph 30 above are satisfied.

33 It is true that in its judgment of 10 July 2014 in *Commission* v *Belgium* (C-421/12, EU:C:2014:2064, paragraph 59), the Court observed that the purpose of Directive 98/6 is to protect consumers not in relation to the indication of prices, in general or with regard to the economic reality of announcements of price reductions, but specifically in relation to the indication of the prices of products by reference to different units of quantity.

34 However, the Court made such an observation only in response to the submission of the Kingdom of Belgium seeking to show that Belgian legislation according to which price reduction announcements must meet certain temporal requirements falls within the scope of Directive 98/6.

35 Such an issue is manifestly different from that of the present case, which concerns the determination of the information that must be included in the indication of the selling price within the meaning of Article 2(a) of Directive 98/6.

36 As regards that information, it should be noted that, in addition to the fact that it must include VAT and all other taxes, the selling price must, as a general rule, constitute the final price for a unit of the product or a given quantity of the product.

37 As a final price, the selling price must necessarily include the unavoidable and foreseeable components of the price, components that are necessarily payable by the consumer and constitute the pecuniary consideration for the acquisition of the product concerned (see, by analogy, judgment of 18 September 2014 in *Vueling Airlines*, C-487/12, EU:C:2014:2232, paragraph 36).

38 In consequence, when the trader selling the product requires the consumer to pay the costs of transferring that product from the manufacturer to that trader-vendor, as a result of which those costs, which are moreover invariable, are necessarily payable by the consumer, such costs form a component of the selling price within the meaning of Article 2(a) Directive 98/6.

39 That is, in particular, the case when the consumer goes to the trader's business premises in order to take possession of a motor vehicle purchased from that trader and manufactured at another site. In such a situation, the costs of transferring that vehicle from the manufacturer to the trader-vendor are ordinarily payable by the consumer.

40 Those transfer costs that the consumer has to pay must be distinguished from the additional cost of transferring or delivering the goods purchased at the place chosen by the consumer, for that additional charge cannot be regarded as an unavoidable and foreseeable component of the price.

41 Therefore, when the situation referred to in paragraph 30 above has come about, the price of a product offered for sale by a trader to consumers must, in the advertising of that product, include the costs of transferring that product from the manufacturer to that trader if it is the consumer who must pay them.

42 As regards the applicability of Directive 2005/29, it should be noted that, under Article 3(4) of that directive, in the case of conflict between the provisions of the directive and the other rules of EU law regulating specific aspects of unfair commercial practices, the latter are to prevail and apply to those specific aspects.

43 It is true that Directive 2005/29 applies, in accordance with Article 3(1) of that directive, to unfair business-to-consumer commercial practices, as defined in Article 5 of the directive, before, during and after a commercial transaction in relation to a product. Article 2(d) of the directive defines commercial practices as being 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers' (see judgment of 16 July 2015 in *Abcur*, C-544/13 and C-545/13, EU:C:2015:481, paragraph 73).

44 However, it should be noted that Directive 98/6 governs specific aspects, within the meaning of Article 3(4) of Directive 2005/29, of unfair commercial practices that can be characterised as unfair in dealings between businesses and consumers, namely, in particular, those that relate to the indication, in offers for sale and in advertising, of the products' selling price.

45 In those circumstances, in so far as the aspect relating to the selling price referred to in an advertisement such as that at issue in the main proceedings is governed by Directive 98/6, Directive 2005/29 cannot apply as regards that aspect.

46 Therefore, Article 7(4)(c) of Directive 2005/29 need not be interpreted.

47 Having regard to all the foregoing considerations, the answer to the questions is that Article 3 of Directive 98/6, read in conjunction with Article 1 and Article 2(a) of that directive, must be interpreted as meaning that costs in connection with the transfer of a motor vehicle from the manufacturer to the dealer, which are payable by the consumer, must be included in the selling price of that vehicle indicated in an advertisement made by the trader when, having regard to all the features of that advertisement, in the eyes of the consumer it sets out an offer concerning that vehicle. It is for the referring court to determine whether all those conditions are satisfied.

## Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

**Article 3 of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers, read in conjunction with Article 1 and Article 2(a) of that directive, must be interpreted as meaning that costs in connection with the transfer of a motor vehicle from the manufacturer to the dealer, which are payable by the consumer, must be included in the selling price of that vehicle indicated in an advertisement made by the trader when, having regard to all the features of that advertisement, in the eyes of the consumer it sets out an offer concerning that vehicle. It is for the referring court to determine whether all those conditions are satisfied.**

[Signatures]