JUDGMENT OF THE COURT
9 July 1997 *

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

REFERENCES to the Court under Article 177 of the EC Treaty by the Marknadsdomstol (Sweden) for a preliminary ruling in the proceedings pending before that court between

Konsumentombudsmannen (KO)

and

De Agostini (Svenska) Förlag AB (C-34/95),

and between

Konsumentombudsmannen (KO)

and

TV-Shop i Sverige AB (C-35/95 and C-36/95)

* Language of the case: Swedish

on the interpretation of Articles 30 and 59 of the EC Treaty and of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray (Rapporteur) and L. Sevón (Presidents of Chambers), C. N. Kakouris, P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted:

— in Case C-34/95, by the Konsumentombudsman, Axel Edling,

— in Cases C-35/95 and C-36/95, on behalf of the Konsumentombudsman, by Per Eklund, Ställföreträdande Konsumentombudsman,

— for De Agostini (Svenska) Förlag AB, by Peter Danowsky and Ulf Isaksson, Advocates, Stockholm,

— for TV-Shop i Sverige AB, by Lars-Erik Ström, Advocate, Malmö,

— for the Swedish Government, by Lotty Nordling, Under-Secretary for Legal Affairs at the Department of Foreign Trade of the Ministry of Foreign Affairs, acting as Agent,

— for the Belgian Government, by Jan Devadder, Director of Administration in the Legal Service of the Ministry of Foreign Affairs, acting as Agent,

— for the Greek Government, by Panagiotis Kamarineas, Legal Adviser to the State Legal Council, and Ioanna Kiki, Secretary at the Special Department for Contentious Community Affairs of the Ministry of Foreign Affairs, and Sofia Chiniadou, Legal Adviser to the Minister for the Press and Media, acting as Agents,

— for the Finnish Government, by Holger Rotkirch, Ambassador, Head of the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent,

— for the Norwegian Government, by Didrik Tønseth, Attorney General for Civil Cases, acting as Agent,

— for the Commission of the European Communities, by Berend Jan Drijber, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Konsumentombudsman, Axel Edling; of De Agostini (Svenska) Förlag AB, represented by Peter Danowsky and Ulf Isaksson; of TV-Shop i Sverige AB, represented by Lars-Erik Ström; of the Swedish Government, represented by Lotty Nordling; of the Greek Government, repre-

sented by Georgios Kanellopoulos, Deputy Legal Adviser to the State Legal Council, acting as Agent; of the Finnish Government, represented by Tuula Pynnä, Legal Adviser to the Ministry of Foreign Affairs, acting as Agent; of the Norwegian Government, represented by Didrik Tønseth; and of the Commission, represented by Berend Jan Drijber and Karin Oldfelt, Principal Legal Adviser, acting as Agents, at the hearing on 11 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 17 September 1996,

gives the following

Judgment

1 By three orders of 7 February 1995, received at the Court on 13 February 1995, the Marknadsdomstol referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 30 and 59 of the EC Treaty and of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23, hereinafter 'the Directive').

2 The questions have been raised in connection with three applications made by the Konsumentombudsman (Consumer Ombudsman) for injunctions to restrain De Agostini (Svenska) Förlag AB (hereinafter 'De Agostini') and TV-Shop i Sverige AB (hereinafter 'TV-Shop') from using certain marketing practices in television advertising concerning a children's magazine (Case C-34/95), skin-care products (Case C-35/95) and a detergent (Case C-36/95).

General provisions of the Directive

3 As the Court held in Case C-412/93 *Leclerc-Siplec* [1995] ECR I-179, the main purpose of the Directive, which was adopted on the basis of Articles 57(2) and 66 of the EEC Treaty, is to ensure freedom to provide television broadcasting services. As is clear from the 13th and 14th recitals of the preamble to the Directive, it lays down minimum rules for broadcasts which emanate from the Community and which are intended to be received within it (paragraphs 28 and 29).

4 Article 1 of the Directive defines 'television broadcasting' as meaning the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It also defines 'television advertising' as including any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking in connection with, *inter alia*, a trade in order to promote the supply of goods or services in return for payment. Finally, the same provision provides that, except for the purposes of Article 18 of the Directive, television advertising does not include direct offers to the public for the sale, purchase or rental of products or for the provision of services in return for payment.

5 Article 2 of the Directive then provides:

'1. Each Member State shall ensure that all television broadcasts transmitted

— by broadcasters under its jurisdiction

...

comply with the law applicable to broadcasts intended for the public in that Member State.

2. Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive. Member States may provisionally suspend retransmissions of television broadcasts if the following conditions are fulfilled:

(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22;

(b) during the previous 12 months, the broadcaster has infringed the same provision on at least two prior occasions;

(c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of its intention to restrict retransmission should any such infringement occur again;

(d) consultations with the transmitting State and the Commission have not produced an amicable settlement within 15 days of the notification period provided for in point (c), and the alleged infringement persists.

The Commission shall ensure that the suspension is compatible with Community law. It may ask the Member State concerned to put an end to a suspension which is contrary to Community law, as a matter of urgency. This provision is without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned.

...'

6 Finally, under Article 3(1) of the Directive, Member States remain free to require television broadcasters under their jurisdiction to lay down more detailed or stricter rules in the areas covered by the Directive. Under Article 3(2), Member States must ensure that television broadcasters under their jurisdiction comply with the provisions of the Directive.

Swedish law

7 Under the first paragraph of Article 2 of the Marknadsföringslag (1975: 1418, hereinafter 'the Marketing Practices Law'), the Marknadsdomstol may prohibit a trader who, in the marketing of goods, services or other commodities, engages in advertising or any other activity which, by being contrary to good commercial practice or otherwise, is unfair towards consumers or other traders, from continuing so to act or from engaging in other similar activity. That provision also applies to television broadcasts which may be received in any country bound by the Agreement on the European Economic Area.

8 Article 3 of the Marketing Practices Law authorizes the Marknadsdomstol, in particular, to order a trader to provide in his advertising information which the Marknadsdomstol considers relevant for the consumer.

9 Article 11 of the Radiolag (1966: 755, hereinafter 'the Broadcasting Law') provides that an advertisement broadcast during a commercial break on television must not be designed to attract the attention of children under 12 years of age.

10 In its order for reference the Marknadsdomstol points out that, according to its established case-law, marketing practices which are contrary to mandatory legal provisions and misleading advertising are regarded as unfair within the meaning of Article 2 of the Marketing Practices Law.

The facts of the cases before the Marknadsdomstol

11 TV3 is a company established in the United Kingdom. It broadcasts television programmes by satellite from the United Kingdom to Denmark, Sweden and Norway.

12 TV4 and Homeshopping Channel are channels operating in Sweden under licence in accordance with the Broadcasting Law.

13 In the three cases, the television advertising in question was retransmitted to Sweden by satellite from the United Kingdom and shown on TV3. In parallel, the advertising was broadcast on TV4 in Case C-34/95 and on Homeshopping Channel in Cases C-35/95 and C-36/95, without having been previously broadcast from another Member State.

Case C-34/95

14 During September 1993, De Agostini, a Swedish company belonging to the Italian group Istituto Geografico De Agostini, whose main business consists in the publication of magazines, advertised on the television channels TV3 and TV4 the magazine *Allt om dinosaurier!* ('Everything about Dinosaurs!').

15 This children's magazine is, apparently, an encyclopedic magazine which contains information about dinosaurs and a related model dinosaur. It is published in series, each consisting of several issues. With each issue comes a constituent part of a model dinosaur: when an entire series has been purchased, all parts of the model will have been collected. The magazine, which is published in several languages, has been launched in many Member States since 1993. All the language versions of the magazine are apparently printed in Italy.

16 The Consumer Ombudsman has applied to the Marknadsdomstol under Article 2 of the Marketing Practices Law for an order prohibiting De Agostini, subject to a penalty payment, from marketing the magazine *Allt om dinosaurier!* in the manner described above, on the ground that the advertising in question is designed to attract the attention of children less than 12 years of age and that it is therefore contrary to Article 11 of the Broadcasting Law. If the Marknadsdomstol does not uphold this claim, the Consumer Ombudsman has asked that De Agostini be ordered, subject to a penalty payment, pursuant to Article 3 of the Marketing Practices Law, to indicate in its television advertising aimed at children the number of magazines needed to obtain the complete model and its total price. Finally, pursuant to Article 2 of the Marketing Practices Law, the Consumer Ombudsman has asked that De Agostini be prohibited, subject to a penalty payment, from using in its television advertising the statement 'Every two weeks you can collect the parts for a fluorescent dinosaur model and collect the magazines which together form an encyclopedia: all for only 7.50 crowns' or any other statement having essentially the same meaning.

Cases C-35/95 and C-36/95

17 These cases concern the activities of TV-Shop, which is the Swedish subsidiary of the company TV-Shop Europe. Its business consists in presenting products in television spots, whereafter the customer can place an order for the product by telephone. Sales servicing and contact with customers take place in the various countries of reception. The products are delivered by post.

