OPINION OF ADVOCATE GENERAL JACOBS
delivered on 8 July 2004 [1]

1. Following *Gabriel*, [2] the Court is again asked to rule on the appropriate forum, in accordance with the Brussels Convention, [3] for legal proceedings in which a private individual claims the award of a 'prize' ostensibly awarded to him or her by a commercial undertaking.

2. In both *Gabriel* and the present case, the claimant was domiciled in Austria, where a specific consumer-protection rule allows promises of such prizes to be enforced by the courts, and was sent notification of the prize award by an undertaking domiciled in Germany.

3. In *Gabriel*, entitlement to collect the prize was explicitly conditional upon the claimant's placing an order with the undertaking for goods of a particular value, and such an order was placed. The Court took the view that jurisdiction was to be determined on the basis that the proceedings to claim the prize were contractual in nature and, specifically, concerned a consumer contract within the meaning of the Convention.

4. In the present case, by contrast, no such condition was expressed, and no order was placed. The question arises as to the correct basis for allocation of jurisdiction.

The Brussels Convention

5. The Brussels Convention applies in civil and commercial matters. Title II allocates jurisdiction between the Contracting States. The basic rule in Article 2 is that the courts

1 — Original language: English.

2 — Case C-96/00 [2002] ECR I-6367.

3 — Of 27 September 1968, on jurisdiction and the enforcement of judgments in civil and commercial matters. A consolidated version of the Convention as amended by the four subsequent Accession Conventions — the relevant version in the present case — is published in OJ 1998 C 27, p. 1. Since 1 March 2002 (after the material time in the present case), the Convention has been replaced, except as regards Denmark and certain overseas territories of other Member States, by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12, p. 1.

of the Contracting State in which the defendant is domiciled have jurisdiction. However, by way of exception to that rule other courts have jurisdiction to hear certain types of action.

6. Article 5(1) of the Convention confers jurisdiction 'in matters relating to a contract' on 'the courts for the place of performance of the obligation in question'.

7. Article 5(3) confers jurisdiction 'in matters relating to tort, delict or quasi-delict' on 'the courts for the place where the harmful event occurred'.

8. Section 4 of Title II of the Convention, comprising Articles 13 to 15, is entitled 'Jurisdiction over consumer contracts'. Article 13 provides in so far as relevant:

'In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called "the consumer", jurisdiction shall be determined by this Section ... if it is:

1. a contract for the sale of goods on instalment credit terms; or

2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

3. any other contract for the supply of goods or a contract for the supply of services, and

(a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and

(b) the consumer took in that State the steps necessary for the conclusion of the contract.

...'

9. Article 14 provides that a consumer may bring proceedings against the other party to a contract 'either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled'.

Facts and proceedings

11. Petra Engler, who resides in Austria, has brought proceedings there against Janus Versand GmbH ('Janus'), a company domiciled in Germany, on the basis of Paragraph 5j of the Consumer Protection Law. She claims payment of an alleged prize of ATS 455 000 (EUR 33 066.14).

Relevant national legislation

10. Paragraph 5j of the Konsumentenschutzgesetz (Consumer Protection Law) [4] was inserted by the Fernabsatz-Gesetz (Law on Distance Selling) [5] It provides:

'Undertakings which send prize notifications or other similar communications to specific consumers, and by the wording of those communications give the impression that the consumer has won a particular prize, must give that prize to the consumer; it may also be claimed in legal proceedings.'

12. Ms Engler alleges that, after careful reading, she believed from the wording and content of a letter addressed to her personally and received in early 2001 that she had won ATS 455 000 in a 'cash prize draw' organised by Janus, and that to obtain the prize she merely had to return the enclosed 'payment notice' — which she did. Janus at first did not respond, and subsequently refused to pay.

13. Although entitlement to the prize did not appear to be conditional on any order of goods, nor did Ms Engler place any such order, she states that she received with the prize notification Janus's catalogue and a voucher for a trial offer without obligation. She considers that the case thus involved a

4 — BGBl. 1979/140, in the version enacted by Article I, paragraph 2 of the Fernabsatz-Gesetz (Law on Distance Selling), BGBl. I 1999/185.

