



JUDGMENT OF THE COURT

16 June 1995

(Admissibility – Free movement of services – Council Directive 89/552/EEC –
Transmitting State principle – Televised advertising targeting children –
Broadcasters/Advertisers – Circumvention – Directed advertising – Council
Directive 84/450/EEC)

In Joined Cases E-8/94 and E-9/94,

REFERENCE to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice* by the Markedsrådet (the Market Council), Oslo (Norway) for an advisory opinion in the two proceedings pending before it between

Forbrukerombudet

and

- 1) **Mattel Scandinavia A/S,**
- 2) **Lego Norge A/S,**

on the interpretation of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as well as Articles 11, 13 and 36 of the EEA Agreement.

* Language of the request for an advisory opinion: Norwegian.

THE COURT,

composed of: Bjørn Haug, President, Thór Vilhjálmsson, Kurt Herndl, Sven Norberg (Rapporteur) and Gustav Bygglin, Judges,

Registrar: Karin Hökborg,

after considering the written observations submitted on behalf of:

- Forbrukerombudet Kjersti Graver;
- Mattel Scandinavia A/S, represented by Siri Teigum, Advokat of Oslo;
- Lego Norge A/S, represented by Hans Skirstad, Advokat of Oslo;
- the Government of Norway, represented by Didrik Tønseth, Attorney at the Office of the Attorney General for Civil Affairs, acting as Agent; the Government of Sweden, represented by Ingrid Larén Marklund, Assistant Under-Secretary of the Ministry for Foreign Affairs, acting as Agent;
- the Government of Greece, represented by Joanna Kiki, a member of the Legal Service of the Ministry of Foreign Affairs, and Sophia Hiniadou, counsellor of the Minister for Press and Mass Media, acting as Agents;
- the EFTA Surveillance Authority, represented by Håkan Berglin, Director of its Legal Service, acting as Agent;
- the EC Commission, represented by Berend Jan Drijber, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Forbrukerombudet, Mattel Scandinavia A/S and Lego Norge A/S, both represented by Siri Teigum, the Government of Norway, the Government of Sweden, represented by Lotty Nordling, Under-Secretary for Legal Affairs of the Ministry for Foreign Affairs, Trade Department, acting as Agent, the Government of Greece, represented by Sophia Hiniadou, the EFTA Surveillance Authority, and the EC Commission at the hearing on 8 May 1995,
gives the following

Judgment

- 1 By order of 28 October and 28 December 1994, received at the Court Registry on 28 December 1994 (by telefax) and 3 January 1995 (by original letter), the Markedsrådet (the Market Council), Oslo made a reference to the EFTA Court for an advisory opinion in two cases brought before it by the Forbrukerombudet (the Norwegian Consumer Ombudsman) against Mattel Norge A/S (Mattel Norway) and Mattel Scandinavia A/S (Mattel), and Lego Norge A/S (Lego), respectively. The factual circumstances in the case are as follows.
- 2 The broadcaster TV 3 is set up with a parent company in the United Kingdom and subsidiary companies in Denmark, Sweden and Norway. Each of these companies broadcasts from the United Kingdom via satellite television programmes specifically directed at the respective country. In the autumn of 1993, commercials for Lego and Mattel products were broadcast on TV 3 Norway. The commercials for Mattel showed two girls playing with a Barbie Motorhome and in the background songs could be heard. The commercials for Lego showed the building of a "Lego town" and a "magic dragon" in the surrounding mountains. The characters were animated and speaking, giving the impression of being at play.
- 3 Mattel is part of a multinational group producing and marketing toys. The company has a sales office in Norway responsible for the distribution of its products in that country. The marketing is based on a common strategy for the whole group and commercials for television are normally developed in the USA. The only adaptation made for the different national markets is dubbing into the various languages. Lego is part of the Lego group, based in Denmark. The group pursues its activities all over the world and markets its products in 135 countries. The commercials for the "Lego town" and the "magic dragon" are part of a larger international marketing strategy for the Lego group. Commercials are normally developed in the headquarters in Denmark and dubbing is thereafter, if necessary, carried out by the various national sales offices.

