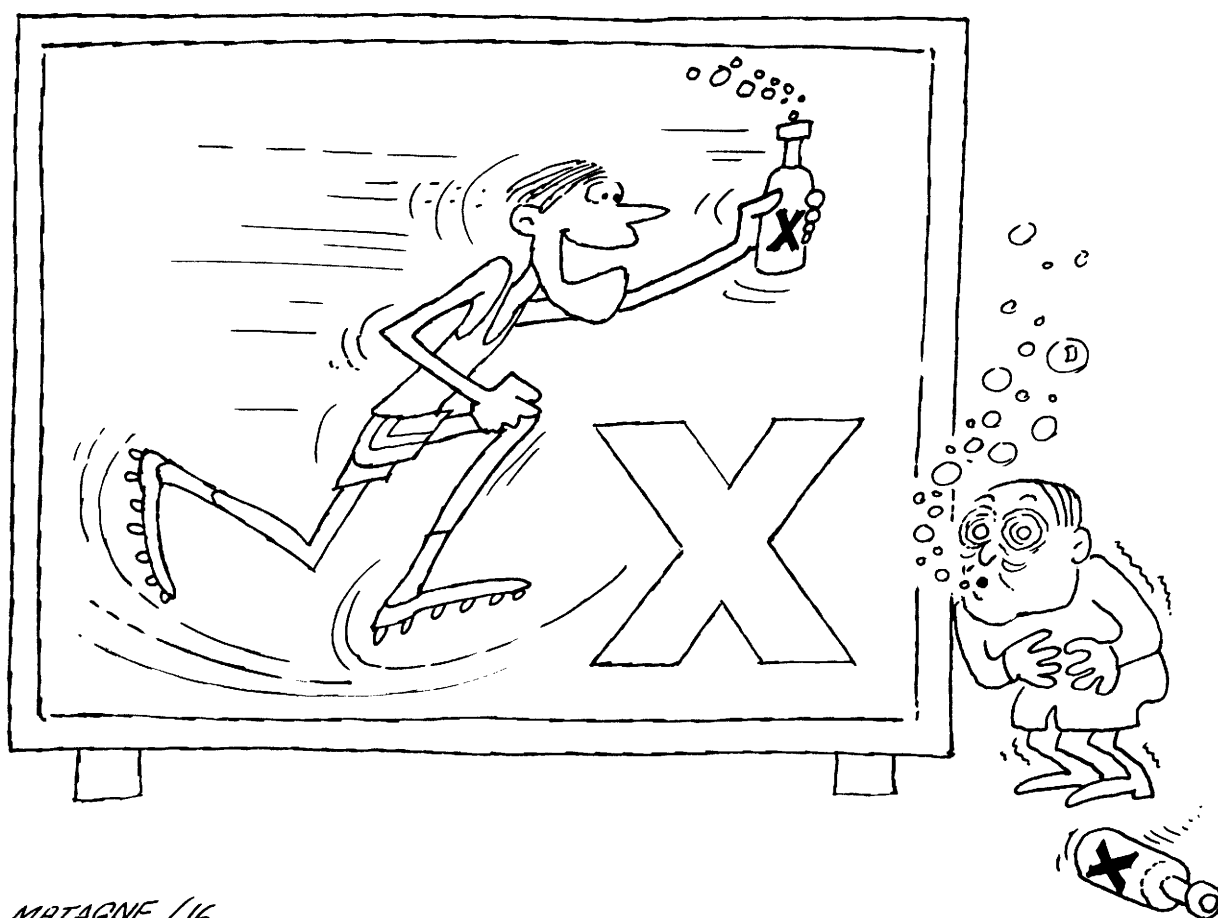


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MATAGNE /16

Misleading advertising - the deception continues (see page 3)

X/295/77 -

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++ PROMOTING CONSUMER INTERESTS

The everyday Europe which Roy Jenkins, President of the European Commission, is set to defend is also the consumers' Europe.

In Annex 1 Euroforum outlines how the European Commission is approaching its talk of promoting the interests of the European consumer.

++ ADVERTISING - EVIL OR GODSEND

Language is the good and evil of things, according to Aesop. What would he have said about advertising twenty-six centuries later?

In Annex 2 Euroforum looks at the problems of misleading advertising and what the Commission is doing to protect the consumer.

