

Case C-412/93

Société d'Importation Édouard Leclerc-Siplec
v
TF1 Publicité SA and M6 Publicité SA

(Reference for a preliminary ruling
from the Tribunal de Commerce, Paris)

(Televised advertising — Free movement of goods and services)

Opinion of Advocate General Jacobs delivered on 24 November 1994	I - 182
Judgment of the Court (Sixth Chamber), 9 February 1995	I - 209

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — General or hypothetical questions — Determination by the Court as to whether it has jurisdiction — Circumstances of the main proceedings — Concept*
(EEC Treaty, Art. 177)

2. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Concept — Obstacles imposed by national provisions governing selling arrangements in a non-discriminatory manner — Article 30 of the Treaty not applicable — Rules prohibiting televised advertising in the distribution sector — Treaty provisions relating to competition — Not applicable*
(EEC Treaty, Arts 3(f), 5, 30, 85 and 86)
3. *Freedom to provide services — Television broadcasting — Directive 89/552 — Freedom for Member States to derogate from the rules on advertising — Scope — Rules prohibiting televised advertising in the distribution sector — Permissible*
(Council Directive 89/552, Art. 3(1))

1. In the context of the procedure under Article 177 of the Treaty, the national court, which alone has direct knowledge of the facts of the case, is in the best position to appreciate, with full knowledge of the matter before it, the necessity for a preliminary ruling to enable it to give judgment. Consequently, where the questions put by national courts concern the interpretation of a provision of Community law, the Court is, in principle, bound to give a ruling.

The fact that the parties are in agreement as to the result to be obtained does not affect the reality of a dispute in the main proceedings concerning the compatibility with Community law of one party's refusal, based on a provision of national law, to comply with a request made by the other party.

It is none the less necessary for the Court, in order to determine whether it has jurisdiction, to examine the conditions in which the case has been referred to it. The spirit of cooperation which must prevail in preliminary ruling proceedings requires the national court to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give opinions on general or hypothetical questions.

2. The application to products from other Member States of national provisions restricting or prohibiting certain selling arrangements is not such as to hinder directly or indirectly, actually or potentially, trade between Member States so long as those provisions apply to all relevant 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. Provided that those conditions are fulfilled, the application of such rules to the sale of products from another Member State meeting the requirements laid down by that State is

not by nature such as to prevent their access to the market or to impede access any more than it impedes the access of domestic products. Such rules therefore fall outside the scope of Article 30 of the Treaty.

It follows that on a proper construction Article 30 of the Treaty does not apply where a Member State, by statute or by regulation, prohibits the broadcasting of televised advertisements for the distribution sector. Such a measure concerns selling arrangements since it prohibits a particular form of promotion of a particular method of marketing products and, since it applies regardless of the type of product to all traders in the distribution sector, affects the marketing of products from other Member States and that of domestic products in the same manner.

Articles 85 and 86 in conjunction with Articles 3(f) and 5 of the Treaty are not applicable to such a measure.

3. Directive 89/552, whose purpose is to ensure freedom to provide television broadcasting services conforming to the minimum rules it lays down and which to that end requires Member States from which broadcasts are made to ensure compliance with its provisions and Member States receiving broadcasts to ensure freedom of reception and retransmission, provides in Article 3(1) that Member States are to remain free, as regards broadcasters under their jurisdiction, to lay down more detailed or stricter rules in the areas covered by the directive. That freedom, which is conferred by a general provision of the directive and the exercise of which is not such as to jeopardize the freedom to provide broadcasting services conforming to its minimum rules which the directive seeks to ensure, is not restricted, in relation to advertising, to the circumstances set out in Articles 19 and 20.

For that reason, on a proper construction the directive does not preclude Member States from prohibiting, by statute or by regulation, the broadcasting of advertisements for the distribution sector by television broadcasters established on their territory.