- 4 In letters dated 25 November 1993, the Forbrukerombudet requested Lego and Mattel Norway to refrain from broadcasting the commercials mentioned above in the future. According to the Forbrukerombudet, the commercials, which were contained in broadcasts directed at Norway, specifically targeted children and were therefore contrary to Section 1 of Markedsføringsloven (the Marketing Act, no. 47 of 16 June 1972) read in conjunction with Section 3-1, second paragraph, of Kringkastingsloven (the Broadcasting Act, no. 127 of 4 December 1992).
- 5 Section 1, first paragraph, of the Marketing Act provides that in the conduct of business no act may be performed which runs counter to good business practice in the relationship between entrepreneurs, or which is unreasonable in relation to consumers.
- 6 Section 3-1, second paragraph, of the Broadcasting Act provides that advertisements may not be broadcast in connection with children's programmes, nor may advertisements target children specifically.
- 7 Lego and Mattel Norway expressed the opinion that international agreements concluded by Norway prevented the Forbrukerombudet from holding the advertiser responsible under the Marketing Act, as the commercials were distributed via TV 3.
- 8 In summaries dated 1 November 1994 the Forbrukerombudet brought the cases before the Markedsrådet, which decided to request an advisory opinion from the EFTA Court before deciding on the cases. By orders of 28 October and 28 December 1994, the Markedsrådet requested the EFTA Court to give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement) on the following questions:
 - "– *Is Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, to be interpreted as being incompatible with the application by the receiving State of national provisions according to which an advertiser may be prohibited from making use of a commercial which specifically targets children, in a transmission which is specifically directed at Norway from another EEA State?*
 - *Is Article 36 of the EEA Agreement on the freedom to provide services to be interpreted as being incompatible with the application by the receiving State of national provisions according to which an advertiser may be prohibited from making use of a commercial which specifically targets*

children, in a transmission which is specifically directed at Norway from another EEA State?

– *Is the application of Section 1 of the Marketing Act, in conjunction with Section 3-1 of the Broadcasting Act, compatible with Articles 11 and 13 of the EEA Agreement concerning quantitative restrictions on imports?"*

- 9 On hearing the Preliminary Report of the Judge-Rapporteur, and after having given the parties an opportunity to express their views, the Court decided under Article 39 of the Rules of Procedure to join the two cases for the purposes of the oral procedure and the final judgment.
- 10 In her defence to the Markedsrådet dated 10 January 1995 the lawyer for Mattel Scandinavia A/S stated that the company Mattel Norge A/S did not exist and that she only represented Mattel Scandinavia A/S, a company registered in Denmark and operating in Norway through a sales office. The Markedsrådet was therefore asked by the Court under Article 96(4) of the Rules of Procedure for clarification of which were the parties in the case against Mattel. By letter dated 2 May 1995, the Markedsrådet confirmed that the company Mattel Norge A/S had been deleted from the Register of companies on 1 July 1994 and that the only parties in the case against Mattel were the Forbrukerombudet and Mattel Scandinavia A/S.
- 11 Reference is made to the Report for the Hearing, which is annexed hereto, for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

- 12 Under Article 34, second paragraph, of the Surveillance and Court Agreement "a court or tribunal" in an EFTA State may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give an advisory opinion.
- 13 It would seem that under Norwegian law the Markedsrådet is considered or treated as an administrative body rather than as a Court.
- 14 As held by the Court in *Restamark* (see Case E-1/94 Ravintoloitsijain Liiton Kustannus Oy Restamark, Judgment of 16 December 1994, paragraph 24), the expression "court or tribunal" in Article 34, second paragraph, of the Surveillance and Court Agreement, must be given its own interpretation, whereby it is not decisive how the body has been defined under national rules.

- 15 The Markedsrådet is a permanent body which has been entrusted by law to exercise its functions. Its jurisdiction is obligatory, and its composition is defined in the relevant Act. It must apply the law and is an independent body. Furthermore, its procedure is adversarial and similar to procedure in court in that, *inter alia*, there is normally both a written procedure and an oral hearing before a decision is made. Finally, its decisions are binding upon the parties before it. In this connection the Court also notes that none of the Parties before it has questioned whether it fulfils the requirements of being a court or tribunal in the sense of Article 34 of the Surveillance and Court Agreement.
- 16 In those circumstances, the Court finds that the request for an Advisory Opinion from the Markedsrådet is admissible.

