Federal Supreme Court upholds previous ruling on detailed price for internet sales

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Key takeaway

The Federal Supreme Court confirmed last year's ruling and maintains that in future, and in contrast to SECO's practice so far, a detailed price does not necessarily have to be disclosed from the outset for goods and services subject to the Federal Ordinance on the Disclosure of Prices (PDO) and offered for sale via the internet.

In our Legal Update of 20 January 2021, we analysed the Federal Supreme Court's ruling 4A_235/2020 on the case brought by the State Secretariat for Economic Affairs (SECO) against Viagogo AG ("Viagogo"), the online ticket exchange platform for a secondary ticket market. In its ruling, the Federal Supreme Court ("Court") held that Viagogo had not violated the provisions of the PDO since, even if it did not disclose from the outset the actual price to be paid for an offer, it did so at the end of the ordering processes and before the order was triggered, i.e. before the contract was concluded.

On 27 October 2021, the Court issued a new ruling 4A_314/2021 on Circus Knie's complaint against Viagogo. The former complained that Viagogo was selling tickets for Circus Knie on its website in a way that violated various provisions of the Federal Act against Unfair Competition (UCA) and the PDO. Among others, Circus Knie accused Viagogo of violating the PDO by increasing the price to be paid in the course of the ordering process without (i) informing customers that additional fees would be added to the price initially mentioned and (ii) indicating the details of the total price when confirming the purchase.

In its latest ruling published on 12 November 2021, the Court confirmed the approach taken in its previous ruling 4A_235/2020 and held that prices for goods and services offered for sale via the internet do not have to include the total price to be paid from the outset. The Court considered it sufficient to mention the final price to be paid solely at the end of the ordering process. However, the Court, confirming the approach of the Commercial Court of St. Gallen, specified that the customer must be given a period of at least three minutes to finalise the purchase decision.

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In summary, the final price to be paid does not necessarily have to be disclosed from the outset for goods and services offered for sale online. It is sufficient to disclose the detailed price to the buyer at the latest before the purchase is finalised, provided the customer has at least three minutes to make a decision on such purchase.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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