18 In 1993 TV-Shop broadcast on TV3 and on Homeshopping Channel two 'infomercials' for *Body de Lite* skin-care products and the detergent *Astonish*.

19 In Case C-35/95, the Consumer Ombudsman has, pursuant to Article 2 of the Marketing Practices Law, applied to the Marknadsdomstol for an order restraining TV-Shop from doing any of the following things in connection with the marketing of skin-care products:

— making statements about the products' effects on the skin without being able to substantiate all the statements at the time of marketing;

— stating that the products have healing or therapeutic effects when the products have not been approved as listed pharmaceuticals;

— stating or intimating that when purchasing a skin-care set the consumer will receive extra items without extra cost if the skin-care set is not normally sold at the same price as that at which it is sold if not accompanied by additional products;

— comparing the price of the skin-care set with products of other makes if the company cannot show that the comparison relates to the same, or equivalent, products; and

— indicating that in order to receive certain extra items the consumer must place an order within 20 minutes or in a comparably short period of time.

20 Pursuant to Article 3 of the Marketing Practices Law the Consumer Ombudsman further asks the Marknadsdomstol to order TV-Shop, subject to a penalty payment, to state in crowns, when marketing products on television, any additional costs for postage, cash on delivery charges and any similar charges.

21 In Case C-36/95 the Consumer Ombudsman has asked the Marknadsdomstol, pursuant to Article 2 of the Marketing Practices Law, to grant an order restraining TV-Shop, subject to a penalty payment, from

— making statements about the detergents' effectiveness without being able, at the time of marketing, to prove that the statements are correct;

— using the words 'environmentally friendly' or similar imprecise phrases implying that the detergent is beneficial for the environment, and

— using the expression 'biodegradable' or similar terms in relation to the detergent without being able to prove, at the time of marketing, that all the statements made are correct.

22 In those circumstances, the Marknadsdomstol has requested the Court of Justice to give a preliminary ruling on the following questions:

'Are Article 30 or Article 59 of the Treaty or Directive 89/552/EEC of 3 October 1989 to be interpreted as:

(a) preventing a Member State from taking action against television advertisements which an advertiser has broadcast from another Member State (Cases C-34/95, C-35/95 and C-36/95);

(b) precluding application of Article 11(1) of the Radiolag prohibiting advertisements directed at children (in Case C-34/95).'

23 By order of 20 March 1995, made pursuant to Article 43 of the Rules of Procedure, the President of the Court of Justice ordered Cases C-34/95, C-35/95 and C-36/95 to be joined for the purposes of the written and oral procedure and of the judgment.

The first question

The Directive

24 As regards the possible application of the Directive, in spite of its defective drafting, it is clear from its title that the Directive is designed to coordinate certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities in order to eliminate obstacles to freedom of broadcasting within the Community.

25 It is also clear from the eighth, ninth and tenth recitals in the preamble to the Directive that the obstacles which the Community legislature intended to abolish are those which result from disparities existing between the provisions of the Member States concerning the pursuit of broadcasting activities and of distribution of television programmes.

26 It follows that the fields coordinated by the Directive are coordinated only in so far as television broadcasting, as defined in Article 1(a), is concerned as such.

27 In order to ensure freedom to provide television broadcasts, Article 2 of the Directive provides that all broadcasts emanating from the Community and intended for reception within the Community, in particular those intended for reception in another Member State, must comply with the legislation of the originating Member State applicable to broadcasts intended for the public in that Member State and with the provisions of the Directive. The corollary of this is that, subject to the power accorded to them by Article 2(2), Member States must ensure freedom of reception and must not impede retransmission on their territory of television broadcasts coming from other Member States for reasons which fall within the fields coordinated by the Directive.

28 Further, according to the 13th recital of the preamble to the Directive, the Directive lays down the minimum rules needed to guarantee freedom of transmission in broadcasting and therefore does not affect the responsibility of the Member States with regard to the organization and financing of broadcasts and the content of programmes. It is clear from the 17th recital that the Directive, being confined specifically to television broadcasting rules, is without prejudice to existing or future Community acts of harmonization, in particular to satisfy overriding considerations of consumer protection, fair trading and competition.

29 It must also be borne in mind that, according to the judgment of the Court in Case C-222/94 *Commission* v *United Kingdom* [1996] ECR I-4025, paragraph 42, a Member State's jurisdiction *ratione personae* over a broadcaster can be based only on the broadcaster's connection to that State's legal system, which in substance overlaps with the concept of establishment as used in the first paragraph of Article 59 of the Treaty, the wording of which presupposes that the supplier and the recipient of a service are 'established' in two different Member States.

