JUDGMENT OF THE COURT (Second Chamber)

12 May 2011 *

In Case C-122/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Marknadsdomstolen (Sweden), made by decision of 4 March 2010, received at the Court on 8 March 2010, in the proceedings

Konsumentombudsmannen

v

Ving Sverige AB,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, A. Rosas, U. Lõhmus, A. Ó Caoimh and P. Lindh, Judges,

* Language of the case: Swedish.

Advocate General: P. Mengozzi,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Konsumentombudsmannen, by G. Wikström, acting as Agent,

— Ving Sverige AB, by D. Tornberg, advokat,

— the Swedish Government, by C. Meyer-Seitz and S. Johannesson, acting as Agents,

— the German Government, by T. Henze, acting as Agent,

— the Spanish Government, by F. Díez Moreno, acting as Agent,

— the Netherlands Government, by C.M. Wissels and B. Koopman, acting as Agents,

— the Polish Government, by M. Szpunar, acting as Agent,

— the United Kingdom Government, by F. Penlington, acting as Agent,

— the Norwegian Government, by J.T. Kaasin and I. Thue, acting as Agents,

— the European Commission, by W. Wils and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 February 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2(i) and 7(4) 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 ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

2 The reference has been made in proceedings between the Konsumentombudsmannen (Consumer Ombudsman), the applicant in the main proceedings, and Ving Sverige AB ('Ving') concerning the compatibility of a commercial communication with the national legislation concerning marketing practice.

Legal context

European Union law

3 Recital 6 in the preamble to Directive 2005/29 states that that 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'.

4 According to recital 7 in the preamble to Directive 2005/29, that directive 'addresses commercial practices directly related to influencing consumers' transactional decisions in relation to products'.

5 Recital 14 in the preamble to Directive 2005/29 states that, in respect of misleading omissions, that directive sets out 'a limited number of key items of information which the consumer needs to make an informed transactional decision. Such information

will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase'.

6 Recital 15 in the preamble to Directive 2005/29 states that '[w]here Community law sets out information requirements in relation to commercial communication, advertising and marketing that information is considered as material under this Directive'.

7 It is apparent from recital 18 in the preamble to Directive 2005/29 that, '[i]n line with the principle of proportionality, and to permit the effective application of the protections contained in it, this Directive takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors'.

8 Article 1 of Directive 2005/29 provides:

'The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests'.

9 According to Article 2(c) of Directive 2005/29 'product' means 'any goods or service including immovable property, rights and obligations'.

10 It is apparent from Article 2(d) of Directive 2005/29 that ''business-to-consumer 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'.

11 Article 2(i) of Directive 2005/29 defines 'invitation to purchase' as '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'.

12 Article 2(k) of Directive 2005/29 describes a 'transactional decision' as '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'.

13 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.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that

paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.

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

(a) the main characteristics of the product, to an extent appropriate to the medium and the product;

(b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;

(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;

(d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;

(e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

5. Information requirements established by Community law in relation to commercial communication[s] including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material.'

National law

14 Directive 2005/29 was transposed into domestic law by Law 2008:486 on marketing practice, Paragraph 12 of which provides:

'Marketing is misleading when the trader in a presentation offers consumers a specific product, giving the price, without the following essential information being stated:

(1) the product's main characteristics, to an extent appropriate to the medium and the product,

(2) the price and comparative price given in the manner provided for in Paragraphs 7 to 10 of Law 2004:347 on price information,

(3) the identity and the geographical address of the trader,

(4) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from what is normal for the industry or product in question,

(5) information about the right of withdrawal or the right to cancel a purchase, which must by law be provided to the consumer.

Marketing is also misleading where the trader offers consumers in a presentation several specific products, giving a common price, without the offer containing essential information in accordance with points 1 to 5 of the first paragraph.'

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

15 Ving is a travel agency which arranges charter holidays and package holidays using scheduled flights. Ving also sells individual airline tickets and hotel accommodation to those who wish to travel independently. The holidays are sold via internet, by telephone, in their own agencies and in selected travel agencies throughout Sweden.