5 — Cited in note 4, which transposes Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ 1997 L 144, p. 19. However, the provision in Article 5j is not itself specifically required by any provision of that directive.

consumer matter, since there had been an intention to persuade her to enter into a contract for the supply of goods.

14. The Landesgericht Feldkirch dismissed the action on the ground of lack of local jurisdiction, essentially because Ms Engler had not established that the sender of the letter she relied on, Handelskontor Janus GmbH, was the same person as Janus Versand GmbH.

15. Hearing her appeal against that dismissal, the Oberlandesgericht Innsbruck takes the view, essentially, that it is necessary first to determine whether the facts as alleged by Ms Engler confer jurisdiction on the Austrian courts, before it is possible to examine whether those facts are established and in particular whether the identity of Janus Versand and Handelskontor Janus has been adequately established, even though that, too, is a condition for jurisdiction. [6]

16. The Oberlandesgericht has therefore stayed the proceedings and seeks a preliminary ruling on the following question:

'For the purposes of the Brussels Convention ..., does the provision in Paragraph 5j of the Austrian Konsumentenschutzgesetz ..., which entitles consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar communications worded so as to give the impression that they have won a particular prize, also constitute:

(1) a contractual claim under Article 13(3); or

(2) a contractual claim under Article 5(1); or

(3) a claim in respect of a tort, delict or quasi-delict under Article 5(3)

where on the basis of the documents sent to him a sensible consumer could have thought that all he had to do to claim the amount held for him was to return an enclosed

6 — In view of that dispute as to identity, and of the fact that it is not relevant at the stage of the legal analysis with which the request for a preliminary ruling is concerned, I shall refer to both firms without distinction as 'Janus', whilst stressing that this is not to be taken as prejudging the issue of identity in any way. Although the name of the defendant in the order for reference is Janus Versand GmbH, it is Handelskontor Janus GmbH which has submitted observations to the Court as party to the main proceedings.

payment notice, so that the payment of the prize did not depend on an order for and delivery of goods from the undertaking promising the prize, but where a catalogue and a voucher for a trial offer without obligation are sent to the consumer with the prize notification?'

17. Written observations have been submitted by the parties to the main proceedings, the Austrian Government and the Commission, all of whom also presented oral argument at the hearing on 26 May 2004.

Assessment

Article 13(3)

18. Ms Engler and the Austrian Government consider that the proceedings fall within Article 13(3), essentially on the ground that the prize notification was accompanied by an invitation to place an order and was thus preparatory to the conclusion of a consumer contract. Janus and the Commission disagree, the former stressing the absence of any reciprocal obligation on Ms Engler's part, the latter emphasising that no consumer contract was 'concluded'.

19. I agree essentially with the Commission.

20. Article 13(3) unequivocally refers to a contract for the supply of goods or services, which the consumer has taken the necessary steps to conclude and which has been concluded.

21. On the facts stated, no contract meeting that definition has been concluded in the present case. Although it was no doubt hoped that Ms Engler would place an order for goods, she neither did so nor took any step to do so, nor was there any contract for the supply of services.

22. Ms Engler and the Austrian Government have none the less argued strongly — particularly at the hearing — that on a broad

interpretation the circumstances of the present case should fall within Article 13 of the Brussels Convention because they lie demonstrably within the sphere of consumer contracts in general and involve predatory conduct by a trader towards a consumer, deemed to be the weaker party and thus deserving of the protection which Article 13 et seq. of the Convention are intended to provide.

23. Whilst I sympathise with that view, I cannot agree with it. In my Opinion in *Gabriel* [7] I stressed that Article 13 should not be given an over-restrictive interpretation. However, that does not mean that it can be interpreted so broadly as to run counter to its clear wording — which requires a contract for the supply of goods or services to have been concluded — even if such a result might appear desirable in the context of a particular case.

24. In *Gabriel*, it was held that proceedings brought under the same national provision as in the present case fell within Article 13 where a company had given a consumer the impression that a prize would be awarded to him on condition that he ordered goods, and where he had actually placed such an order. The essential ground for that ruling was that the proceedings concerning the prize notification were linked so closely to the consumer contract (the order for goods) as to be indissociable from it; therefore, to avoid a situation in which several courts have jurisdiction in respect of one and the same contract, it must be possible to bring such proceedings before the court which has jurisdiction to deal with the consumer contract. [8]

25. In Ms Engler's case, however, it is impossible to identify any comparable contract to which the prize notification is indissociably linked. Conclusion of such a contract was not a condition for receipt of the prize, nor was any such contract concluded. Consequently, there is no danger that different courts might have jurisdiction over different disputes closely linked to it.

