

Case C-368/95

Vereinigte Familiapress Zeitungsverlags-und vertriebs GmbH
v
Heinrich Bauer Verlag

(Reference for a preliminary ruling
from the Handelsgericht Wien)

(Measure having equivalent effect — Distribution of periodicals —
Prize competitions — National prohibition)

| | |
|--|----------|
| Opinion of Advocate General Tesauro delivered on 13 March 1997 | I - 3692 |
| Judgment of the Court, 26 June 1997 | I - 3709 |

Summary of the Judgment

1. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Definition — Prohibition on the sale of periodicals containing prize competitions — Treatment as national provisions regulating selling arrangements in a non-discriminatory manner — Precluded — Applicability of Article 30 of the Treaty*
(EC Treaty, Art. 30)
2. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Prohibition on the sale of periodicals containing prize competitions — Restriction justified in order to maintain press diversity — Permissibility conditional on respect for fundamental rights — Reconciliation with freedom of expression — Limits*
(EC Treaty, Art. 30)

3. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Prohibition on the sale of periodicals containing prize competitions — Justification — Maintaining press diversity — Conditions — To be assessed by the national court*
(EC Treaty, Art. 30)

1. 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.
2. Where a Member State relies on overriding requirements, such as maintaining press diversity, under Article 30 of the Treaty in order to justify rules which are likely to obstruct the exercise of free movement of goods, such justification must also be interpreted in the light of the general principles of law and in particular of fundamental rights. Those rights include freedom of expression, as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. A prohibition on selling publications which offer the chance to take part in prize competitions may, in that context, detract from freedom of expression. Article 10 does, however, permit derogations from that freedom for the purposes of maintaining press diversity, in so far as they are prescribed by law and necessary in a democratic society.

That is not the case where the legislation of a Member State prohibits the sale on its territory of periodicals containing games or competitions for prizes. Even though such legislation is directed against a method of sales promotion, it bears on the actual content of the products, in so far as the competitions in question form an integral part of the magazine in which they appear, and cannot be concerned with a selling arrangement. Moreover, since it requires traders established in other Member States to alter the contents of the periodical, the prohibition at issue impairs access of the product concerned to the market of the Member State of importation and consequently hinders free movement of goods. It therefore constitutes in principle a measure having equivalent effect within the meaning of Article 30 of the Treaty.

3. Article 30 of the EC Treaty is to be interpreted as not precluding application of legislation of a Member State the effect of which is to prohibit the distribution on its territory by an undertaking established in another Member State of a periodical produced in that latter State containing prize puzzles or competitions which are lawfully organized in that State, provided that that prohibition is proportionate to

maintenance of press diversity and that that objective cannot be achieved by less restrictive means.

pect of winning is liable to bring about a shift in demand.

This assumes, *inter alia*, that the newspapers offering the chance of winning a prize in games, puzzles or competitions are in competition with small newspaper publishers who are deemed to be unable to offer comparable prizes and the pros-

Furthermore, the national prohibition must not constitute an obstacle to the marketing of newspapers which, albeit containing prize games, puzzles or competitions, do not give readers residing in the Member State concerned the opportunity to win a prize. It is for the national court to determine whether those conditions are satisfied on the basis of a study of the national press market concerned.