

and 29(1) of the Staff Regulations in the version in force until 30 April 2004 — Concept of ‘internal competition’ and the objective assigned to recruitment of ensuring that the institution secures the services of persons of the ‘highest standard of ability, efficiency and integrity’ — Eligibility of auxiliary staff

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Ms Chetcuti to pay the costs.

(¹) OJ C 82, 14.4.2007.

Judgment of the Court (Second Chamber) of 2 October 2008 — K-Swiss Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-144/07 P) (¹)

(Appeal — Community trade mark — Regulation (EC) No 2868/95 — Time-limit for instituting proceedings before the Court of First Instance — OHIM decision — Notification by express courier — Calculation of the time limit for bringing an action)

(2008/C 301/14)

Language of the case: English

Parties

Appellant: K-Swiss Inc. (represented by: H.E. Hübner, Advocate)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Re:

Appeal against the order of the Court of First Instance (Third Chamber) of 14 December 2006 in Case T-14/06 K-Swiss v OHIM dismissing as inadmissible an action for annulment of a decision of the First Board of Appeal of OHIM — Time-limit for instituting proceedings — Notification by express courier — Date from which the time-limit begins to run

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders K Swiss Inc. to pay the costs.

(¹) OJ C 117, 26.5.2007.

Judgment of the Court (Third Chamber) of 9 October 2008 (reference for a preliminary ruling from the Lietuvos Respublikos Konstitucinis Teismas (Republic of Lithuania)) — Proceedings for review of the constitutionality of legislation brought by Julius Sabatauskas and Others

(Case C-239/07) (¹)

(Internal market in electricity — Directive 2003/54/EC — Article 20 — Transmission and distribution systems — Third party access — Obligations of Member States — Open access of third parties to electricity transmission and distribution systems)

(2008/C 301/15)

Language of the case: Lithuanian

Referring court

Lietuvos Respublikos Konstitucinis Teismas

Parties in the main proceedings

Julius Sabatauskas and Others

Re:

Reference for a preliminary ruling — Lietuvos respublikos konstitucinis teismas — Interpretation of Article 20 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC — Statements made with regards to decommissioning and waste management activities (OJ 2003 L 176, p. 37) — Compatibility with the directive of national legislation permitting consumers to have access to the electricity transmission system only after refusal by the distribution system operator to grant access to a distribution system.

Operative part of the judgment

1. Article 20 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC is to be interpreted as defining the Member States' obligations only in respect of the access and not the connection of third parties to the electricity transmission and distribution systems and as not laying down that the system of network access that the Member States are required to establish must allow an eligible customer to choose, at his discretion, the type of system to which he wishes to connect.

2. Article 20 must also be interpreted as not precluding national legislation which lays down that an eligible customer's equipment may be connected to a transmission system only where the distribution system operator refuses, on account of established technical or operating requirements, to connect to its system the equipment of the eligible customer which is on the territory included in its licence. It is, however, for national courts to verify that the implementation and application of that access system takes place in accordance with objective and non discriminatory criteria between the users of the transmission and distribution systems.

(¹) OJ C 170, 21.7.2007.

Judgment of the Court (Grand Chamber) of 16 September 2008 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — (United Kingdom)) — The Commissioners of Her Majesty's Revenue and Customs v Isle of Wight Council, Mid-Suffolk District Council, South Tyneside Metropolitan Borough Council, West Berkshire District Council

(Case C-288/07) (¹)

(Sixth VAT Directive — Article 4(5) — Activities engaged in by bodies governed by public law — Provision of off-street car-parking facilities for which a charge is made — Distortions of competition — Meaning of 'would lead to' and 'significant')

(2008/C 301/16)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Appellants: The Commissioners of Her Majesty's Revenue and Customs

Respondents: Isle of Wight Council, Mid-Suffolk District Council, South Tyneside Metropolitan Borough Council, West Berkshire District Council

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales (Chancery Division) — Interpretation of Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Activities or transactions engaged in by a body governed by

public law in its capacity as a public authority — Off-street parking facilities for which a charge is made — Non-application of VAT leading to distortions of competition — Concept of 'distortion of competition' — Criteria for determination

Operative part of the judgment

1. Article 4(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that the significant distortions of competition, to which the treatment as non-taxable persons of bodies governed by private law acting as public authorities would lead, must be evaluated by reference to the activity in question, as such, without such evaluation relating to any local market in particular.
2. The expression 'would lead to' is, for the purposes of the second subparagraph of Article 4(5) of Sixth Council Directive 77/388/EEC, to be interpreted as encompassing not only actual competition, but also potential competition, provided that the possibility of a private operator entering the relevant market is real, and not purely hypothetical.
3. The word 'significant' is, for the purposes of the second subparagraph of Article 4(5) of Sixth Council Directive 77/388/EEC, to be understood as meaning that the actual or potential distortions of competition must be more than negligible.

(¹) OJ C 199, 25.8.2007.

Judgment of the Court (Fourth Chamber) of 9 October 2008 (reference for a preliminary ruling from the Bundesgerichtshof, Germany) — Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg

(Case C-304/07) (¹)

(Directive 96/9/EC — Legal protection of databases — Sui generis right — Concept of 'extraction' of the contents of a database)

(2008/C 301/17)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Directmedia Publishing GmbH

Defendant: Albert-Ludwigs-Universität Freiburg