++ THE COMMUNITY'S PUBLIC ENTERPRISES

Public enterprises like private ones are subject to the rules of the Treaty of Rome - the legal foundation-stone of the European Economic Community. In Annex 3 Euroforum shows how the European Commission keeps a close eye on them to ensure they respect the rules of competition as keenly as their counterparts in the private sector.

++ COMMUNITY "WATER CONSERVATION PLAN"

500 litres of water per person per day is consumed in some of the Community's larger cities including public use such as street cleaning. This is, to say the least, excessive. It is all the more serious since good quality water is becoming more scarce and the total quantity available can drop considerably according to seasonal needs. Now is the time to act. The European Commission has decided to introduce a series of measures designed to guarantee the supply and the protection of water resources.

First of all it is necessary to gain a better understanding of this seemingly simple thing called water. The Services of the Commission have been undertaking penetrating studies designed to acquire a new and deeper knowledge of water. Having done so, it is then necessary to protect it and keep it pure. Thus, the Commission has intensified action to reduce or eliminate pollution of surface and subterranean water. It has become necessary to reduce waste in this resource which seems so abundant, and here the Commission plans to establish a "European Water Plan" so as to better manage the common water

of several Member States of the Community. Saving on water is not a minor problem. The Commission plans to bring together all those who were responsible for the supply of water during the serious drought of 1976, to benefit from their experience.

++ MOUNTAINS OF CARS!

The number of private cars produced each year in the European Community has risen from 6.6 million in 1963 to 8.7 million in 1975 with a "peak" of 10.7 million in 1973.

In 1963, 2.8 million cars were exported, while in 1975 the figure stood at 4.8 million, with a highpoint of 5.7 million in 1973. Registrations rose in the same period from 4.8 million to 6.8 million, with a highpoint of 7.9 million, again in 1973.

++ THE NUCLEAR DEBATE

"A public debate on nuclear energy is essential, as in any democratic society the views of the citizens must be known and must be able to find clear expression". This statement was made by the European Commission in reply to Messrs Albers and Waltmans of the European Parliament, who were worried about Commission efforts to guarantee and encourage the public character of debates on nuclear energy.

The European Commission added that it hoped that the Parliament would be able to reflect public attitudes and help in striking a suitable balance between the needs of a Common energy policy and the role of nuclear energy in such a policy.

++ DANGER OF AEROSOLS

American and European experts have just met in Washington to examine the problems of aerosols. Fluorocarbons - the propellant used in aerosols - have been worrying specialists on both sides of the Atlantic for some time. The European Commission feels that while, at present, the question of negative effects of fluorocarbons on human health cannot be ignored, there is still no conclusive evidence of their danger to the environment and human health. As a result, the Community States are agreed that no restrictions need to be introduced for the moment on the production of these aerosols. Meanwhile the Commission has decided to undertake, before the end of 1978, a series of studies on : scientific data to determine the possible negative effects of fluorocarbon aerosols; possible substitutes; the economic impact of a progressive reduction in the use of these aerosols.

++ INTERESTING SAVINGS

Below are given borrowing rates in the Community at the beginning of this year in the different countries - they have been provided by the Community's savings banks.

	Ordinary deposits	One year deposit	5 year savings bonds	Current account	Fixed period deposit (1 year)
B	5.5	7.25	9.5	0.75	7.25
DK	5.7	11.50	-	2.4	-
G	3.5	4.5	6.54	0.5	3.8
F	6.5	-	12.95	0	-
GB	4	10.5	-	0	-
IRL	7	-	-	0	-
I	14.35	-	-	14.35	10.45
L	6.5	6.25	6.75	0.5	6.5
NL	4	5.75	8.25	1.5	6.5

++ FREE MOVEMENT OF SICK PEOPLE

The free movement of doctors became statutory on January 1st, 1977. But what about the free movement of sick people asks Mr. Dondelinger of the European Parliament.

It is on the way, the Commission has replied. Already the Community has introduced a regulation on the social security rights of wage-earning workers (and members of their families) who move within the Community. This provides that a worker who is affiliated in one country can receive medical care in another Community country, as can members of their families, in conformity with the legislation of that State. This also applies to workers entitled to pensions.

These rights at present only apply to wage-earning workers, but the European Commission is in the process of extending these rights to benefit self-employed workers.

++ THE COST OF MONEY

An Italian going to Copenhagen must, if he takes the most direct route, change currency six times. The administrative expenses of such changes can be costly. In Italy, between 0.15% and 0.30% of the total is charged. In the Netherlands it costs one guilder, plus other possible expenses deemed justified, and in Denmark the cost is 4 Kroner when selling and 2 Kroner when buying currency. In the other Community countries, selling and buying of bank notes does not involve an exchange commission for the bank, as it is included in the rate, and banks in the countries collecting it are controlled and approved by the competent authorities.