16 On 13 August 2008, Ving put a commercial communication in a daily Swedish newspaper offering trips to New York (United States of America) between September and December 2008. That advertisement contained certain information, namely, written in bold letters, 'New York from SEK 7 820', in smaller letters below that wording, 'Flight from Arlanda with British Airways and 2 nights in the Bedford Hotel — Price per person in double room including airport taxes. Extra nights from SEK 1 320. Applies to selected trips from September to December. Limited number of places' and, at the very bottom left side of the advertisement, 'Vingflex.se Tel. 0771-995995'.

17 On 27 February 2009, the Konsumentombudsmannen brought an action against Ving before the national court, the Marknadsdomstolen (Commercial Court), on the ground that that commercial communication was an invitation to purchase containing a misleading omission in so far as there was insufficient or no information on the main characteristics of the trip, inter alia the price. The Konsumentombudsmannen requested that Ving be ordered to state fixed prices in its advertisements and be prohibited, on pain of a penalty, from advertising an entry-level price. He furthermore requested that that travel agency be ordered to give more exact details of how and in what way the main characteristics of the trip such as, for example, the departure time, the consumer's options or corresponding characteristics, affect the entry-level price given in the commercial communication and of how that entry-level price is affected.

18 Ving disputes that the commercial communication in question constitutes an invitation to purchase. In the alternative, it submits that the main characteristics of the product were stated in an appropriate manner having regard to the medium of communication used and the product concerned and that the price was given in the manner provided for in Law 2004:347 on price information.

19 Furthermore, Ving disputes that that commercial communication constitutes an unfair practice and that it failed to provide material and clear information. In the alternative, Ving submits that the omission of the disputed information does not affect or is not liable to affect the consumer's ability to reach an informed transactional decision.

20 On the view that the outcome of the proceedings before it depends on the interpretation of Directive 2005/29, the Marknadsdomstolen decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is the requirement "thereby enables the consumer to make a purchase" in Article 2(i) of Directive 2005/29 … to be interpreted as meaning that an invitation to purchase exists as soon as information on the advertised product and its price is available so that the consumer may make a decision to purchase, *or* is it necessary that the commercial communication also offer an actual opportunity to purchase the product (for example, an order form) or that it appears in connection with such an opportunity (for example, an advertisement outside a shop)?

2. If the answer to the … [first] question is that it is necessary that there be an actual opportunity to purchase the product, is that to be regarded as existing if the commercial communication refers to a telephone number or website where the product can be ordered?

3. Is Article 2(i) of … Directive [2005/29] to be interpreted as meaning that the requirement for a price is met if the commercial communication contains an entry-level price, that is to say, the lowest price for which the advertised product or category of products can be bought while the advertised product or category of products are available in other versions or with other content at prices which are not indicated?

4. Is Article 2(i) of … Directive [2005/29] to be interpreted as meaning that the requirement concerning a product's characteristics is met as soon as there is a verbal or visual reference to the product, that is to say, so that the product is identified but not further described?

5. If the answer to the … [fourth] question is affirmative, does that also apply where the advertised product is offered in many versions, but the commercial communication refers to them only by a common designation?

6. If there is an invitation to purchase, is Article 7(4)(a) of … Directive [2005/29] to be interpreted as meaning that it is sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on the condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7(4)?

7. Is Article 7(4)(c) of … Directive [2005/29] to be interpreted as meaning that it is sufficient to give an entry-level price for the price requirement to be met?'

Consideration of the questions referred

Initial observations

21 Directive 2005/29 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.

22 The meaning of consumer is of the utmost importance for the purposes of interpreting the provisions of Directive 2005/29. That directive takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors.

23 The Court has already held that, as regards the misleading nature of advertising, the national courts must take into account the perception of an average consumer who is reasonably well informed and reasonably observant and circumspect (see, to that effect, Case C-356/04 *Lidl Belgium* [2006] ECR I-8501, paragraph 78, and Case C-159/09 *Lidl* [2010] ECR I-11761, paragraph 47).

