

to fall within the scope of the said provision solely because that operator does not have an authorisation permitting it to offer such bets to persons within the territory of the Member State in which it is established, but holds only an authorisation to offer those services to persons located outside that territory.

2. On a proper interpretation of Article 49 EC, where a regional public monopoly on sporting bets and lotteries has been established with the objective of preventing incitement to squander money on gambling and of combating gambling addiction, and yet a national court establishes at the same time:

— that other types of games of chance may be exploited by private operators holding an authorisation; and

— that in relation to other games of chance which do not fall within the said monopoly and which, moreover, pose a higher risk of addiction than the games which are subject to that monopoly, the competent authorities pursue policies of expanding supply, of such a nature as to develop and stimulate gaming activities, in particular with a view to maximising revenue derived from the latter;

that national court may legitimately be led to consider that such a monopoly is not suitable for ensuring the achievement of the objective for which it was established by contributing to reducing the opportunities for gambling and to limiting activities within that area in a consistent and systematic manner.

The fact that the games of chance subject to the said monopoly fall within the competence of the regional authorities, whereas those other types of games of chance fall within the competence of the federal authorities, is irrelevant in that respect.

3. On a proper interpretation of Article 49 EC, where a system of prior administrative authorisation is established in a Member State as regards the supply of certain types of gambling, such a system, which derogates from the freedom to provide services guaranteed by Article 49 EC, is capable of satisfying the requirements of that latter provision only if it is based on criteria which are objective, non-discriminatory and known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily. Furthermore, any person affected by a restrictive measure based on such a derogation must have an effective judicial remedy available to them.
4. On a proper interpretation of Article 49 EC, national legislation prohibiting the organisation and intermediation of games of chance on the internet for the purposes of preventing the squandering of money on gambling, combating addiction to the latter and protecting young persons may, in principle, be regarded as

suitable for pursuing such legitimate objectives, even if the offer of such games remains authorised through more traditional channels. The fact that such a prohibition is accompanied by a transitional measure such as that at issue in the main proceedings is not capable of depriving the said prohibition of that suitability.

(¹) OJ C 128, 24.5.2008.

Judgment of the Court (Fourth Chamber) of 9 September 2010 (reference for a preliminary ruling from the Landesgericht Linz (Austria)) — Criminal proceedings against Ernst Engelmann

(Case C-64/08) (¹)

(Freedom to provide services — Freedom of establishment — National rules establishing a system of concessions for the operation of games of chance in casinos — Concessions obtainable solely by public limited companies established in national territory — All concessions granted without any competitive procedure)

(2010/C 288/14)

Language of the case: German

Referring court

Landesgericht Linz

Party in the main proceedings

Ernst Engelmann

Re:

Reference for a preliminary ruling — Landesgericht Linz — Interpretation of Articles 43 EC and 49 EC — National legislation prohibiting, on pain of criminal sanctions, the operation of games of chance in casinos without a concession granted by the competent authority, but restricting the possibility of obtaining such a concession, of a maximum duration of 15 years, to public limited companies established in national territory which do not have any branches abroad

Operative part of the judgment

1. Article 43 EC must be interpreted as precluding legislation of a Member State under which games of chance may be operated in gaming establishments only by operators whose seat is in the territory of that Member State.
2. The obligation of transparency flowing from Articles 43 EC and 49 EC and from the principle of equal treatment and the prohibition of discrimination on grounds of nationality precludes the grant without any competitive procedure of all the concessions to operate gaming establishments in the territory of a Member State.

(¹) OJ C 116, 9.5.2008.

Judgment of the Court (First Chamber) of 2 September 2010 — European Commission v Deutsche Post AG, Bundesverband Internationaler Express- und Kurierdienste eV, UPS Europe SA, Federal Republic of Germany

(Case C-399/08 P) (¹)

(Appeal — Article 87 EC — Aid granted by the Member States — Measures implemented by the Federal Republic of Germany for Deutsche Post AG — Article 86 EC — Services of general economic interest — Compensation for additional costs generated by a policy of selling below cost in the door-to-door parcel delivery sector — Existence of an economic advantage — Method used by the Commission to check — Burden of proof — Article 230 EC — Scope of the General Court's powers of judicial review)

(2010/C 288/15)

Language of the case: German

Parties

Appellant: European Commission (represented by: V. Kreuzschitz, J. Flett and B. Martenczuk, acting as Agents)

Other parties to the proceedings: Deutsche Post AG (represented by: J. Sedemund, Rechtsanwalt), Bundesverband Internationaler Express- und Kurierdienste eV (represented by: R. Wojtek, Rechtsanwalt), UPS Europe SA (represented by: E. Henny, advocaat), Federal Republic of Germany (represented by: M. Lumma and B. Klein, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber, Extended Composition) of 1 July 2008 in Case T-266/02 *Deutsche Post v Commission* annulling Commission Decision 2002/753/EC of 19 June 2002 on measures implemented by the Federal Republic of Germany for Deutsche Post AG (OJ 2002 L 247, p. 27) declaring the aid incompatible with the common market and ordering its recovery — Compensation of additional costs generated by a below-cost selling policy in the door-to-door parcel delivery sector — Infringement of Articles 86(2) EC and 87(1) EC, Article 230 EC and Article 36 of the Statute of the Court of Justice — Annulment without finding any specific error in the Commission's reasoning supporting the contested decision — Failure to state reasons as regards the alleged unlawfulness of the method used by the Commission to ascertain the existence of unlawful aid

Operative part of the judgment

The Court:

1. Dismisses the main appeal and the cross-appeals;
2. Orders the European Commission to bear its own costs and to pay those incurred by Deutsche Post AG in connection with the main appeal;
3. Orders Bundesverband Internationaler Express- und Kurierdienste eV and UPS Europe SA to bear their own costs relating to the main appeal;
4. Orders Deutsche Post AG, Bundesverband Internationaler Express- und Kurierdienste eV and UPS Europe SA to bear their own costs relating to the cross-appeals;
5. Orders the Federal Republic of Germany to bear its own costs.

(¹) OJ C 301, 22.11.2008.