In virtually all the banks the buying and selling rates for notes are posted. According to information provided by the European Commission, putting the rates on public display is obligatory in Ireland, Denmark and Italy. On the other hand, there is no country where the official tariff and national bank conditions (such as commissions collected on the various operations) is published as public information.

The European Commission is aware of the expenses that tourists have to face and it has repeatedly drawn the attention of professional associations and banks to mistakes or to the imposition of abnormally high charges. The Commission is at present studying the whole realm of banking regulations with a view to possible harmonisation.

++ POLLUTION AND HUMAN HEALTH

More than sixty international experts took part in an international seminar on biological detection of environmental pollutants in humans, which was organised in Luxembourg by the European Commission in collaboration with the World Health Organisation (WHO) and the Environmental Protection Agency (EPA) of the United States.

The seminar aimed at examining the possibility of developing detection programmes as well as building up a collection of human tissue for future analysis. It came to the conclusion that scientific knowledge and techniques are already sufficiently advanced for such programmes to be applied to a certain number of pollutants such as arsenic, cadmium, chromium, mercury, lead, carbon monoxide, organochlorinated pesticides, PCBs (polychlorinated biphenyls) as well as chlorinated solvents.

Some research is still necessary for other pollutants and priority areas were proposed for this research.

++ INTERNATIONAL ORGANISATIONS AND THE COMMUNITY

Several international organisations have recently opened offices in Brussels for liaison with the European Community :

United Nations - Liaison and Information Office

108 rue d'Arlon,
1040 Brussels Tel : 230.23.75

High Commission for Refugees - Delegation to Belgium and Luxembourg

11 a (box 3) rue Van Eyck,
1050 Brussels Tel : 649.01.51

International Labour Organisation - Liaison Office with the Communities

40 rue Aimé Smekens,
1040 Brussels Tel : 736.99.16

Council of Europe - Liaison Office with the European Communities

Résidence Palace,
155 rue de la Loi,
1040 Brussels Tel : 736.30.52

++ COMPETITION IN HOLLAND

The European Commission has recently initiated the end of a supply monopoly of non-ferrous metal alloys. Tin Tetrachloride (Sn Cl₄), necessary for the manufacture of non-ferrous metal alloys, is mainly produced in Europe by the Dutch company Billiton, and one half of their production is consumed by Metal & Thermit Chemicals, another Dutch company. An agreement between the two companies meant that M & T could only get its supplies from Billiton and could not even manufacture the product as long as Billiton could guarantee supplies.

The European Commission has made it known that it does not approve of supply agreements carrying exclusivity clauses where the normal functioning of the market is hindered. From now on Billiton will supply M & T on a commercial basis with no restrictions.

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PROMOTING CONSUMER INTERESTS

We have to make the Community a concrete reality in the every day life of its citizens, stressed Roy Jenkins, President of the European Commission, at the European Parliament when he presented the Commission's programme for 1977. The Community's work will not be limited to traditional policy areas, but will attempt to deal with and resolve everyday problems confronting the Community's inhabitants.

This week the Commission took up the cause of consumers when it debated a document drawn up by Richard Burke, the Commissioner responsible for consumer affairs.

The first innovation will change the approach from one of 'consumer protection' - with its defensive overtones - to one of promoting the general interests of European consumers. In a period of economic difficulties such as today, it is necessary to ensure that everyone can reap the maximum benefits from their income. This is the new emphasis contained in the Commission's policy. Community action cannot only improve the quality of the products we buy, but also the quality of services offered, and the conditions attached.

The Community's aim is, in a nutshell, to help improve the quality of life for its citizens.

To develop more ideas on how this can best be done, the Commission intends holding a European seminar in the near future devoted to discussion of the Community's real needs towards improving the quality of life in general.

The ways and means of implementing such objectives will be drawn up by Mr. Burke in close collaboration with his colleagues.

A number of measures in this area have already been presented in the preliminary Consumer Protection Programme (see Industry and Society N° 15/75) adopted by the Community in April 1975. The Programme aims to guarantee consumers five fundamental rights:

- the right to protection of health and safety
- the right to protection of economic interests
- the right to redress
- the right of information and education
- the right to be heard

But much more than this is required. Promoting the interests of European consumers should be the Community's constant pre-occupation in all its policies, in all its initiatives and in all its decisions.

