

Case C-368/95 Familiapress v Bauer [1997]

Facts: Familiapress, an Austrian newspaper publisher, brought proceedings against Bauer, a German newspaper publisher, for an order that the latter should cease to sell in Austria publications offering readers the chance to take part in games for prizes, practice in breach of the Austrian Law of Unfair Competition. In connection with these proceedings, the Commercial Court of Vienna referred for a preliminary ruling whether application of this legislation to an undertaking established in a different Member State, in which this practice is lawful, would be considered a quantitative restriction on imports or a measure having equivalent effect.

Held: Article 30 of the EC Treaty does not preclude the application of legislation of a Member State that prohibits the distribution on its territory by an undertaking established in another Member State of a newspaper produced in that latter State containing prize puzzles which are lawfully organized in that State, provided that that prohibition is proportionate to maintenance of press diversity and that that objective cannot be achieved by less restrictive means. This assumes that the newspapers offering the chance of winning a prize are in competition with small newspapers publishers who are deemed to be unable to offer comparable prizes and the prospect of winning is liable to bring about a shift in demand. The national prohibition must not constitute an obstacle to the marketing of newspapers which, albeit containing prize games do not give readers residing in the Member State concerned the opportunity to win a prize.