— *whether the customers to whom such a pricing practice is applied are new or existing customers of the undertaking concerned;*

— *the fact that the dominant undertaking is unable to recoup any losses which the establishment of such a pricing practice might cause, or*

— *the extent to which the markets concerned are mature markets and whether they involve new technology, requiring high levels of investment*

(1) OJ C 90, 18.04.2009.

Judgment of the Court (Second Chamber) of 17 February 2011 — European Commission v Republic of Cyprus

(Case C-251/09) (1)

(Public works contracts and supply contracts — Water, energy, transport and telecommunications sectors — Directive 93/38/EEC — Contract notice — Award criteria — Equal treatment of tenderers — Principle of transparency — Directive 92/13/EEC — Review procedure — Requirement to state reasons for a decision to eliminate a tenderer)

(2011/C 103/04)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: C. Zadra, I. Chatzigiannis and M. Patakia, agents, agents)

Defendant: Republic of Cyprus (represented by: K. Likourgos and A. Patanzi-Lamprou, agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4(2) and 31(1) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) — Infringement of Article 1(1) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14) — Requirement to state reasons for a decision to eliminate a tenderer — Requirement to ensure that decisions taken by the contracting authorities may be reviewed effectively and as rapidly as possible — Principles of equal treatment and transparency

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the European Commission to pay the costs.*

(1) OJ C 233, 26.9.2009.

Judgment of the Court (First Chamber) of 10 February 2011 — Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) v European Commission

(Case C-260/09 P) (1)

(Appeal — Article 81 EC and Article 53 of the EEA Agreement — Market for Nintendo video games consoles and games cartridges — Limitation of parallel exports in that market — Agreement between a manufacturer and an exclusive distributor — Distribution agreement allowing passive sales — Proof of a concurrence of wills in the absence of direct documentary evidence that passive sales were to be restricted — Standard of proof necessary to establish the existence of a vertical agreement)

(2011/C 103/05)

Language of the case: English

Parties

Appellant: Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) (represented by: J.K. de Pree and E.N.M. Raedts, advocaten)

Other party to the proceedings: European Commission (represented by: S. Noë and F. Ronkes Agerbeek, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber) of 30 April 2009 in Case T-18/03 *CD-Contact Data GmbH* v *Commission of the European Communities* by which the Court reduced the fine imposed on the appellant and dismissed as to the remainder an action for annulment of Commission Decision 2003/675/EC of 30 October 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega — Nintendo) concerning a complex of agreements and concerted practices in the markets for Nintendo consoles and video games cartridges compatible with Nintendo consoles designed to restrict parallel exports of those consoles and cartridges

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*