

**Re:**

Reference for a preliminary ruling — Raad van State — Interpretation of Article 49 EC — National legislation prohibiting the unlicensed organisation of gaming and collection of bets and reserving a licence to one single operator in order to safeguard social wellbeing and public health — Refusal to issue a licence to an (internet) operator which is already licensed in other Member States, including the Member State in which it has its registered office — Renewal of such a licence without subjecting the matter to competition — Overriding reasons in the public interest

**Operative part of the judgment**

1. Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.
2. Article 49 EC must be interpreted as meaning that the principle of equal treatment and the consequent obligation of transparency are applicable to procedures for the grant of a licence to a single operator or for the renewal thereof in the field of games of chance, in so far as the operator in question is not a public operator whose management is subject to direct State supervision or a private operator whose activities are subject to strict control by the public authorities.

(<sup>1</sup>) OJ C 197, 2.8.2008.

**Judgment of the Court (Second Chamber) of 3 June 2010  
(reference for a preliminary ruling from the Hoge Raad der  
Nederlanden — Netherlands) — Ladbrokes Betting &  
Gaming Ltd, Ladbrokes International Ltd v Stichting de  
Nationale Sporttotalisator**

(Case C-258/08) (<sup>1</sup>)

**(Article 49 EC — Restrictions on the freedom to provide services — Games of chance — Offer of games of chance via the internet — Legislation reserving a licence to a single operator — Refusal to grant an operating licence to an operator who is licensed in other Member States — Justification — Proportionality — Review of each specific measure applying national legislation)**

(2010/C 209/06)

Language of the case: Dutch

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Applicants:* Ladbrokes Betting & Gaming Ltd, Ladbrokes International Ltd

*Defendant:* Stichting de Nationale Sporttotalisator

**Re:**

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 49 EC — National legislation prohibiting the unlicensed organisation of gaming and collection of bets and reserving a licence to one single operator in order to safeguard social wellbeing and public health — Refusal to issue a licence to an (internet) operator which is already licensed in other Member States, including that in which it has its registered office — overriding reasons in the public interest

**Operative part of the judgment**

1. National legislation, such as that at issue in the main proceedings, which seeks to curb addiction to games of chance and to combat fraud, and which in fact contributes to the achievement of those objectives, can be regarded as limiting betting activities in a consistent and systematic manner even where the holder(s) of an exclusive licence are entitled to make what they are offering on the market attractive by introducing new games and by means of advertising. It is for the national court to determine whether unlawful gaming activities constitute a problem in the Member State concerned which might be solved by the expansion of authorised and regulated activities, and whether that expansion is on such a scale as to make it impossible to reconcile with the objective of curbing such addiction.
2. For the purpose of applying legislation of a Member State on games of chance which is compatible with Article 49 EC, the national courts are not required to determine, in each case, whether the implementing measure intended to ensure compliance with that legislation is suitable for achieving the objective of that legislation and is compatible with the principle of proportionality, in so far as that measure is necessary to ensure the effectiveness of that legislation and does not include any additional restriction over and above that which arises from the legislation itself. Whether that implementing measure was adopted as a result of action by the public authorities to ensure compliance with national legislation or of an application by an individual in the context of a civil action to protect his rights under that legislation has no bearing on the outcome of the dispute before the national court.

3. Article 49 EC must be interpreted as not precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which exclusive rights to organise and promote games of chance are conferred on a single operator, and which prohibits any other operator, including an operator established in another Member State, from offering via the internet services within the scope of that regime in the territory of the first Member State.

(<sup>1</sup>) OJ C 223, 30.08.2008.

**Judgment of the Court (First Chamber) of 3 June 2010  
(reference for a preliminary ruling from the Tribunal Supremo (Spain)) — Caja de Ahorros y Monte de Piedad de Madrid v Asociación de Usuarios de Servicios Bancarios (Ausbanc)**

(Case C-484/08) (<sup>1</sup>)

*(Directive 93/13/EEC — Consumer contracts — Terms defining the main subject-matter of the contract — Assessment by the courts as to their unfairness — Excluded — More stringent national provisions designed to afford a higher level of consumer protection)*

(2010/C 209/07)

Language of the case: Spanish

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

Applicant: Caja de Ahorros y Monte de Piedad de Madrid

Defendant: Asociación de Usuarios de Servicios Bancarios (Ausbanc)

**Re:**

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Articles 2, 3(1)(g) and 4(1) EC and of Articles 4(2) and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1995 L 95, p. 29) — Stricter national provisions to guarantee the consumer a higher level of protection — Review of terms defining the

main subject matter of the contract or the adequacy of the price and remuneration as against the services or goods supplied.

**Operative part of the judgment**

1. Articles 4(2) and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which authorises a judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language;

2. Articles 2 EC, 3(1)(g) EC and 4(1) EC do not preclude an interpretation of Articles 4(2) and 8 of Directive 93/13 according to which Member States may adopt national legislation which authorises a judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, on the one hand, as against the services or goods to be supplied in exchange, on the other hand, even in the case where those terms are drafted in plain, intelligible language.

(<sup>1</sup>) OJ C 19, 24.01.2009.

**Judgment of the Court (First Chamber) of 3 June 2010 — European Commission v Kingdom of Spain**

(Case C-487/08) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Free movement of capital — Articles 56 EC and 40 of the EEA Agreement — Difference in treatment — Dividends distributed to resident and non-resident companies)*

(2010/C 209/08)

Language of the case: Spanish

**Parties**

Applicant: European Commission (represented by: R. Lyal and I. Martínez del Peral, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)