24 Furthermore, it must be pointed out that only a commercial practice which is categorised beforehand as an invitation to purchase is covered by Article 7(4) of Directive 2005/29, whereas all commercial practices, including invitations to purchase, are subject to the requirements of Article 7(1), (2), (3) and (5) of that directive. An invitation to purchase, which is defined in Article 2(i) of that directive, must contain a number of key items of information, which are listed in Article 7(4) of the directive and which

the consumer needs in order to take an informed transactional decision. In the absence of that information, which Article 7(4) describes as material, an invitation to purchase is deemed to be misleading and is therefore unfair, as is apparent from the provisions of Articles 5(4) and 7 of Directive 2005/29.

25 Lastly, it must be borne in mind that, as is apparent from recital 15 in the preamble to Directive 2005/29 and from Article 7(5) of that directive, information requirements established by European Union law in relation to commercial communications including advertising or marketing are also to be regarded as material. A non-exhaustive list of those provisions of European Union law, which is contained in Annex II to Directive 2005/29, includes inter alia Article 3 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

26 The relevance of the latter provision must therefore be investigated by the national court, even though questions relating to it have not been raised or been the subject of an exchange of arguments before the Court.

The first question

27 By its first question the national court asks, in essence, whether the words 'thereby enables the consumer to make a purchase' in Article 2(i) of Directive 2005/29 are to be interpreted as meaning that it makes categorisation as an invitation to purchase conditional on the existence of an actual opportunity to purchase the product advertised or as meaning that an invitation to purchase exists as soon as the information on

the product in question and its price is sufficient for the consumer to be able to make a transactional decision.

28 As the Advocate General stated at point 22 of his Opinion, an invitation to purchase is a specific form of advertising to which is attached a stricter obligation to provide information under Article 7(4) of Directive 2005/29.

29 A non-restrictive interpretation of the concept of invitation to purchase is the only one which is consistent with one of the objectives of that directive which, according to Article 1 thereof, is that of achieving a high level of consumer protection.

30 In the light of that information, the words 'thereby enables the consumer to make a purchase' must be analysed not as adding a further requisite condition to categorisation as an invitation to purchase, but as stating the purpose of the requirements set out with regard to the characteristics and the price of the product so that the consumer has sufficient information to enable him to make a purchase.

31 Such a finding is borne out by a literal interpretation based on the use of the adverb 'thereby' and is closely linked to the teleological interpretation of Article 2(i) of Directive 2005/29.

32 It follows that, for a commercial communication to be capable of being categorised as an invitation to purchase, it is not necessary for it to include an actual opportunity to purchase or for it to appear in proximity to and at the same time as such an opportunity.

33 In those circumstances, the answer to the first question is that the words 'thereby enables the consumer to make a purchase' in Article 2(i) of Directive 2005/29 must

be interpreted as meaning that an invitation to purchase exists as soon as the information on the product advertised and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product or for it to appear in connection with such an opportunity.

The second question

34 In the light of the answer to the first question, it is not necessary to answer the second question.

The third question

35 By its third question the national court asks whether Article 2(i) of Directive 2005/29 is to be interpreted as meaning that the requirement relating to the indication of the price of the product is met if the commercial communication contains an entry-level price, that is to say, the lowest price for which the advertised product or category of products can be bought while the advertised product or category of products are available in other versions or with other content at prices which are not indicated.

36 As Article 2(i) of Directive 2005/29 does not require the indication of a final price, it cannot automatically be ruled out that the requirement relating to the indication of the price of the product is met by a reference to an entry-level price.

37 That provision provides that an invitation to purchase must indicate the price of the product in a way appropriate to the means of the commercial communication used. That being the case, it is conceivable that, by virtue of the medium used, it might to difficult to state the price of the product corresponding to each of its versions.

38 Furthermore, Article 7(4)(c) of Directive 2005/29 itself concedes, as far as concerns misleading omissions, that, having regard to the nature of the product, a trader may not reasonably be able to communicate, in advance, the final price.

