

## Case law

### Case Details

**National ID:** 22J/2010

**Member State:** Portugal

**Common Name:** Cabovisão vs. PT Comunicações

**Decision type:** Other

**Decision date:** 08/10/2010

**Court:** Second Division of the Ethics Panel of the Civil Institute for Self-Regulation in Commercial Communication (Lisbon) (ICAP)

**Subject:**

**Plaintiff:** Cabovisão

**Defendant:** PT Comunicações

**Keywords:** advertisement, material information, misleading advertising, misleading omissions, price information, promotional sales

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1.](#)

### Headnote

Distributing advertisements that offer a subscription to services at a promotional monthly rate without adequately indicating that the promotional price will only apply to subscribers for a limited period of time and will increase in the near future amounts to misleading advertising.

A failure to indicate that such services may also require additional equipment to be purchased or rented at additional expense beyond the promotional monthly rate constitutes a misleading omission.

It is still a misleading omission where the advertiser indicates that additional equipment is necessary but fails to indicate the cost of such equipment.

### Facts

The defendant is a major Portuguese telecommunications operator which ran a television, internet and radio advertisement campaign for its "MEO FIBRA" fibre-optic services.

Three of the defendant's televised advertisements included express statements that its MEO FIBRA services were available to consumers "for €19.99 per month", as well as a disclaimer written in very small letters to be displayed at the bottom of viewers' television screens which stated that "The price of €19.99 applies to subscriptions until 31 October and is valid until 31 December for television, internet and telephone services". This means that, after 31 December 2010, a higher monthly rate would be charged to the defendant's subscribers. The court found that the written disclaimers were illegible while the advertisements were being broadcast, even when viewed on a widescreen television. Moreover, the disclaimers remained very difficult to read on a widescreen television even when the advertisement was paused.

During the course of one of these televised advertisements, the defendant prominently displayed the benefits and advantages of its digital video recording boxes that could be used in conjunction with its MEO FIBRA services. No mention was made, however, of the fact that these boxes required the payment of an additional monthly fee that was not included in the advertised monthly rate of €19.99.

The defendant's radio advertisements included the statement that consumers could subscribe to MEO FIBRA services for €19.99 per month, but did not include any type of statement or reference to the time restrictions of 31 October and 31 December for benefitting from this promotion.

Further, the defendant's internet advertisements stated that it offered "A CUTTING EDGE EXPERIENCE FOR JUST €19.99 PER MONTH", written in large letters. At the bottom of the advertisements, two separate disclaimers were displayed in much smaller lettering, stating "All this is MEO from €19.99 per month" and "Mobile internet equipment is needed in order to enjoy free mobile broadband services of up to 100 MB per month. Monthly rates valid for subscribers to the Broadband Zero tariff. For use of between 100 MB and 300 MB: €13.01 per month; between 300 MB and 1 GB: €26.12; over 1 GB: 0.025 MB."

The plaintiff filed a complaint with the Civil Institute for Self-Regulation in Commercial Communication, alleging that the defendant had engaged in misleading advertising.

### Legal issue

(1) It was held by the Civil Institute that at no point in any of the advertisements, consumers were adequately informed that the monthly rate of €19.99 is merely promotional and subject to two different time restrictions. Not only consumers had to subscribe to the defendant's services before 31 October 2010, they were also only able to enjoy the rate of €19.99 until 31 December of that same year. Given that the advertisements were broadcasted and otherwise distributed late 2010, this means that the rate of €19.99 per month would only apply to, at most, four (4) monthly payments. While the television advertisements included disclaimers indicating these restrictions, they were deemed virtually illegible by the Court and therefore unsuitable. Further, neither the radio nor the internet advertisements made any mention of the restrictions, either in their body or by way of a disclaimer. The Court considered that although Article 7 (1) and (3) of the UCP Directive allows material information, such as price information, to be omitted from advertisements, this only applies where the medium of the advertisement is unsuitable for communicating the omitted information and the trader has taken necessary steps to make the information available to consumers by other means. This was not the case with the disclaimers included in the television advertisements due to the inherent difficulty in reading them. The Civil Institute found that, in this particular case, the statements made in the disclaimers displayed on the television advertisements should have been displayed at least as prominently as the other claims made in the advertisement. Consequently, the Civil Institute found that the television, radio and internet advertisements were misleading towards consumers.

(2) The television advertisements focused almost exclusively on the advantages and benefits of the defendant's digital video recording box, but no mention was made whatsoever of the fact that this equipment was not included in the advertised monthly rate of €19.99. In fact the advertisement stated that consumers could enjoy the advertised benefits for €19.99 per month. This amounted to material information that was not communicated to consumers and could not be justified on the basis of Article 7 (1) or (3) of the Directive as the defendant did not adequately make this information available to consumers by other means. Consequently, the Court found that this advertisement amounted to misleading advertising.

(3) The internet advertisement made no mention whatsoever of the price of the mobile internet equipment which was necessary in order to use the defendant's free mobile broadband services for less than 100 MB per month. This leaves consumers entirely unaware of the fact that a further cost will be incurred beyond the advertised €19.99 should they wish to enjoy free mobile broadband services amounting to less than 100 MB per month. This amounted to material information that was not communicated to consumers and could not be justified on the basis of Article 7 (1) or (3) of the Directive as the defendant did not adequately make this information available to consumers by other means. Consequently, this is a misleading omission. Further, the Civil Institute was motivated by the fact that the cost of the mobile internet equipment necessary was substantial, almost amounting to the advertised monthly rate of €19.99 itself.

### Decision

(1) Does the failure to clearly communicate the fact that the promotional rate of €19.99 per month only applies to consumers who subscribe before 31 October 2010, and will be increased after 31 December 2010, in both the television and radio advertisements, amount to misleading advertising?

(2) Is a failure to indicate in the defendant's television advertisements that the defendant's digital video recording boxes were subject to an additional monthly fee either a misleading omission or misleading advertising?

(3) Is a failure to indicate the price of the mobile internet equipment needed to enjoy free mobile broadband up to 100 MB per month in the internet advertisement a misleading omission?

URL: [http://www.icap.pt/icapv2/icap\\_site/deliberacao\\_detalhe.php?](http://www.icap.pt/icapv2/icap_site/deliberacao_detalhe.php?AG4JPQ51=ADotela9Xr1&AHAJJg5i=&AGoJNwtela9Xr1tela9Xr1=ADAJag41&AGIJPQ5v=ADEJYw4xVmotela9Xr1)

[AG4JPQ51=ADotela9Xr1&AHAJJg5i=&AGoJNwtela9Xr1tela9Xr1=ADAJag41&AGIJPQ5v=ADEJYw4xVmotela9Xr1](http://www.icap.pt/icapv2/icap_site/deliberacao_detalhe.php?AG4JPQ51=ADotela9Xr1&AHAJJg5i=&AGoJNwtela9Xr1tela9Xr1=ADAJag41&AGIJPQ5v=ADEJYw4xVmotela9Xr1)

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### Related Cases

No results available

### Legal Literature

No results available

### Result

The plaintiff's allegations were upheld and the defendant was ordered to remove the advertisement from its website until it was amended accordingly.