26. The fact that the prize notification was accompanied by an invitation to place an order, and was no doubt intended as an inducement to place an order, cannot be relevant. If an individual receives a mail

7 — At paragraph 45 et seq.

8 — See paragraphs 53 to 57 of the judgment.

order catalogue but places no order, there is no consumer contract for the supply of goods or services. The receipt in addition of a prize notification cannot create such a contract.

27. Nor, in my view, does the concern to assure consumer protection require that the circumstances of the present case be classified under Article 13 et seq. of the Brussels Convention.

28. Certainly, it is the aim of those provisions to 'protect the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract, [who] must not therefore be discouraged from suing by being compelled to bring his action before the courts in the Contracting State in which the other party to the contract is domiciled'. [9]

29. However, as counsel for Janus pointed out at the hearing, the aim is indeed to protect the consumer, and not to facilitate his enrichment. It justifiably seeks to remove the difficulties which a consumer in a dispute over an onerous contract for the supply of goods or services might encounter if he is obliged to sue in another State. The need to remove such difficulties is far from obvious, however, where a person receiving notification of a prize in respect of which he has incurred no outlay must bring proceedings in another State to pursue his claim.

30. I am therefore of the view that no contract falling within Article 13 et seq. of the Brussels Convention was concluded and that jurisdiction cannot be founded on those provisions.

Article 5(1)

31. Ms Engler submits that a voluntary unilateral obligation of the kind alleged, which can be enforced under Austrian law, is contractual in nature. Janus however contends that an obligation arising *ex lege* in the absence of concordant expressions of intention by both parties cannot fall within the concept of a contract, and that the invitation to place an order for goods cannot be relevant if no order was in fact placed. The Commission discerns in the facts disclosed no relationship of a contractual nature between Janus and Ms Engler and no legal basis for such a relationship.

9 — Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, at paragraph 18 of the judgment.

32. In my view, it is not possible to proceed, with regard to Article 5(1) of the Brussels Convention, by analogy with the reasoning followed by the Court in *Gabriel* with regard to Article 13(3).

33. For the same reasons as I have set out above in paragraphs 24 to 26, it is impossible to identify any contract, comparable to the order for goods in *Gabriel*, to which the prize notification is indissociably linked. Whilst Article 5(1) does not require a contract to have been concluded, there must still be an identifiable obligation with an identifiable place of performance, since otherwise the very basis for allocating jurisdiction falls away, [10] and no obligation can arise in respect of an order which has not been placed.

34. That is not however to say that the circumstances in Ms Engler's case cannot involve any obligation at all. The prize notification itself could be regarded as giving rise to a contractual obligation.

35. Paragraph 5j of the Austrian Consumer Protection Law may be relied on when an undertaking sends a prize notification or similar communication to a specific consumer, giving the impression that the consumer has won a particular prize, in which case that prize must be awarded. The question is thus whether in those circumstances the relationship between the undertaking and the consumer is of a contractual nature for the purposes of the Convention.

36. It is settled law that the expression 'matters relating to a contract' in Article 5 (1) of the Brussels Convention is to be interpreted independently, having regard primarily to the objectives and general scheme of the Convention; it cannot be taken as a reference to the national law of one or other of the Contracting States concerned. [11]

37. That approach does not in my view preclude any reference to the basic principles of contract law common to the various legal systems of the Contracting States. It is intended rather to construct a definition of contractual matters on the basis of those principles, to the exclusion of any reference to individual national concepts — such as, for example, the doctrine of consideration in English law.

10 — See Case C-334/00 *Tacconi* [2002] ECR I-7357, at paragraph 22 of the judgment.

11 — See, for example, Case C-265/02 *Frahuil*, judgment of 5 February 2004, at paragraph 22, and the case-law cited there.

