2) If the answer to question 1 is no, is Article 6(2)(b) [now Article 26(1)(b)] to be interpreted as requiring the provision of the voucher by the employer to the employee in accordance with the contract of employment to be treated as a supply of services, in circumstances where the voucher is to be used by the employee for his or her private purposes?

3) If the provision of the voucher is neither a supply of services for consideration within the meaning of Article 2(1) nor is to be treated as a supply of services under Article 6(2)(b), is Article 17(2) [now Article 168] to be interpreted so as to permit the employer to recover the value added tax it has incurred in purchasing and providing the voucher to the employee in accordance with the contract of employment in circumstances where the voucher is to be used by the employee for his or her private purposes?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment OJ L 145, p. 1

Action brought on 30 January 2009 — Commission of the European Communities v Republic of Estonia

(Case C-46/09)

(2009/C 90/18)

Language of the case: Estonian

Parties

Applicant: Commission of the European Communities (represented by: E. Randvere and K. Simonsson)

Defendant: Republic of Estonia

Form of order sought

The applicant claims that the Court should:

— declare that, since it has not correctly transposed into national law the provisions of Directive 2000/59/EC ([1]) of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, the Republic of Estonia has failed to fulfil its obligations under Article 11 of Directive 2000/59/EC;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

It follows from Article 11(2)(a) of Directive 2000/59 that the Republic of Estonia is under an obligation to establish criteria in order to select ships, other than fishing vessels and recreational craft authorised to carry no more than 12 passengers, for inspection.

Article 11(2)(c) of Directive 2000/59 provides that, if the relevant authority is not satisfied with the results of this inspection, it must ensure that the ship does not leave the port until it has delivered its ship-generated waste and cargo residues to a port reception facility in accordance with Articles 7 and 10.

The Republic of Estonia has stated its intention to supplement the Estonian legislation in order to correctly transpose those provisions of the directive. The Commission does not have any information on the adoption of such amendments.

([1]) OJ 2000 L 332, p. 81

Reference for a preliminary ruling from the Tingsrätt Stockholm (Sweden) lodged on 6 February 2009 — Konkurrensverket v TeliaSonera Sverige AB

(Case C-52/09)

(2009/C 90/19)

Language of the case: Swedish

Referring court

Tingsrätt Stockholm

Parties to the main proceedings

Applicant: Konkurrensverket

Intervener: Tele2 Sverige Aktiebolag

Defendant: TeliaSonera Sverige AB

Questions referred

1. Under what conditions does an infringement of Article 82 EC arise on the basis of a difference between the price charged by a vertically integrated dominant undertaking for the sale of input ADSL products to competitors on the wholesale market and the price which the same undertaking charges on the end-user market?

2. Is it only the prices of the dominant undertaking to end-users which are relevant or should the prices of competitors on the end-user market also be taken into account in the consideration of question 1?

3. Is the answer to question 1 affected by the fact that the dominant undertaking does not have any regulatory obligation to supply on the wholesale market but has, rather, chosen to do so on its own initiative?

4. Is an anti-competitive effect required in order for a practice of the kind described in question 1 to constitute abuse and, if so, how is that effect be to be determined?

5. Is the answer to question 1 affected by the degree of market strength enjoyed by the dominant undertaking?

6. Is the dominant position on both the wholesale market and the end-user market of the undertaking engaging in the practice required in order for a practice of the kind described in question 1 to constitute abuse?

7. For a practice such as that described in question 1 to constitute abuse, must the good or service supplied by the dominant undertaking on the wholesale market be indispensable to competitors?

8. Is the answer to question 1 affected by the question whether the supply is to a new customer?

9. Is an expectation that the dominant undertaking will be able to recoup the losses it has incurred required in order for a practice of the kind described in question 1 to constitute abuse?

10. Is the answer to question 1 affected by the question whether a change of technology is involved on a market with a high investment requirement, for example with regard to reasonable establishment costs and the possible need to sell at a loss during an establishment phase?

Reference for a preliminary ruling from House of Lords (United Kingdom) made on 6 February 2009 — Commissioners for Her Majesty's Revenue and Customs v Loyalty Management UK Limited

(Case C-53/09)

(2009/C 90/20)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: Loyalty Management UK Limited

Questions referred

'In circumstances where a taxable person (the "Promoter") is engaged in the business of running a multi-participant customer loyalty rewards programme (the "Scheme"), pursuant to which the Promoter enters into various agreements as follows:

(i) Agreements with various companies referred to as "Sponsors" under which the Sponsors issue "Points" to customers of the Sponsors ("Collectors") who purchase goods or services from the Sponsors and the Sponsors make payments to the Promoter;

(ii) Agreements with the Collectors which include provisions such that, when they purchase goods and/or services from the Sponsors, they will receive Points which they can redeem for goods and/or services; and

(iii) Agreements with various companies (known as "Redeemers") under which the Redeemers agree, among other things, to provide goods and/or services to Collectors at a price which is less than would otherwise be payable or for no cash payment when the Collector redeems the Points and in return the Promoter pays a "Service Charge" which is calculated according to the number of Points redeemed with that Redeemer during the relevant period.

1. How are Articles 14, 24 and 73 of Council Directive 2006/112/EC of 28 November 2006 [1] (formerly Articles 5, 6 and 11(A)(1)(a) of Council Directive 77/388/EEC of 17 May 1977 [2]) to be interpreted where payments are made by the Promoter to the Redeemers?

2. In particular, are those provisions to be interpreted such that the payments of the kind made by the Promoter to Redeemers are to be characterised as:

(a) consideration solely for the supply of services by the Redeemers to the Promoter; or

(b) consideration solely for the supply of goods and/or services by the-Redeemers to the Collectors; or