39 Furthermore, if a reference to an entry-level price had to be regarded as not meeting the requirement relating to the indication of the price referred to in Article 2(i) of Directive 2005/29, it would be easy for traders to indicate only an entry-level price in order to prevent the commercial communication in question from being categorised as an invitation to purchase and, therefore, from having to comply with the requirements of Article 7(4) of that directive. Such an interpretation would erode the practical effect of that directive, as pointed out in paragraphs 28 and 29 of this judgment.

40 It follows from the foregoing that an entry-level price may meet the requirement relating to the reference to the price of the product within the meaning of Article 2(i) of Directive 2005/29 if, on the basis of the nature and characteristics of the product and the commercial medium of communication used, that reference enables the consumer to take a transactional decision.

41 Consequently, the answer to the third question is that Article 2(i) of Directive 2005/29 must be interpreted as meaning that the requirement relating to the indication of the price of the product may be met if the commercial communication contains an entry-level price, that is to say the lowest price for which the advertised product or category of products can be bought, while the advertised product or category of products are available in other versions or with other content at prices which are not indicated. It is

for the national court to ascertain, on the basis of the nature and characteristics of the product and the commercial medium of communication used, whether the reference to an entry-level price enables the consumer to take a transactional decision.

The fourth and fifth questions

42 By its fourth and fifth questions, which should be considered together, the national court asks, in essence, whether Article 2(i) of Directive 2005/29 is to be interpreted as meaning that a verbal or visual reference to the product makes it possible to meet the requirement relating to the indication of the product's characteristics, and that includes a situation where such a verbal or visual reference is used to designate a product which is offered in a variety of forms.

43 The term 'product' as defined in Article 2(c) of Directive 2005/29 refers to any goods or service including immovable property, rights and obligations.

44 The information relating to the characteristics of the product may, however, vary considerably according to the nature of that product.

45 In so far as Article 2(i) of Directive 2005/29 requires that the characteristics of the product must be indicated in a way appropriate to the means used, the commercial medium of communication used must be taken into consideration for that purpose. The same degree of detail cannot be required in the description of a product

irrespective of the form — radio, television, electronic or paper — which the commercial communication takes.

46 A verbal or visual reference may enable the consumer to form an opinion on the nature and characteristics of the product for the purpose of taking a transactional decision, and that includes a situation where such a reference designates a product which is offered in many versions.

47 Furthermore, as the Advocate General stated at point 29 of his Opinion, an entry-level price may enable the consumer to understand that the product which he has been able to customise exists in other versions.

48 It is for the national court to ascertain, on a case-by-case basis, taking into account the nature and characteristics of the product and the medium of communication used, whether the consumer has sufficient information to identify and distinguish the product for the purpose of taking a transactional decision.

49 The answer to the fourth and fifth questions is therefore that Article 2(i) of Directive 2005/29 must be interpreted as meaning that a verbal or visual reference to the product makes it possible to meet the requirement relating to the indication of the product's characteristics, and that includes a situation where such a verbal or visual reference is used to designate a product which is offered in a variety of forms. It is for the national court to ascertain, on a case-by-case basis, taking into account the nature and characteristics of the product and the medium of communication used, whether the consumer has sufficient information to identify and distinguish the product for the purpose of taking a transactional decision.

The sixth question

50 By its sixth question the national court asks whether Article 7(4)(a) of Directive 2005/29 is to be interpreted as meaning that it is sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7(4) of that directive.

51 It should be recalled that the commercial practices covered by Article 7(4) of Directive 2005/29 require a case-by-case assessment, whereas the commercial practices referred to in Annex I to that directive are regarded as unfair in all circumstances (see, to that effect, Joined Cases C-261/07 and C-299/07 *VTB-VAB* [2009] ECR I-2949, paragraph 56, and Case C-304/08 *Plus Warenhandelsgesellschaft* [2010] ECR I-I-217, paragraph 45).

52 Article 7(4)(a) of Directive 2005/29 refers to the main characteristics of the product without however defining that notion or providing an exhaustive list. It is however stated that account must be taken, first, of the medium of communication used and, secondly, of the product.