The first question

- 17 By its first question the Markedsrådet essentially asks whether the provisions of Directive 89/552/EEC (the TV Directive) are to be interpreted as precluding an EEA State (*i.e.* a State which is a Contracting Party to the EEA Agreement) from applying to an advertiser a general prohibition, contained in its national law, against broadcast advertisements specifically targeting children in a case where the advertisement is contained in a television broadcast from another EEA State directed at the first State.
- 18 The Forbrukerombudet and the Governments of Norway, Sweden and Greece as well as the EFTA Surveillance Authority have all argued that the TV Directive is to be interpreted as not preventing the receiving State from applying national provisions of the type at issue. Mattel and Lego as well as the EC Commission have, on the other hand, argued that the Directive is to be interpreted as not permitting the receiving State to apply such national provisions.

Directive 89/552/EEC

- 19 Article 36(1) of the EEA Agreement, on the freedom to provide services, is in substance identical to Article 59, first paragraph, of the EC Treaty. Article 36(2) EEA states further that Annexes IX to XI contain provisions on the freedom to provide services. By Annex X, Audiovisual Services, to the EEA Agreement, Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities is integrated into the EEA Agreement.

- 20 The text of the Directive is to be read in accordance with Protocol 1 to the EEA Agreement, "On Horizontal Adaptations".
- 21 Furthermore, Annex X contains two specific adaptations to the provisions of the Directive, one of which concerns Article 6(1)(c) of the Directive regarding "European works". The other consists of an addition to Article 15 of the Directive and reads:
- "The EFTA States shall be free to compel cable companies operating on their territories to scramble or otherwise obscure spot advertisements for alcoholic beverages. This exception shall not have the effect of restricting the retransmission of parts of television programmes other than advertising spots for alcoholic beverages. The Contracting Parties will jointly review this exception in 1995."
- 22 As stated by the EC Court of Justice in *Leclerc-Siplec* (Case C-412/93 *Société d'Importation Édouard Leclerc-Siplec v TF1 Publicité SA and M6 Publicité SA*, Judgment of 9 February 1995, paragraph 28), the main purpose of Directive 89/552/EEC, which was adopted on the basis of Articles 57(2) and 66 of the EC Treaty, is to ensure freedom to provide television broadcasting services. This objective was apparently in the foreground when the Directive was adopted (cf. e.g. the third and the sixth to fifteenth recitals in the preamble).
- 23 As was also held by the EC Court of Justice in *Leclerc-Siplec* (paragraph 29), in order to ensure the freedom to provide television broadcasting services the Directive lays down minimum rules governing broadcasts emanating from and intended for reception within the Community and, in particular, those intended for reception in another Member State. By virtue of the integration of the Directive into the EEA Agreement the same now applies within the whole area of the EEA.
- 24 The Court also notes that the Directive establishes to that end an overriding principle of division of responsibilities among the Member States. This, which is often called "the transmitting State principle" when the Directive is referred to, is reflected, *inter alia*, in the twelfth, fourteenth, fifteenth and twenty-seventh recitals in the preamble.
- 25 Furthermore, general provisions to that end are laid down in Chapter II, "General provisions", of the Directive. Thus, Member States from which broadcasts are transmitted are to ensure that television broadcasters under their jurisdiction comply with the provisions of the Directive (Article 3(2)). These Member States are further to ensure that all television broadcasts transmitted by broadcasters under their jurisdiction or by other broadcasters who make use of a frequency or a satellite capacity granted by, or a satellite up-link situated in, that Member State,

comply with the law applicable to broadcasts intended for the public in that Member State (Article 2(1)).