30 As regards, more particularly, the matter of advertising, the Directive, in Chapter IV concerning television advertising and sponsorship, lays down a number of principles concerning broadcasting conditions, the use of certain advertising techniques and the amount of broadcasting time which may be devoted to this type of activity (Articles 10, 11, 17 and 18).

31 The Directive also covers the content of television advertising. Thus, Article 12 provides that television advertising must not prejudice respect for human dignity, include any discrimination on grounds of race, sex or nationality, be offensive to religious or political beliefs, encourage behaviour prejudicial to health or to safety or encourage behaviour prejudicial to the protection of the environment. Articles 13 and 14 lay down an absolute prohibition of television advertising for cigarettes and other tobacco products and of television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls. Article 15 lays down a number of restrictions concerning television advertising for alcoholic beverages. Article 16 lays down a number of principles regarding, more particularly, the protection of minors, which is also dealt with in Chapter V by Article 22.

32 Consequently, it follows that, as regards the activity of broadcasting and distribution of television programmes, the Directive, whilst coordinating provisions laid down by law, regulation or administrative action on television advertising and sponsorship, does so only partially.

33 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 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.

34 Thus the Directive does not in principle preclude application of national rules with 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.

35 Consequently, where a Member State's legislation such as that in question in the main proceedings which, for the purpose of protecting consumers, provides for a system of prohibitions and restraining orders to be imposed on advertisers, enforceable by financial penalties, application of such legislation to television broadcasts from other Member States cannot be considered to constitute an obstacle prohibited by the Directive.

36 According to De Agostini, TV-Shop and the Commission, the principle that broadcasts are to be controlled by the State having jurisdiction over the broadcaster would be seriously undermined in both its purpose and effect if the Directive were held to be inapplicable to advertisers. They argue that a restriction relating to advertising has an impact on television broadcasts, even if the restriction concerns only advertising.

37 In response to that objection, it is sufficient to observe that Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17), 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 that this would be in contradiction with the express intention of the Community legislature (see, to this effect, the judgment of the Court of the European Free Trade Association of 16 June 1995 in Joined Cases E-8/94 and E-9/94 *Forbrukerombudet* v *Mattel Scandinavia and Lego Norge*, Report of the EFTA Court, 1 January 1994 — 30 June 1995, 113, paragraphs 54 to 56 and paragraph 58).

38 It follows from the foregoing that the Directive does not preclude a Member State from taking, pursuant to general legislation on protection of consumers against misleading advertising, measures 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.

As regards Article 30 of the Treaty

39 In paragraph 22 of its judgment in *Leclerc-Siplec*, cited above, the Court held that legislation which prohibits television advertising in a particular sector concerns selling arrangements for products belonging to that sector in that it prohibits a particular form of promotion of a particular method of marketing products.

40 In Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, at paragraph 16, the Court held that 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.

41 The first condition is clearly fulfilled in the cases before the national court.

42 As regards the second condition, it cannot be excluded that an outright ban, applying in one Member State, of a type of promotion for a product which is lawfully sold there might have a greater impact on products from other Member States.

43 Although the efficacy of the various types of promotion is a question of fact to be determined in principle by the referring court, it is to be noted that in its observations De Agostini stated that television advertising was the only effective form of promotion enabling it to penetrate the Swedish market since it had no other advertising methods for reaching children and their parents.

44 Consequently, an outright ban on advertising aimed at children less than 12 years of age and of misleading advertising, as provided for by the Swedish legislation, is not covered by Article 30 of the Treaty, unless it is shown that the ban does not affect in the same way, in fact and in law, the marketing of national products and of products from other Member States.

45 In the latter case, it is for the national court to determine whether the ban is necessary to satisfy overriding requirements of general public importance or one of the aims listed in Article 36 of the EC Treaty if it is proportionate to that purpose and if those aims or requirements could not have been attained or fulfilled by measures less restrictive of intra-Community trade.

46 Further, according to settled case-law, fair trading and the protection of consumers in general are overriding requirements of general public importance which may justify obstacles to the free movement of goods (Case 120/78 *Rewe* v *Bundesmonopolverwaltung für Branntwein* ('*Cassis de Dijon*') [1979] ECR 649, paragraph 8).

47 Consequently, the answer to the question must be that, on a proper construction of Article 30 of the Treaty, a Member State is not precluded from taking, on the basis of provisions of its domestic legislation, measures against an advertiser in relation to television advertising, 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 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.