53 That provision must be read in conjunction with Article 7(1) of that directive, according to which the commercial practice must be assessed having regard to its factual context and the limitations of the medium of communication used.

54 It must also be pointed out that Article 7(3) of that directive provides expressly that account is to be taken, in deciding whether information has been omitted, of the limitations of space and time of the medium of communication used and of the measures taken by the trader to make that information available to consumers by other means.

55 It follows that the extent of the information relating to the main characteristics of a product which has to be communicated, by a trader, in an invitation to purchase, must be assessed on the basis of the context of that invitation, the nature and characteristics of the product and the medium of communication used.

56 It follows from the foregoing that Article 7(4)(a) of Directive 2005/29 does not preclude a reference to only certain of a product's main characteristics if the trader refers in addition to its website, on condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7 of that directive.

57 It must however be borne in mind that, according to Article 7(5) of Directive 2005/29, information requirements established by European Union law in relation to commercial communications, a non-exhaustive list of which is contained in Annex II to that directive, are to be regarded as material. Among the provisions referred to in that annex is Article 3 of Directive 90/314 on package travel, package holidays and package tours, paragraph 2 of which sets out a certain number of items of information which a brochure relating to that kind of travel and those kinds of holidays and tours must contain.

58 It is for the national court to assess, on a case-by-case basis, taking into consideration the context of the invitation to purchase, the medium used to communicate and the nature and characteristics of the product, whether a reference only to certain main characteristics of the product enables the consumer to take an informed transactional decision.

59 In the light of the foregoing, the answer to the sixth question is that Article 7(4)(a) of Directive 2005/29 must be interpreted as meaning that it may be sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7 of that directive. It is for the national court to assess, on a case-by-case basis, taking into consideration the context of the invitation to purchase, the medium of communication used and the nature and characteristics of the product, whether a reference only to certain main characteristics of the product enables the consumer to take an informed transactional decision.

The seventh question

60 By its seventh question the national court seeks to know whether Article 7(4)(c) of Directive 2005/29 is to be interpreted as meaning that it is sufficient to give an entry-level price for the price requirement to be met.

61 Compared with the third question, this questions calls for considerations of a different order.

62 Whereas Article 2(i) of Directive 2005/29 seeks to set out the definition of an invitation to purchase, Article 7(4)(c) of that directive defines the information which, in the case of an invitation to purchase, must be regarded as material.

63 Although it is true that information regarding the price is regarded, in Article 7(4) of that directive, as being, as a rule, material, the fact remains that Article 7(4)(c) provides that, where the nature of the product means that the price cannot reasonably be calculated in advance, the information must include 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.

64 A reference only to an entry-level price may, therefore, be justified in situations where the price cannot reasonably be calculated in advance, having regard, inter alia, to the nature and characteristics of the product. It is apparent from the information in the documents before the court that, in order to establish the final price of a trip, a certain number of variable factors may be taken into consideration, inter alia the point at which a booking is made; the interest in the destination on account of the existence of religious, artistic or sports events; the particular characteristics of seasonal conditions; and the dates and times of travel.

65 Nevertheless, where there is only an entry-level price in an invitation to purchase, and the detailed rules for calculating the final price as well as, where appropriate, the additional charges or the fact that those charges are payable are not indicated, it is necessary to ask the question whether that information is sufficient for the purpose of enabling the consumer to take an informed transactional decision or whether it must be concluded that there are misleading omissions in the light of Article 7 of Directive 2005/29.

66 It is important to consider that Article 7(3) of Directive 2005/29 states that, where the medium used to communicate the commercial practice imposes limitations of space or time, those limitations and any measures taken by the trader to make the information available to consumers by other means are to be taken into account in deciding whether information has been omitted.

67 The guidance provided by that provision relating to the factors to be taken into account in order to ascertain whether the commercial practice must be categorised as a misleading omission apply to the invitations to purchase referred to in Article 7(4) of that directive.

