Court of Justice of the European Communities: Ruling on the Bacardi Case

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On 13 July, the Court of Justice of the European Communities delivered its judgment in the two cases concerning the French law which bans indirect advertising of alcoholic beverages (Loi Evin).

The Court follows the Opinion of its Advocate General, dated 11 March 2004 (see IRIS 2004-4: 3 also for the content of the French provisions). Advocate General Tizzano decided in favour of the compatibility with Community law of the French legislation on tobacco and alcohol addiction ("the Loi Evin ") and of the code of conduct drawn up by the Conseil Supérieur de l'Audiovisuel (the French audiovisual regulatory body CSA).

The reasoning of the Court is similar to that of the Advocate General. First, the Court excludes the application, in the specific case, of the "Television without Frontiers" Directive. According to the Court, indirect television advertising for alcoholic beverages resulting from hoardings visible during the retransmission of sporting events does not constitute a separate announcement broadcast to promote goods or services within the meaning of the Directive.

As to the Treaty rules on the freedom to provide services (Art. 49 EC), the Court finds that the French television advertising rules constitute a restriction on the freedom to provide services: this is because, first, the owners of the advertising hoardings must refuse, as a preventive measure, any advertising for alcoholic beverages if the sporting event is likely to be retransmitted in France, and, second, because the rules hinder the provision of broadcasting services for television programmes. French broadcasters must refuse to retransmit all sporting events during the course of which hoardings bearing advertising for alcoholic beverages marketed in France are visible. Furthermore, the organisers of sporting events taking place outside France cannot sell the retransmission rights to French broadcasters where the broadcast of television programmes devoted to such events is likely to contain indirect television advertising for alcoholic beverages. Moreover, although it is true that it is technically possible to mask the images in order selectively to conceal the hoardings displaying advertising for alcoholic beverages, the use of such techniques involves substantial extra costs for the French broadcasters.

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Finally, the Court considers whether the prohibition may be justified according to the derogations to freedom to provide services provided in the Treaty. The Court states that the French television advertising rules seek to protect public health (Art. 46 EC) and that they are appropriate to ensure that that objective is achieved. The rules restrict the situations in which advertising hoardings for alcoholic beverages can be seen on television and, as a result, are likely to restrict the broadcasting of such advertisements, thereby reducing the occasions on which television viewers might be encouraged to consume alcoholic beverages.

The Court, therefore, holds that the principle of the freedom to provide services laid down in the EC Treaty does not preclude a ban such as that imposed by the French rules on indirect television advertising for alcoholic beverages.

Case C-262/02 Commission of the European Communities v. French Republic and Case C-429/02 Bacardi France SAS v. Télévision Française 1 SA (TF1), Groupe Jean-Claude Darmon SA, Girosport SARL

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