

Case law**Case Details**

National ID: 864/2010, VII d.

Member State: Bulgaria

Common Name: link

Decision type: Supreme court decision

Decision date: 07/07/2010

Court: Supreme Administrative Court (Sofia)

Subject:

Plaintiff: Cosmo Bulgaria Mobile EAD

Defendant: Consumer Protection Commission

Keywords: aggressive commercial practices, cancellation of contract

Directive Articles

Unfair Commercial Practices Directive, [Chapter 4, Article 11, 2., \(a\)](#)

Headnote

The safeguard of consumer interests prevails over the economic interests of traders and justifies enforcement of preliminary measures to prevent a trader from further pursuing an aggressive commercial practice.

Facts

The plaintiff introduced specific requirements for termination of service agreements. In order to terminate a service, consumers had to file a personal request on a given day of the month and only after having already settled all their unsettled payments with the plaintiff.

The defendant, a consumer authority, investigated these requirements and found that they constituted an aggressive commercial practice. The defendant banned the plaintiff from further pursuing the aggressive practice (i.e. the requirements concerned). The defendant ordered preliminary enforcement of this ban in order to ensure a proper safeguard of consumers' interests. As a result, the ban became effective prior to defendant's decision actually entered into force.

To suspend the preliminary enforcement, the plaintiff appealed against the preliminary measure. The plaintiff mainly argued that the admission of preliminary enforcement was disproportionate, because it harmed defendant's economic interests and, as a result, breached the principle of proportionality under the domestic administrative procedural rules.

Legal issue

In a short reasoning the court concluded that the plaintiff's economic interests cannot prevail over the proper safeguard of consumers' interests.

According to the court, the consumers' interests prevail over the economic interests of traders, hence the admission of preliminary enforcement of a ban was justified. Such a ban was considered to be an efficient means of protecting consumers when aggressive commercial practices of this kind were involved.

Decision

Is the principle of proportionality breached, when a preliminary measure regarding a ban of alleged unfair practices, is imposed on a trader, taking into account that the trader's economic interests might be harmed?

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Related Cases

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Legal Literature

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Result

The admission of preliminary enforcement of the ban was upheld and the appeal was dismissed.