38. In interpreting Article 5(1), the Court has not considered that the scope of the provision is to be defined narrowly. It extends to 'close links of the same kind as those which are created between the parties to a contract', including the relationship between an association and its members. [12] Such an approach appears to reflect the intention implied by the wording used in the provision's various language versions, which is appreciably broader than that of Article 13.

39. Clearly, however, there must be limits to what can be considered contractual, and the most important criterion applied by the Court is that 'matters relating to a contract' cannot cover a situation in which there is no obligation freely assumed by one party towards another. [13] In other words, contractual matters involve voluntary binding obligations.

40. Bearing those two orientations in mind, I find considerable force in the view that the proceedings in the present case arise out of a relationship which is broadly contractual in nature.

41. First, an announcement by one party that he will provide a specified item or advantage, or pay a specified sum of money, to another — which is the message conveyed by the type of communication referred to in Paragraph 5j of the Austrian law — is capable of forming a voluntary binding obligation, although the actual outcome will depend on the specific circumstances and on the legal rules against which they are assessed. In all of the Contracting States' legal systems, at least some types of unilateral undertaking to perform a definite act for the benefit of another may be enforceable against the promisor, provided that certain conditions specific to each system are met, a common requirement being that the undertaking should be in writing. [14]

42. Second, such an undertaking is voluntary and any ensuing obligation is not itself imposed by law. It appears from the explanatory memorandum to the amendment which introduced Paragraph 5j into the Consumer Protection Law, as set out in the order for reference, that the intention was to remove the civil law barriers to enforcement of promises (*'Zusagen'*) of the kind in question — which might otherwise have been unenforceable as betting or gaming

12 — Case 34/82 *Peters* [1983] ECR 987, in particular at paragraph 13 of the judgment.

13 — Case C-26/91 *Handte* [1992] ECR I-3967, at paragraph 15 of the judgment, Case C-51/97 *Réunion Européenne* [1998] ECR I-6511, at paragraph 17, *Tacconi*, cited in note 1011, at paragraph 24.

14 — See generally James Gordley (ed.), *The enforceability of promises in European contract law* (2001), Cambridge.

transactions. Thus, the obligation is considered to arise from the will of the person obliged; the statutory provision does not create it but merely allows its enforcement.

43. To express that point more generally, the law may regard certain obligations as unenforceable; if a change in the law removes the impediment to enforceability, that does not change the fundamental nature of the obligation.

44. In any legal system the question whether a voluntary undertaking gives rise to a contractual obligation will fall to be decided by the law of contract. And jurisdiction over a dispute as to the existence of a contractual obligation is to be determined in accordance with Article 5(1). [15]

45. Third, even if Paragraph 5j itself makes no explicit requirement of reciprocity, the mere fact that the prize must be claimed — unless it is sent spontaneously, in which case there will be no dispute — means that there will always be acceptance of whatever promise or undertaking has been made, and thus a bilateral relationship of the kind which is widely regarded as a central feature of a contract.

46. It also seems likely that the sender of a prize notification within the meaning of that provision will in fact usually or always require the addressee, by claiming the prize, to accept certain conditions to which its award is subject. In the present case, Ms Engler had to certify that she had read and agreed to the 'terms of payment and participation'. Whatever such terms may be, the need to agree to them appears to imply a relationship of a broadly contractual nature.

47. Fourth, obligations of the kind actionable under Paragraph 5j appear to be 'freely assumed by one party towards another'. The communications in question are sent of the sender's own volition to individual addressees determined by means freely chosen by the sender. The sender cannot be unaware that they are likely to create the impression that he will award a prize to the addressee. If he sends them to addressees in Austria, he should also be aware that in that country they may entail an obligation to award the prize announced.

15 — See Case 38/81 *Effer* [1982] ECR 825, in particular at paragraph 7 of the judgment.

48. It is true, as the Commission points out, that examination of the 'small print' may reveal that the sender does not intend actually to award the prize announced, at least to the particular addressee or unless certain further conditions — such as success in a lottery yet to be held — are fulfilled, in which case Paragraph 5j will override that lack of intention. However, the issue of the sender's intention thus expressed is itself, in such a context, a contractual matter. The small print can only be examined in the context of a dispute relating to some kind of contractual relationship, or to the existence of such a relationship.