- 26 Member States receiving broadcasts are, moreover, to ensure freedom of reception and not to restrict retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by the Directive. Receiving Member States may only provisionally suspend broadcasts in certain specified cases (Article 2(2)).
- 27 Finally, under Article 3(1), as regards television broadcasters under their jurisdiction, Member States remain free to lay down more detailed or stricter rules in areas covered by the Directive.
- 28 In the opinion of the Court it follows from the foregoing that the main responsibility for regulating the activities of television broadcasters and ensuring their compliance with the relevant legal framework rests with the transmitting State, *i.e.* normally the State under whose jurisdiction the broadcasters are.
- 29 The receiving States, on the other hand, must mainly provide for freedom of reception and refrain from restricting retransmission on their territory of television broadcasts emanating in other Member States. While these States, when acting in their capacity of a transmitting State, remain free to lay down more detailed or stricter rules as regards television broadcasters under their jurisdiction, their room for interfering with retransmissions of television broadcasts from other Member States is limited under the terms of the Directive, with regard to the fields coordinated by it, to the cases specified in Article 2(2). Under that provision action may be taken in special circumstances against broadcasts coming from another Member State which manifestly, seriously and gravely infringe Article 22. In addition, an EFTA State may under the EEA Agreement, in accordance with the specific adaptation to Article 15 of the Directive (see paragraph 21 above), compel cable companies operating on their territories to scramble or otherwise obscure spot advertisements for alcoholic beverages.
- 30 Under Article 22, which is the sole Article in Chapter V of the Directive, "Protection of minors", Member States are obliged to take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. The provision extends to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. Member States must also ensure that broadcasts do not contain any incitement to hatred on

grounds of race, sex, religion or nationality.

The scope of coordination of national legislation under the Directive

- 31 The Court will now examine the scope of coordination of national legislation laid down by the Directive, which is of relevance in this case.
- 32 The twenty-seventh recital in the preamble states:
- "Whereas in order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules in certain circumstances to lay down different conditions for television broadcasters under their jurisdiction;"
- 33 The twenty-eighth to thirtieth and the thirty-second recitals of the preamble give various further reasons for prohibiting or limiting certain types of television advertising, such as for tobacco products.
- 34 Chapter IV of the Directive, "Television advertising and sponsorship", in twelve Articles (Articles 10 to 21) lays down both more general and also specific provisions on how advertising via television broadcasts should be achieved.
- 35 In examining how the Directive thus regulates television advertising, it is possible to distinguish between, on the one hand, rules regarding when, where and how advertisements may be placed in relation to programmes (e.g. Articles 10, 11, 18 to 20), and, on the other, rules regarding the content and presentation of advertisements (Articles 12 to 16).
- 36 With regard to the latter category, Article 12 requires that television advertising complies with certain general moral and ethical standards. Thus it must not, for instance, prejudice respect for human dignity or include any discrimination on grounds of race, sex or nationality, or be offensive to religious or political beliefs, or encourage behaviour prejudicial to health or safety or the protection of the environment.
- 37 Article 13 contains a general and strict prohibition on all forms of television advertising for cigarettes and other tobacco products. Under Article 14, television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls is prohibited. As to television advertising for alcoholic beverages, Article 15 lays

down a number of criteria with which it must comply, among which are that it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages.

38 Article 16 provides that television advertising must not cause moral or physical detriment to minors and therefore must comply with the following criteria for their protection:

- "(a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods of services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations."

39 Under Article 21 Member States must, within the framework of their laws, ensure that in the case of television broadcasts that do not comply with the provisions of this chapter, appropriate measures are applied to secure compliance with these provisions.

40 From this it is clear that, in line with the twenty-seventh recital of the preamble (see paragraph 32 above), the Directive lays down minimum rules and standards governing television advertising. As found by the EC Court of Justice in *Leclerc-Siplec*, cited above, paragraph 37 *et seq*, Member States may, however, lay down stricter rules under Article 3(1) in relation to broadcasters under their jurisdiction. At the oral hearing the Forbrukerombudet informed the Court that the United Kingdom, under whose jurisdiction TV 3 is, had made use of this possibility. The Independent Television Commission, the regulatory body in the United Kingdom, has set standards for advertising which include more stringent rules on the protection of children than those in Directive 89/552/EEC.

41 The scope of coordination of the rules regarding advertising aimed at children (Article 16) is furthermore such that under the Directive a receiving State is limited to action under Article 2(2) of the Directive, as concerns possible restrictions on advertisements in broadcasts emanating from another EEA State.

