

Judgment of the Court (First Chamber) of 2 April 2009 — Bouygues SA, Bouygues Télécom SA v Commission of the European Communities, French Republic, Orange France S.A., Société française du radiotéléphone — SFR

(Case C-431/07 P) ⁽¹⁾

(Appeals — State aid — Article 88(2) EC — Conditions for initiation of the formal investigation procedure — Serious difficulties — Criteria for establishing the existence of State aid — State resources — Principle of non-discrimination)

(2009/C 141/18)

Language of the case: French

Parties

Appellants: Bouygues SA, Bouygues Télécom SA (represented by: F. Sureau, D. Théophile, S. Perrotet, A. Bénabent, J. Vogel and L. Vogel, avocats,)

Other parties to the proceedings: Commission of the European Communities, (represented by: C. Giolito, Agent), French Republic (represented by: G. de Bergues, O. Christmann and A.L. Vendrolini, Agents), Orange France SA (represented by: S. Hautbourg, S. Quesson and L. Olza Moreno, avocats), Société française du radiotéléphone — SFR (represented by: A. Vincent, avocat and by C. Vajda QC)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 4 July 2007 in Case T-475/04 *Bouygues and Bouygues Télécom v Commission* in which the Court of First Instance dismissed the applicants' action for annulment of the Commission Decision of 20 July 2004 (State Aid NN 42/2004 — France) concerning alteration of the fees payable by Orange and SFR for UMTS (Universal Mobile Telecommunication System) licences — State aid — Conditions for initiation of the formal investigation procedure under Article 88(2) EC — Criteria for State aid — Concepts of State resources, competitive advantage and non-discrimination.

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Bouygues SA and Bouygues Télécom SA to pay the costs;
3. Orders the French Republic to bear its own costs.

⁽¹⁾ OJ C 269, 10.11.2007.

Judgment of the Court (Third Chamber) of 2 April 2009 (reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Graz (Austria)) — Veli Elshani v Hauptzollamt Linz

(Case C-459/07) ⁽¹⁾

(Community Customs Code — Article 202 and point (d) of the first paragraph of Article 233 — Incurrence of a customs debt — Unlawful introduction of goods — Seizure and confiscation — Extinction of the customs debt — Moment at which seizure must take place)

(2009/C 141/19)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Graz

Parties to the main proceedings

Applicant: Veli Elshani

Defendant: Hauptzollamt Linz

Re:

Reference for a preliminary ruling — Unabhängiger Finanzsenat, Außenstelle Graz — Interpretation of Article 202 and point (d) of the first paragraph of Article 233 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code — Extinction of the customs debt linked to the seizure of goods upon their unlawful introduction — Seizure of goods in the Member State of destination — Removal of the goods — Moment at which the debt is extinguished

Operative part of the judgment

1. Article 202 and point (d) of the first paragraph of Article 233 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in order to lead to the extinction of the customs debt, the seizure of goods unlawfully introduced into the customs territory of the Community must take place before those goods go beyond the first customs office situated inside that territory.
2. There is no need to reply to the second question.

⁽¹⁾ OJ C 297, 8.12.2007.