49. I am thus of the view that the relationship between Janus and Ms Engler, or between the sender and addressee of any communication of the kind defined in Paragraph 5j in the Austrian Consumer Protection Law, is sufficiently contractual in nature for a dispute concerning the alleged obligation to pay the prize announced to be regarded as 'relating to a contract' within the meaning of Article 5(1) of the Brussels Convention.

50. Such an approach seems fully in line with the Court's case-law in the field. Not only does it accord with *Peters* [16] in acknowledging that 'matters relating to a contract' should not be defined restrictively, but it adheres to the requirement, emphasised in particular in *Handte* [17] and *Tacconi*, [18] that there must be an obligation 'freely assumed by one party towards another' — even if, as in the present situation, the law defines the contours of that obligation in a way which may not be freely altered by the party assuming it.

51. My conclusion in relation to Article 5(1) is sufficient to resolve the issue of jurisdiction which underlies the main proceedings. It may none the less be helpful to consider the third possibility raised by the national court: Article 5(3) of the Convention.

Article 5(3)

52. Ms Engler cites the explanatory memorandum to the amendment introducing Paragraph 5j into the Consumer Protection Law, stressing those parts which categorise the communications in question as unfair competitive practices, misleading to consumers. Janus however emphasises that some loss or harm must be alleged in order to claim

16 — Cited in note 12.

17 — Cited in note 13.

18 — Cited in note 10.

damages in tort, delict or quasi-delict, and here there is none. The Commission reasons that the prize notification was clearly misleading or fraudulent in intent and can therefore form the basis of a claim for damages in tort, delict or quasi-delict; moreover, at first instance Ms Engler asked that, in the alternative, her action should be classified thus.

53. As with Article 5(1), 'matters relating to tort, delict or quasi-delict' in Article 5(3) are to be interpreted independently in the light of the objectives and general scheme of the Convention. They have been held to cover all actions which seek to establish the liability of a defendant and are not related to a contract within the meaning of Article 5(1). [19]

54. At first sight, therefore, if the action were not to fall within Article 5(1), it must fall within Article 5(3).

55. Yet I am not convinced, in general, that such a simple binary classification is correct. Not only would it appear to reduce the scope of the general rule laid down in Article 2 to that of a minor residual provision, [20] but there are clearly categories of actions for liability which fall within neither Article 5(1) nor Article 5(3). For example, Article 5(2) covers actions seeking to establish liability to maintain, inter alia, a parent but even in its absence it is difficult to see how such liability could have been regarded as falling within either Article 5(1) or Article 5(3). It would be unwise to assume that there are no other such categories which are not specifically identified in the Convention.

56. However, although it seems too sweeping to state that Article 5(3) covers all actions which seek to establish liability and are not covered by Article 5(1), and although there are undoubtedly situations where that does not hold true, there does not appear to be any reason in the present case to consider that the proceedings in issue might fall outside the combined scope of both provisions.

19 — See, for example, Case C-167/00 *Henkel* [2002] ECR I-8111, at paragraphs 35 and 36 of the judgment, and the case-law cited there.

20 — Contrary to other consistent case-law; see, for a very recent example, Case C-168/02 *Kronhofer and Others*, judgment of 10 June 2004, at paragraph 12 et seq.

57. But even in those circumstances it is not enough simply to ask whether the proceedings relate to a contract. The category of tort, delict or quasi-delict is not merely negative or residual, but has a positive content. Particularly in cases which do not fall unequivocally within one category, it is helpful to examine both. [21]

58. Whilst any attempt to provide a comprehensive definition of the concept of 'tort, delict or quasi-delict' based on the laws of the Contracting States would be problematic, [22] it is possible to identify certain generally recurring features.

59. First, one usual element in a tortious, delictual or quasi-delictual act is that it is in breach of a legal rule.

60. That element does seem likely to be present in many actions under Paragraph 5j of the Austrian Consumer Protection Law. Indeed, the explanatory memorandum to the amendment introducing the provision specifically states that, in most cases, the communications in question infringe the 1984 Law on Unfair Competition. However, there appears to be nothing in Paragraph 5j which makes a claim conditional on establishing such an infringement — or fraudulent intent or any other specifically unlawful conduct.

