

**Order of the Court of 18 December 2007 — *Cementbouw Handel & Industrie BV v Commission of the European Communities***

(Case C-202/06 P) <sup>(1)</sup>

*(Appeals — Competition — Regulation (EEC) No 4064/89 — Competence of the Commission — Notification of a concentration having a Community dimension — Commitments proposed by the parties — Effect on the Commission's competence — Authorisation subject to certain commitments — Principle of proportionality)*

(2008/C 51/24)

Language of the case: English

**Parties**

*Appellant:* Cementbouw Handel & Industrie BV (represented by: W. Knibbeler, O. Brouwer and P. Kreijger, lawyers)

*Other party to the proceedings:* Commission of the European Communities (represented by: E. Gippini Fournier, A. Nijenhuis and A. Whelan, Agents)

**Action**

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 23 February 2006 in Case T-282/02 *Cementbouw Handel & Industrie v Commission*, whereby the Court of First Instance dismissed an application for the annulment of Commission Decision (2002)2315 final of 26 June 2002 relating to a procedure pursuant to Regulation (EEC) No 4064/89 — *Haniel/Cementbouw/JV* (CVK), declaring a concentration entailing the acquisition of joint control of the cooperative CVK by Franz Haniel & Cie GmbH and *Cementbouw Handel & Industrie BV* to be compatible with the common market and the EEA Agreement, on condition that certain commitments be complied with in order to correct the dominant position created on the Netherlands market in construction materials for load-bearing walls — Incorrect interpretation of Articles 1, 2, and 3(1) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1) and of Article 8(2) of Council Regulation (EC) No 1310/97 of 30 June 1997 amending Regulation (EEC) No 4064/89 (OJ 1997 L 180, p. 1) — Breach of the principle of proportionality

**Operative part of the judgment**

1. Dismisses the appeal;
2. Orders *Cementbouw Handel & Industrie BV* to pay the costs.

<sup>(1)</sup> OJ C 178, 29.7.2006.

**Judgment of the Court (First Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Audiencia Nacional, Sala de lo Contencioso-Administrativo — Spain) — *Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia v Administración General del Estado***

(Case C-220/06) <sup>(1)</sup>

*(Public procurement — Liberalisation of postal services — Directives 92/50/EEC and 97/67/EC — Articles 43 EC, 49 EC and 86 EC — National legislation allowing public authorities to conclude agreements for the provision of both reserved and non-reserved postal services with a publicly owned company, namely the provider of universal postal service in the Member State concerned, without regard to the rules governing the award of public service contracts)*

(2008/C 51/25)

Language of the case: Spanish

**Referring court**

Audiencia Nacional, Sala de lo Contencioso-Administrativo

**Parties to the main proceedings**

*Applicant:* Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia

*Defendant:* Administración General del Estado

**Re:**

Reference for a preliminary ruling — Audiencia Nacional, Sala de lo Contencioso-Administrativo — Interpretation of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directive 2002/39/EC (OJ 2002 L 176, p. 21) — Agreement concluded without regard to the rules governing the award of public service contracts between a department of the State administration and a publicly owned company covering, in particular, the provision of postal services, including those not reserved to the universal service providers

**Operative part of the judgment**

- 1) Community law must be interpreted as not precluding legislation of a Member State that allows public authorities to entrust, without regard to the rules governing the award of public service contracts, the provision of postal services reserved, in a manner consistent

with Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, to a public limited company whose capital is wholly state-owned and which, in that State, is the provider of the universal postal service.

- 2) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, must be interpreted as precluding legislation of a Member State that allows public authorities to entrust, without regard to the rules governing the award of public service contracts, the provision of non-reserved postal services within the meaning of Directive 97/67 to a public limited company whose capital is wholly state-owned and which, in that State, is the provider of the universal postal service, in so far as the contracts to which that legislation applies

— reach the relevant threshold as provided for in Article 7(1) of Directive 92/50, as amended by Directive 2001/78, and

— constitute contracts within the meaning of Article 1(a) of Directive 92/50, as amended by Directive 2001/78, concluded in writing for pecuniary interest,

which are matters for the national court to establish.

- 3) Articles 43 EC, 49 EC and 86 EC, as well as the principles of equal treatment, non-discrimination by reason of nationality and transparency, must be interpreted as precluding legislation of a Member State that allows public authorities to entrust, without regard to the rules governing the award of public service contracts, the provision of non-reserved postal services within the meaning of Directive 97/67 to a public limited company whose capital is wholly state-owned and which, in that State, is the provider of universal postal services, in so far as the contracts to which that legislation applies

— do not reach the relevant threshold as provided for in Article 7(1) of Directive 92/50, as amended by Directive 2001/78, and

— do not in actual fact constitute a unilateral administrative measure creating obligations solely for the provider of the universal postal service and departing significantly from the normal conditions of a commercial offer made by that company,

which are matters for the national court to establish.

<sup>(1)</sup> OJ C 178, 29.7.2006.

**Judgment of the Court (Third Chamber) of 13 December 2007 (reference for a preliminary ruling from the Conseil d'État (Belgium)) — United Pan-Europe Communications Belgium SA, Coditel Brabant SA, Société Intercommunale pour la Diffusion de la Télévision (Brutele), Wolu TV ASBL v État Belge**

(Case C-250/06) <sup>(1)</sup>

**(Article 49 EC — Freedom to provide services — National legislation requiring cable operators to broadcast programmes transmitted by certain private broadcasters ('must carry') — Restriction — Overriding reason relating to the general interest — Maintenance of pluralism in a bilingual region)**

(2008/C 51/26)

Language of the case: French

## Referring court

Conseil d'État

## Parties to the main proceedings

Applicants: United Pan-Europe Communications Belgium SA, Coditel Brabant SPRL, Société Intercommunale pour la Diffusion de la Télévision (Brutele), Wolu TV ASBL

Defendant: État Belge

Intervening parties: BeTV SA, Tvi SA, Télé Bruxelles ASBL, Belgian Business Television SA, Media ad Infinitum SA, TV5-Monde,

## Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Articles 49 EC and 86 EC — Definition of 'special right' — Obligation imposed on cabled distribution companies to distribute television programmes broadcast by certain broadcasting organisations established mainly in national territory

## Operative part of the judgment

Article 49 EC is to be interpreted as meaning that it does not preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which requires, by virtue of a must-carry obligation, cable operators providing services on the relevant territory of that State to broadcast television programmes transmitted by private broadcasters falling under the public powers of that State and designated by the latter, where such legislation:

— pursues an aim in the general interest, such as the retention, pursuant to the cultural policy of that Member State, of the pluralist character of the television programmes available in that territory, and