Broadcasters/Advertisers

42 The parties in the proceedings before the Court, who argued that the TV Directive should be interpreted as not preventing the receiving State from applying national provisions of the kind contained in the Norwegian Broadcasting Act, submitted

that the rules of the Directive only cover the behaviour of broadcasters but not that of advertisers.

- 43 The analysis above of the content of the Directive hardly supports such an assertion. On the contrary, it is most unlikely that the Directive, without any specific indication, were to contain such elaborate rules on advertising if these only concerned broadcasters but not advertisers, for whom the Member States would thus have been free to apply different rules. Such an arrangement would be in conflict with some of the main principles of the Directive, since allowing a receiving State the right freely to regulate advertisers' activities in relation to television advertising would mean that a prohibition on the advertiser (as the recipient of the television service in practice) could amount to an interruption of the delivery of the broadcasting service provided by the broadcaster, something which under the Directive is only allowed in the circumstances specified in Article 2(2). The right to broadcast, and the corresponding obligation on receiving States to ensure freedom of reception, as embodied in the Directive, would be seriously threatened if compliance with the minimum rules laid down in the Directive did not ensure access to the EEA market for the economic operators abiding by those rules. The receiving State cannot escape this obligation by taking action only against the advertiser and not against the broadcaster.
- 44 Furthermore, as was also pointed out by the Commission, the activities of a broadcaster which are related to the transmission of programmes consist not only of the transmission of television programmes but also of providing advertisers established in the Member State where the programmes are received with the possibility of broadcasting advertisements prepared especially for the public in that Member State (cf. e.g. Case 352/85, *Bond van Adverteerders* [1988] ECR 2085, point 14, and Case C-288/89, *Collectieve Antennevoorziening Gouda* [1991] ECR 4007, point 17). Therefore, if a restriction is imposed upon an advertiser, this in practice also implies that a restriction is imposed upon the broadcaster as regards the opportunities to include certain advertisements in his programmes. This possibility for broadcasters to provide services is recognised by the TV Directive, and is of importance for the European broadcasting industry.
- 45 The argument that the Directive was only intended to lay down rules for broadcasters but not for advertisers, if accepted, would for these reasons risk depriving the Directive of a major part of its effect. It must therefore be rejected.

Circumvention

- 46 Among the arguments put forward in support of making a distinction between broadcasters and advertisers is the assertion that any other result would amount to,

or have the same effect as, circumvention of the rules in the case before the Court. While no assertion has been made that the broadcaster, *i.e.* the one who provided the services in question, acted in the present case in circumvention of the provisions of the Directive, it has been alleged that the advertisers, *i.e.* the recipients of those services, by advertising on TV 3 have acted in a way which is tantamount to a circumvention of the rules applicable to television broadcasters under Norwegian jurisdiction.

- 47 That argument cannot be accepted.
- 48 The provisions of a Directive integrated in the EEA Agreement, which is aimed at achieving freedom to provide television broadcasting services emanating from and intended for reception within the EEA and, in particular, intended for reception in another EEA State, may have as a consequence that advertisers avail themselves of the services of television broadcasters acting under a jurisdiction which submit them to the provisions of the Directive instead of procuring such services from broadcasters operating under a national jurisdiction with stricter rules. In this case Norwegian law contains a general prohibition which goes further than the rules of the United Kingdom, which, however, in their turn are also stricter than those of the Directive. Looked upon from a national perspective, this result might well be viewed as circumvention of national law. Seen in an EEA context it is, however, a logical and necessary consequence of the main principles of the Directive, *i.e.* the freedom to provide television broadcasting services, the coordination of national rules and administrative action as well as the transmitting State principle (see paragraphs 22 to 24 above).
- 49 It follows from the transmitting State principle, the corollary to which is the limitation on the possibility of restricting reception of transmissions, combined with the agreed level of protection of minors set by the Directive, that transfrontier transmissions fulfilling the criteria of the Directive must not be impeded. Action, based on different rules enacted by a receiving State, taken against an advertisement that fulfils the criteria of the transmitting State, and also those of the Directive, is therefore contrary to the regime established by the Directive.
- 50 The Court thus finds that the provisions on advertising in the Directive are intended to coordinate the rules on advertising without intending to make a distinction between different types of economic operators, such as broadcasters and advertisers, involved in these activities.