As regards Article 59 of the Treaty

48 As was held in Case 352/85 *Bond van Adverteerders* [1988] ECR 2085, advertising broadcast for payment by a television broadcaster established in one Member State for an advertiser established in another Member State constitutes provision of a service within the meaning of Article 59 of the Treaty.

49 Consequently, it must be examined whether domestic rules such as those in question in the cases before the national court constitute restrictions, prohibited by Article 59 of the Treaty, on freedom to provide services.

50 Provisions such as those in question in the main proceedings, where they restrict the possibility for television broadcasters established in the broadcasting State to broadcast, for advertisers established in the receiving State, television advertising specifically directed at the public in the receiving State, involve a restriction on freedom to provide services.

51 Where the rules applicable to services have not been harmonized, restrictions on the freedom guaranteed by the Treaty in this field may result from application of national rules affecting any person established in the national territory to persons providing services established in the territory of another Member State who already have to satisfy the requirements of that State's legislation (Case C-288/89 *Collectieve Antennevoorziening Gouda* [1991] ECR I-4007, paragraph 12).

52 In such a case, it is for the national court to determine whether those provisions are necessary to meet overriding requirements of general public importance or one of the aims laid down in Article 56 of the EC Treaty, whether they are proportionate for that purpose and whether the aims or overriding requirements could have been met by less restrictive means.

53 Further, according to settled case-law, fair trading and the protection of consumers in general are overriding requirements of public interest which may justify restrictions on freedom to provide services (see, in particular, *Collectieve Antennevoorziening Gouda*, cited above, paragraph 14, and Case C-384/93 *Alpine Investments* [1995] ECR I-1141).

54 The answer to be given must therefore be that, 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, measures against an advertiser in relation to television advertising. However, it is for the national court to determine whether those provisions are necessary for meeting overriding requirements of general public importance or one of the aims mentioned in Article 56 of the EC 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.

The second question

55 By its second question the Marknadsdomstol asks the Court for an interpretation of Community law with regard to a provision of a domestic broadcasting law which provides that advertisements broadcast during commercial breaks on television must not be designed to attract the attention of children under 12 years of age.

56 Application of such a domestic provision to advertising broadcast by a television broadcaster established in the same State cannot be contrary to the Directive since Article 3(1) of that provision does not contain any restriction as regards the interests which the Member States may take into consideration when laying down more strict rules for television broadcasters established in their territory. However, the situation is not the same where television broadcasters established in another Member State are concerned.

57 In Articles 16 and 22, the Directive contains a set of provisions specifically devoted to the protection of minors in relation to television programmes in general and television advertising in particular.

58 The broadcasting State must ensure that those provisions are complied with.

59 This certainly does not have the effect of prohibiting application of legislation of the receiving State designed to protect consumers or minors in general, provided that its application does not prevent retransmission, as such, in its territory of broadcasts from another Member State.

60 However, the receiving Member State may no longer, under any circumstances, apply provisions specifically designed to control the content of television advertising with regard to minors.

61 If provisions of the receiving State regulating the content of television broadcasts for reasons relating to the protection of minors against advertising were applied to broadcasts from other Member States, this would add a secondary control to the control which the broadcasting Member State must exercise under the Directive.

62 It follows that the Directive 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.

Costs

63 The costs incurred by the Swedish, Belgian, Greek, Finnish and Norwegian Governments, and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Marknadsdomstol, by orders of 7 February 1995, hereby rules:

1. **Council Directive 89/552/EEC of 3 October 1989 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 legisla-**

tion on protection of consumers against misleading advertising, measures 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.

2. On a proper construction of Article 30 of the EC Treaty, a Member State is not precluded from taking, on the basis of provisions of its domestic legislation, measures against an advertiser in relation to television advertising, 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 or one of the aims laid down in Article 36 of the EC Treaty, are proportionate for that purpose, and those aims or overriding requirements could not be met by measures less restrictive of intra-Community trade.

3. On a proper construction of Article 59 of the EC Treaty, a Member State is not precluded from taking, on the basis of provisions of its domestic legislation, measures against an advertiser in relation to television advertising. However, it is for the national court to determine whether those provisions are necessary for meeting overriding requirements of general public importance or one of the aims stated in Article 56 of the EC 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/EEC 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.

Rodríguez Iglesias	Mancini	Moitinho de Almeida
Murray		Sevón
Kakouris	Kapteyn	Gulmann
Edward		Puissochet
Hirsch	Jann	Ragnemalm

Delivered in open court in Luxembourg on 9 July 1997.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President