68 The extent of the information relating to the price will be established on the basis of the nature and characteristics of the product, but also on the basis of the medium of communication used for the invitation to purchase and having regard to additional information possibly provided by the trader.

69 A reference only to an entry-level price in an invitation to purchase cannot therefore be regarded, in itself, as constituting a misleading omission.

70 It is for the national court to ascertain whether a reference to an entry-level price is sufficient for the requirements concerning the reference to a price, such as those set out in Article 7(4)(c) of Directive 2005/29, to be considered to be met.

71 The national court will have, inter alia, to ascertain whether the omission of the detailed rules for calculating the final price prevents the consumer from taking an informed transactional decision and, consequently, leads him to take a transactional decision which he would not otherwise have taken. It is also for the national court

to take into consideration the limitations forming an integral part of the medium of communication used; the nature and the characteristics of the product and the other measures that the trader has actually taken to make the information available to consumers.

72 Consequently, the answer to the seventh question is that Article 7(4)(c) of Directive 2005/29 must be interpreted as meaning that a reference only to an entry-level price in an invitation to purchase cannot be regarded, in itself, as constituting a misleading omission. It is for the national court to ascertain whether a reference to an entry-level price is sufficient for the requirements concerning the reference to a price, such as those set out in that provision, to be considered to be met. That court will have to ascertain, inter alia, whether the omission of the detailed rules for calculating the final price prevents the consumer from taking an informed transactional decision and, consequently, leads him to take a transactional decision which he would not otherwise have taken. It is also for the national court to take into consideration the limitations forming an integral part of the medium of communication used; the nature and the characteristics of the product and the other measures that the trader has actually taken to make the information available to consumers.

Costs

73 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 (Second Chamber) hereby rules:

1. **The words 'thereby enables the consumer to make a purchase' in Article 2(i) 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 ('Unfair Commercial Practices Directive') must be interpreted as meaning that an invitation to purchase exists as soon as the information on the product advertised and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product or for it to appear in proximity to and at the same time as such an opportunity.**

2. **Article 2(i) of Directive 2005/29 must be interpreted as meaning that the requirement relating to the indication of the price of the product may be met if the commercial communication contains an entry-level price, that is to say the lowest price for which the advertised product or category of products can be bought, while the advertised product or category of products are available in other versions or with other content at prices which are not indicated. It is for the national court to ascertain, on the basis of the nature and characteristics of the product and the commercial medium of communication used, whether the reference to an entry-level price enables the consumer to take a transactional decision.**

3. **Article 2(i) of Directive 2005/29 must be interpreted as meaning that a verbal or visual reference to the product makes it possible to meet the requirement**

relating to the indication of the product's characteristics, and that includes a situation where such a verbal or visual reference is used to designate a product which is offered in many versions. It is for the national court to ascertain, on a case-by-case basis, taking into account the nature and characteristics of the product and the medium of communication used, whether the consumer has sufficient information to identify and distinguish the product for the purpose of taking a transactional decision.

4. **Article 7(4)(a) of Directive 2005/29 must be interpreted as meaning that it may be sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on the condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7 of that directive. It is for the national court to assess, on a case-by-case basis, taking into consideration the context of the invitation to purchase, the medium of communication used and the nature and characteristics of the product, whether a reference only to certain main characteristics of the product enables the consumer to take an informed transactional decision.**

5. **Article 7(4)(c) of Directive 2005/29 must be interpreted as meaning that a reference only to an entry-level price in an invitation to purchase cannot be regarded, in itself, as constituting a misleading omission. It is for the national court to ascertain whether a reference to an entry-level price is sufficient for the requirements concerning the reference to a price, such as those set out in that provision, to be considered to be met. That court will have to ascertain, inter alia, whether the omission of the detailed rules for calculating the final price prevents the consumer from taking an informed transactional decision and, consequently, leads him to take a transactional decision which he would not otherwise have taken. It is also for the national court to take into consideration the limitations forming an integral part of the medium of communication used; the nature and the characteristics of the product and**

the other measures that the trader has actually taken to make the information available to consumers.

[Signatures]