



Decision of the Federal Supreme Court concerning Advertising and Combined offers

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GRP Rainer Lawyers Tax Advisors, Cologne, Berlin, Bonn, Dusseldorf, Hamburg, Munich, Stuttgart, Frankfurt www.grprainer.com inform: If a significant reduction is granted in order to sell the actual main product or service, the advertiser is obliged to explain the actual value of the overall offer. This means, combined offers are subject to the obligation that prices must be uniformly assessed.

Generally speaking an advertisement is deemed to be anticompetitive if it only highlights the promise of a gratuitous partial performance or the low price of a partial performance, without indicating at the same time in a clear, easily identifiable and clearly legible form the payment required for the other part of the combined offer.

These two cases were brought before the Federal Supreme Court of Germany (BGH), involving electrical equipment that could be purchased much cheaper if a power supply contract was concluded at the same time. Regarding to the court this advertising was anticompetitive.

In one of the case, the Federal Supreme Court (BGH) reached the following decision: "After abrogation of the Ordinance on Bonuses, the admissibility of combined offers is to be assumed.

However, such an offer is anticompetitive if the risk exists that consumers will be misled or otherwise provided with inadequate information about the actual value of the offer, in particular about the offered additional benefit. Moreover, the fact that a combined offer may emanate such a strong attraction force that the rationality of the consumer's demand decision is exceptionally pushed entirely into the background may also contribute to the assessment of the offer as being anticompetitive. A general obligation to always indicate the value of the bonus can neither be inferred from the general clause of the Law on Unfair Competition nor from the prohibition of misleading statements.?" (BGH judgment of 13.06.2002 - I ZR 173/01)

In the other case, the Court ruled that an advertisement for a combined offer consisting of a power supply contract with a term of at least two years and a television set for 1 DM is deemed to be anticompetitive if the conditions under which the benefit is granted are not made sufficiently clear (cf. BGH judgment of 13.06.2002 - I ZR 71/01).

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Anlage: Bild