The Services of the Commission will be helped in establishing its priorities by consultations with consumer organisations. The principal topics for discussion are :

1. Protection of consumer health and safety

- implementing the directive on cosmetics, in particular establishing the positive lists of approved ingredients
- the harmonisation of legislation dealing with food additives
- toy safety
- the specification and labelling of household cleaning products
- informative labelling concerning textiles

The Commission will study the possibility of introducing a Community system for collating information on household accidents caused by certain products.

2. Protection of consumers' legal and economic interests

- the progress of work in view of the adoption of the draft directive on door-to-door selling
- progress to be made following the adoption of the draft directive on product liability
- the preparation of a draft directive on misleading advertising
- preparation of a directive on consumer credit
- preparation of a directive on unfair clauses in contracts
- preparation of a directive on correspondence courses
- preparation of a directive on tobacco advertising
- potential Community measures covering after sales services and other services
- the relationships between advertising and children

3. Improvement of the procedures enabling consumers to have better redress for damages

Supplementary studies are to be carried out on the possibility of introducing Community proposals dealing with conciliation and arbitration for small claims.

4. Consumer information and education

- progress towards adoption of the draft directive on foodstuff labelling
- progress in the work towards the adoption of the draft directive on unit pricing

- the publication of the first report on consumer protection and information policy
 - progress in work dealing with the collection and comparison of prices of certain goods at different places within the Community
 - progress towards establishing an inventory of work undertaken to improve consumer education within the Community
5. The voice of the European Consumer is heard through the work of the Consumers' Consultative Committee which represents consumers organisations. The Commission's Services work closely with the CCC.

ADVERTISING - EVIL OR GODSEND?

Language is the good and evil of things said Aesop the fabulist. What would he have said about advertising twenty-six centuries later? 'Miracle' products, 'natural' foods, 'pure' drinks are more frequently contained in advertising slogans than simple descriptions of contents and what exactly the consumer is getting for his money.

Unlawful

Misleading advertising is unlawful throughout the European Community, but law enforcement varies considerably from one country to another.

In countries like the UK, the law on misleading advertising is particularly detailed and distinct from other legal texts. In other countries, like the Netherlands, the law on misleading advertising is treated as part of a chapter on unfair competition. In Denmark, by contrast, an Ombudsman has been set up to control the publication of specious adverts.

The laws are progressively changing in the direction of protecting consumers rather than simply maintaining fair competition between producers. Nowadays, at least, a distinction is made between the two ideas.

Certain forms for certain products

Some products have specific regulations governing their presentation. For instance, cigarette advertising is banned from television screens not only in the UK, but in France and Denmark as well. In France advertising of pharmaceutical products is strictly controlled both with regard to volume and content. Only products which are not paid for by social security can be advertised, and even then advertising is strictly restricted to the point of sale. In Belgium medical advertising is regulated. It is forbidden to guarantee successful treatment or to present 'before and after' photos.

Implicitly or explicitly, legislation in certain countries considers that advertising can be equally as misleading by omission. This is particularly the case with alcohol and tobacco. It would be unfair if advertising for these products did not indicate the damage which could arise from misuse. Overall, however, only a few countries demand specific information in advertising announcements.

European Commission proposals

Misleading advertising has been a big consumer problem ever since the affair of Adam and Eve and the serpent and the apple. It also presents a problem for producers and advertisers who have been sceptical of the European Commission's attempts to

develop a draft directive that can define exactly what misleading and unfair advertising is, and to decide on appropriate action to counter it.

Advertising amounts to friendly advice for some and an expensive deception for others. Striking a balance between the two is not easy.

The Services of the Commission have already prepared two draft proposals and are now working on a third to try and reconcile the preoccupations of both sides.

It is first of all necessary to define exactly what advertising is and where to draw the line. Is, for instance, a cobbler advertising if he assures you that his repairs will last for years? A definition has to be found which leaves no room for doubt as to what advertising is.

It is also necessary to define what are 'goods' and 'services', though this is slightly easier.

Above all, it is necessary to define misleading advertising.

Repairing the damage

Each Community country should, according to the Commission, include provision in its legislation for damages and sanctions where misleading advertising has been proven. They should be able to prevent the publishing of an advertisement, they should be able to impose fines corresponding to damage to the public and/or profit gained by the advertiser. A court should be able to demand a rectifying advert and have its verdict published for all to see.

