Court of Justice of the EC: Interpretation of advertising and sponsorship rules of the 'Television without Frontiers' Directive

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Roberto Mastroianni
RTS Radio Télévision Suisse, Geneva

In a judgement of 12 December 1996, the Court of Justice of the EC interpreted two provisions of the "Television without Frontiers" Directive. The intervention of the Court was requested by the Regional Administrative Tribunal in Rome (Tribunale Amministrativo Regionale) in the course of a proceeding between some national and local private broadcasters, on one side, and the Ministry of Post and Telecommunications, on the other side. The plaintiffs sought the anullment of the Decree No 581/93 adopted by the Government in 1993, concerning television advertising and sponsorship. According to the broadcasters, the Decree did not respect the provisions of the EC directive (Artt. 17 and 18) insofar as, 1) certain forms of television advertising other than the regular advertisement spots (the display of products, the oral or visual presentation of goods, services, the name, the trademark or the activity of a producer of goods made by the broadcaster, in Italy referred to as telepromozioni), were subjected to the same rules limiting advertising time as the regular advertisment spots; 2) the showing or quoting of the sponsor's name or logo was limited to the beginning and the end of the programme: the Decree prohibited any reference to the sponsor during the course of the programme.

As for the first question, one should note that the telepromozione is a form of advertising used by both private and public broascasters in Italy. It is inserted during the course of the programmes, and normally consists in direct presentation of products by the presenter of the programme.

Article 17 contains requirements for sponsored television programmes.

Par. 1 of Article 18 stipulates that the amount of advertising shall not exceed 15% of the daily transmission time, but this percentage may be increased to 20% in the case of special forms of advertisement, such as direct offers to the public for the sale, purchase, or rental of products or for the provision of services.

Par. 2 of Article 18 stipulates that the amount of spot advertising within a give one-hour period shall not exceed 20%.

The Italian Tribunal asked the Court of Justice of the EC for a preliminary ruling concerning the interpretation of Artt. 17 and 18 of the Directive. The Court replied

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that: 1) for the purposes of Art. 18 of the Directive, telepromozione is to be considered a form of advertising such as direct offers to the public. Consequently, if a broadcaster uses this practice, the amount of advertising can be increased from 15 to 20% of the daily transmission time (Art. 18, par. 1).

On the basis of this interpretation by the Court of Justice of the EC, it can be argued that the practice of telepromozione does not have to respect any hourly limit, since par. 2 of Art. 18 applies this limit only to spot advertising. One wonders whether the Court has taken into account this important consequence of its ruling. 2) In regard to the mentioning of the sponsor, the Court held that Art. 17 does not limit the number of references in programmes to sponsors which appear at the beginning and/or at the end of a sponsored programme. Further references to sponsors during the course of the programma are also not prohibited.

At the same time the Court recalled that, according to Artt. 3 and 19 of the directive, Member States may include in their domestic legislation stricter rules than those laid down in Articles 17 and 18.

Judgment of the Court of Justice of 12 December 1996, joined cases C-320/94, C-328/94, C-329/94, C-337/94, C-338/94 and C-330/94, R.T.I. and others v. Ministero delle Poste e Telecomunicazioni.

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