61. Second, a claim in tort, delict or quasi-delict generally, perhaps always, requires at least an allegation of harm or damage suffered [23] — reflected in the expression 'harmful event' in Article 5(3) of the Convention.

62. It is true that the recipient of a bogus prize notification may be able to allege some harm suffered. He may have been lured into an unnecessary or disadvantageous purchase by the ostensible promise of a prize, or have entered into other commitments or incurred other expenditure in the expectation of receiving it. Yet a recipient fully aware of his rights under the Austrian legislation may suffer no harm but rather experience great

21 — See for example *Henkel*, cited in note 19, at paragraph 41 et seq.

22 — See Advocate General Warner's Opinion in Case 814/79 *Rüffer* [1980] ECR 3807, at pp. 3834 and 3835; Advocate General Darmon's Opinion in Case 189/87 *Kalfelis* [1988] ECR I-5565, at paragraphs 20 and 21; and Advocate General Gulmann's Opinion in Case C-261/90 *Reichert and Kockler* [1992] ECR I-2149, at pp. 2168 and 2169. See also Christian von Bar, *The Common European Law of Torts* (1998), pp. 1 to 5; and Walter van Gerven, Jeremy Lever and Pierre Larouche, *Tort Law* (2000) (Common Law of Europe Casebooks Series), pp. 1 to 18.

23 — Or likely to be suffered. However, we may for present purposes ignore proceedings to prevent the occurrence of future harm. Ms Engler's action is not of that type, which moreover does not seem to be contemplated by Paragraph 5j of the Consumer Protection Law.

delight at the prospect of a sudden windfall at no great cost to himself — and there is in any event again no indication that any proof or allegation of harm is necessary for his claim to succeed.

63. In the present case, neither the order for reference nor Ms Engler's observations mention any alleged harm suffered by her. Nor would I view as significant the fact that at first instance she asked, in the alternative (*'hilfsweise'*), for her action to be classified as a claim in tort, delict or quasi-delict. That was only in response to Janus's argument that the Brussels Convention did not apply. In her initial application, she had quite clearly stated that her claim was 'of a contractual nature' (*'vertraglicher Natur'*) and throughout her pleadings before the national courts she seems to have insisted that there was a consumer contract and stressed the existence of a promise to pay but not to have alleged any specific harm.

64. Third, it is commonly the case that any amount awarded by a court to a claimant in tort, delict or quasi-delict takes account, primarily, of the nature and degree of harm suffered and perhaps, secondarily, of the seriousness of the (unlawful) act giving rise to the claim. There is generally a central element of compensation, though the final award may in some cases be increased to a dissuasive, or reduced to a symbolic, level.

65. None of that seems possible in a claim under Paragraph 5j of the Austrian law. Ms Engler was led to understand that she would receive ATS 455 000, and that is what she appears to be entitled to receive under the provision. Had she been led to understand ten times, or a tenth of, that sum, then she would have been entitled to that, regardless of whether she had suffered any greater or lesser degree of harm. The award made will in all cases be a sum — or other benefit — which has been specified in advance by the defendant. Whilst the aim of the provision may be to dissuade traders from a particular tactic, the method used seems to be simply to hold them to their 'promises' — an idea much more akin to the field of contract.

66. In the light of those considerations, I am of the view that, although elements of tort, delict or quasi-delict may be present in proceedings of the kind in issue, any such elements are distinctly outweighed by others which link the proceedings to a relationship of a contractual nature.

Conclusion

67. I am accordingly of the opinion that the Court should give the following answer to the question raised by the Oberlandesgericht:

The jurisdiction rules set out in the Brussels Convention are to be construed as meaning that judicial proceedings relate to a contract for the purposes of Article 5(1) thereof when a consumer seeks an order, in the Contracting State in which he is domiciled and pursuant to that State's legislation, requiring a mail-order company established in another Contracting State to award him a prize in circumstances where that company had sent to that consumer in person a letter liable to create the impression

— that such a prize would be awarded to him and

— that the award did not depend on an order for and delivery of goods from the undertaking promising the prize.

The fact that a catalogue and a voucher for a trial offer without obligation are sent to the consumer with the prize notification is of no relevance in that regard if no order is in fact placed.