The problem facing the Commission is a delicate one of combining civil law (covering unfair competition) and penal law (since it is a question of consumer protection).

First reactions

The text drawn up by the European Commission has, of course, been discussed by the parties directly concerned. The Consumer Association in the UK welcomed the fact that a Community directive was being prepared, though it still sought greater clarity on a few points together with a few modifications. For instance, should 'corrective advertising' simply be a text which corrects certain information or should it be a sort of 'counter-advertisement' to counteract the effect of the original advert with the same force?

The UK Advertising Association has examined the proposals in detail and has maintained that it would be absurd to demand that the advertiser prove his statements are exact "which would be an unacceptable change in current legal practice concerning the onus of proof". Normally the onus of proof falls on the plaintiff and this is standard throughout the Community.

This Commission does not have an easy job trying to reconcile the camps that are often legitimately poles apart.

THE COMMUNITY'S PUBLIC ENTERPRISES

Public enterprises, like private ones, are subject to the rules of the Treaty of Rome which founded the European Economic Community. It comes, therefore, as no surprise that the European Commission scrutinizes them as much as private companies to ensure they respect the EEC's rules of competition.

Basic neutrality

It is important to recall that the Treaty of Rome (article 222) emphasises that the Treaty itself shall in no way prejudice the rules in Member States governing the system of property ownership. The Member States remain completely free to determine the extent, composition and internal organisation of their public sector, and to introduce whatever reforms they believe necessary in their rules governing property ownership.

Mr. Jean Rey, as President of the European Commission, expressed clearly the full political consequences of this basic principle. In reply to Mr. Glinne, socialist member of the European Parliament he declared that a country can perfectly well change its system of property ownership and its economic system without automatically excluding itself from the European Economic Community.

The Treaty's purpose here is to ensure that the market conduct of these undertakings does not impede the proper application of the rules of the Treaty, either as regards competition or as regards the unity of the market.

This objective is both fair and logical. 'Public undertakings' benefit from the common market as much as other undertakings, and they should comply with the rules in the same way as the others must.

State responsibility

Article 90 of the Treaty of Rome (paragraph 1) states that Member States may not use their 'public undertakings' to escape from their obligations under the Treaty, nor cause undertakings to violate theirs.

If however a public undertaking does engage in an illicit agreement or abuse its dominant position, the Commission can intervene and treat it in the same way as a private concern.

If the misdemeanor committed by the public enterprise is due to governmental constraint or encouragement, the European Commission can start proceedings at the European Court of Justice. An example of this would be where a public enterprise is constrained or encouraged systematically to favour domestic suppliers in breach of the provisions of the Treaty.

Inaction - deliberate or not - by a State can provoke intervention by the European Commission. If, for example, a State which possesses the necessary authority, failed to put an end to objectionable practices by public enterprises, it would be violating the Treaty.

This does not rule out the possibility of injured parties themselves invoking provisions of the Treaty, or certain instruments which give effect to the Treaty, against public undertakings.

The Commission may also intervene where a Member State has not got the necessary authority to correct objectionable behaviour on the part of public undertakings. If such a public undertaking was acting independently and systematically favouring national suppliers, the Commission may call upon the Member State to take such general or specific preventive measures as are needed to re-establish fair competitive behaviour.

Preventive measures

To avoid situations like those outlined above, the Commission may take preventive steps. It may call on Member States to take such general or specific preventive measures concerning the public undertakings as are needed to ensure the Treaty is complied with. In this way, it can overcome the difficulties involved in applying the provisions of the Treaty (article 90) caused by the lack of transparency in the accounts of some public enterprises, in particular as regards commercially unjustified costs and offsetting costs. The Commission must be able to distinguish between legitimate offsetting of such costs and the granting of competitive advantages by a Member State, which is incompatible with the common market.

Aims of the Commission

There can be no doubt whatever that public undertakings may be a particularly useful instrument for securing a country's economic or social policy objectives. However, the free movement of goods and services and the unity of the common market would be endangered if the behaviour of certain categories of undertakings could evade the provisions of the Treaty.

The Commission has a double objective : on the one hand it is to ensure that public undertakings benefit from an enlarged market in the same way as private concerns, by buying on the best terms, reducing the burden on public finances and, where appropriate, also the cost of the services provided. On the other hand, it aims to ensure that productive industries fully benefit from the common market and also consolidate their competitive position vis-à-vis the non-member countries.

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