



Press and Information

Court of Justice of the European Union

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Judgment in Case C-310/15

Vincent Deroo-Blanquart v Sony Europe Limited

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## **The sale of a computer equipped with pre-installed software does not constitute, in itself, an unfair commercial practice**

*Moreover, failure to indicate the price of each item of pre-installed software does not constitute a misleading commercial practice*

In 2008, Vincent Deroo-Blanquart acquired a Sony laptop in France equipped with pre-installed software (namely Windows Vista Home Premium operating system and various other software applications). When using that computer for the first time, Mr Deroo-Blanquart refused to subscribe to the operating system's 'end-user licence agreement' (EULA) and asked to be reimbursed by Sony for the part of the purchase price of the computer corresponding to the cost of the pre-installed software. Sony refused to process that reimbursement but offered to cancel the sale and to reimburse Mr Deroo-Blanquart the entirety of the sale price, namely €549, subject to the return of the equipment purchased.

Mr Deroo-Blanquart declined that offer and brought legal proceedings against Sony for €450 as a lump sum for the pre-installed software and for €2 500 for the damage suffered as a result of unfair commercial practices. An EU directive<sup>1</sup> prohibits unfair commercial practices which distort the economic behaviour of consumers and which are contrary to the requirements of professional diligence, including, in particular, misleading commercial practices and aggressive commercial practices.

The French Cour de cassation (Court of Cassation), which is hearing the case on appeal, has asked the Court of Justice, first, whether a commercial practice consisting of the sale of a computer equipped with pre-installed software without any option for the consumer to purchase the same model of computer not equipped with pre-installed software constitutes an unfair commercial practice and, second, whether, in the context of a combined offer consisting of the sale of a computer equipped with pre-installed software, the failure to indicate the price of each item of software constitutes a misleading commercial practice.

In its judgment today, the Court finds, in response to the first question, that **the sale of a computer equipped with pre-installed software does not in itself constitute an unfair commercial practice** within the meaning of Directive 2005/29 when such an offer is not contrary to the requirements of professional diligence and does not distort the economic behaviour of consumers. It will be for the national court to determine this issue by taking into account the specific circumstances of the case.

The Court also points out at the outset that the sale of such equipped computers can satisfy the requirements of professional diligence, taking account of the fact that (1) the sale by Sony of computers with pre-installed software meets the expectations of a significant proportion of consumers who prefer to purchase a computer already equipped and ready for immediate use, rather than to purchase a computer and software separately; (2) prior to the purchase of the computer, Mr Deroo-Blanquart was duly informed via Sony's retailer of the existence of pre-

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<sup>1</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22).

installed software and the specific nature of each of those items of software, and (3) following the purchase, when using the computer for the first time, Sony offered Mr Deroo-Blanquart the option of subscribing to the EULA or cancelling the sale. This issue is, again, for the national court to determine.

Next, while pointing out that the information provided, before the conclusion of a contract, on the terms of the contract and the consequences of such conclusion is of fundamental importance for consumers, the Court indicates that the national court must determine whether, in the situation where a consumer is informed before the sale that the model of computer is not marketed without pre-installed software and that he is therefore free to choose another model of computer, of another brand, with similar technical specifications and sold without software, the ability of that consumer to make an informed transactional decision was appreciably impaired.

As regards the second question, the Court recalls that a commercial practice is to be regarded as misleading if it omits material information that the average consumer needs in order to make an informed transactional decision and thereby causes, or is likely to cause, the average consumer to make a transactional decision that he would not have taken otherwise. In the context of a combined offer consisting of the sale of a computer equipped with pre-installed software, the Court takes the view that the failure to indicate the price of each item of software is not such as to prevent the consumer from taking an informed transactional decision, or likely to cause the average consumer to make a transactional decision that he would not have taken otherwise. **Since the price of each of those items of software therefore does not constitute material information, the failure to indicate the price of each of those items of software does not constitute a misleading commercial practice.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher 📞 (+352) 4303 3355