Advertising directed specifically at the receiving State only

- 51 Finally, it was asserted that advertisements in television broadcasts which are specifically aimed and directed at the receiving State only (so-called directed advertising) does not fall within the scope of the Directive.
- 52 Unlike the 1989 European Convention on Transfrontier Television, which to a great extent served as a model for the Directive, the latter does not contain any exemption for advertising directed specifically at a single party (cf. Article 16(1) of the Convention). Taking into account both the scope of the Directive (see for instance, the fourteenth and fifteenth recitals of the preamble) and Article 16(2) of the Convention, according to which the exemption in Article 16(1) does not apply where the Contracting Parties concerned have concluded bilateral or multilateral agreements in the area, the Court must conclude that advertising specifically aimed and directed at the receiving State only was not exempted from the scope of the fields coordinated by the Directive.
- 53 It must thus be concluded that advertising directed specifically at the receiving State only falls within the scope of the Directive.

Directive 84/450/EEC

- 54 Apart from the above conclusions regarding television advertising aimed at children, account must also be given to the seventeenth recital in the preamble to Directive 89/552/EEC, according to which the Directive, "being confined specifically to television broadcasting rules, is without prejudice to existing or future Community acts of harmonization, in particular to satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions and competition".
- 55 This clearly refers, *inter alia*, to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising, which Directive is also part of the EEA Agreement (Annex XIX). According to that Directive it is in the interest of the public in general, as well as that of consumers and all those who, in competition with one another, carry on a trade, business, craft or profession, in the common market, to harmonize national provisions against misleading advertising (the sixth recital in the preamble). For this purpose minimum and objective criteria for determining whether advertising is misleading should be established (the seventh recital). Article 2 contains definitions of the term misleading advertising, and further elements for the determination of whether advertising is misleading are contained in Article 3 of the Directive.

56 From this it must follow that Directive 89/552/EEC was not intended to preclude a State from taking action under Directive 84/450/EEC with regard to an advertisement that must be considered to be misleading under the terms of the latter Directive. In cases of transfrontier broadcasting a receiving State might also be better placed to assess whether a TV advertisement directed to an audience in that country may be misleading or not. It was not asserted that the advertisements in the present case were misleading. The Court nevertheless notes that, in considering whether an advertisement is misleading or not, higher standards would normally apply if the advertisement is specifically targeting children.

Conclusion

57 The answer to the first question raised by the Markedsrådet must therefore be that Articles 2(2) and 16 of Directive 89/552/EEC, as integrated into the EEA Agreement, must be interpreted as precluding a prohibition imposed on an advertiser, whereby he is prevented from showing an advertisement contained in a television programme of a broadcaster established in another EEA State, if this arises as a consequence of a general prohibition, laid down in national law, of advertisements which specifically target children.

58 However, in this connection the Court notes again that Directive 89/552/EEC was not intended as precluding a State from taking action under Directive 84/450/EEC with regard to an advertisement that must be considered to be misleading under the terms of the latter Directive.

The second and third questions

59 In those circumstances it is not necessary to answer the other questions referred from the Markedsrådet.

Costs

60 The costs incurred by the Norwegian, Swedish and Greek Governments, the EFTA Surveillance Authority and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Markedsrådet, by order of 28 October and 28 December 1994, hereby gives the following Advisory Opinion:

Articles 2 (2) and 16 of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative actions in Member States concerning the pursuit of television broadcasting activities, as integrated into the EEA Agreement, must be interpreted as precluding a prohibition imposed on an advertiser, whereby he is prevented from showing an advertisement contained in a television programme of a broadcaster established in another EEA State, if this arises as a consequence of a general prohibition, laid down in national law, of advertisements which specifically target children.

Bjørn Haug

Thór Vilhjálmsson

Kurt Herndl

Sven Norberg

Gustav Bygglin

Delivered in open court in Geneva on 16 June 1995.

Karin Hökberg
Registrar

Bjørn Haug
President