threshold, whilst it systematically applies the exemption method for nationally-sourced dividends, provided, however, that the mechanisms in question designed to prevent or mitigate distributed profits being liable to a series of charges to tax lead to equivalent results. The fact that the national tax authority demands information from the company receiving dividends relating to the tax that has actually been charged on the profits of the company distributing them in the non-member State in which the latter is resident is an intrinsic part of the very operation of the imputation method and does not affect, as such, the equivalence between the exemption and imputation methods.

5. *Article 63 TFEU must be interpreted as:*

— *precluding national legislation which grants resident companies the possibility of carrying losses suffered in a tax year forward to subsequent tax years and which prevents the economic double taxation of dividends by applying the exemption method to nationally-sourced dividends, whereas it applies the imputation method to dividends distributed by companies established in another Member State or in a non-member State, in so far as, when the imputation method is applied, such legislation does not allow the credit for the corporation tax paid in the State where the company distributing dividends is established to be carried forward to the following tax years if the recipient company has recorded an operating loss for the tax year in which it received the foreign-sourced dividends, and*

— *not obliging a Member State to provide, in its tax legislation, that a credit is to be granted for the withholding tax levied on dividends in another Member State or in a non-member State in order to prevent the juridical double taxation — resulting from the parallel exercise by the States concerned of their respective powers of taxation — of the dividends received by a company established in the first Member State.*

[1] OJ C 19, 24.1.2009.

Judgment of the Court (First Chamber) of 17 February 2011 (reference for a preliminary ruling from the Stockholms tingsrätt — Sweden) — Konkurrensverket v TeliaSonera AB

(Case C-52/09) [1]

(Preliminary ruling — Article 102 TFEU — Abuse of dominant position — Prices applied by telecommunications operator — ADSL input services — Broadband connection services to end users — Margin squeeze on competitors)

(2011/C 103/03)

Language of the case: Swedish

Referring court

Stockholms tingsrätt

Parties to the main proceedings

Applicant: Konkurrensverket

Defendant: TeliaSonera Sverige AB

Intervening party: Tele2 Sverige AB

Re:

Reference for a preliminary ruling — Stockholms tingsrätt — Interpretation of Article 82 EC — Margin squeeze — Prices applied by a telecommunications operator which formerly held a historical monopoly for ADSL access — Spread between the prices invoiced by the operator to intermediate operators for the wholesale supply of ADSL access and the tariffs applied by the operator to consumers for ADSL access not sufficient to cover the additional costs borne by the operator itself for the supply of those retail services

Operative part of the judgment

In the absence of any objective justification, the fact that a vertically integrated undertaking, holding a dominant position on the wholesale market in asymmetric digital subscriber line input services, applies a pricing practice of such a kind that the spread between the prices applied on that market and those applied in the retail market for broadband connection services to end users is not sufficient to cover the specific costs which that undertaking must incur in order to gain access to that retail market may constitute an abuse within the meaning of Article 102 TFEU.

When assessing whether such a practice is abusive, all of the circumstances of each individual case should be taken into consideration. In particular:

— *as a general rule, primarily the prices and costs of the undertaking concerned on the retail services market should be taken into consideration. Only where it is not possible, in particular circumstances, to refer to those prices and costs should those of competitors on the same market be examined, and*

— *it is necessary to demonstrate that, taking particular account of whether the wholesale product is indispensable, that practice produces an anti-competitive effect, at least potentially, on the retail market, and that the practice is not in any way economically justified.*

The following factors are, as a general rule, not relevant to such an assessment:

— *the absence of any regulatory obligation on the undertaking concerned to supply asymmetric digital subscriber line input services on the wholesale market in which it holds a dominant position;*

— *the degree of dominance held by that undertaking in that market;*

— *the fact that that undertaking does not also hold a dominant position in the retail market for broadband connection services to end users;*

— *whether the customers to whom such a pricing practice is applied are new or existing customers of the undertaking concerned;*

— *the fact that the dominant undertaking is unable to recoup any losses which the establishment of such a pricing practice might cause, or*

— *the extent to which the markets concerned are mature markets and whether they involve new technology, requiring high levels of investment*

[1] OJ C 90, 18.04.2009.

Judgment of the Court (Second Chamber) of 17 February 2011 — European Commission v Republic of Cyprus

(Case C-251/09) [1]

(Public works contracts and supply contracts — Water, energy, transport and telecommunications sectors — Directive 93/38/EEC — Contract notice — Award criteria — Equal treatment of tenderers — Principle of transparency — Directive 92/13/EEC — Review procedure — Requirement to state reasons for a decision to eliminate a tenderer)

(2011/C 103/04)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: C. Zadra, I. Chatzigiannis and M. Patakia, agents, agents)

Defendant: Republic of Cyprus (represented by: K. Likourgos and A. Patanzi-Lamprou, agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4(2) and 31(1) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) — Infringement of Article 1(1) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14) — Requirement to state reasons for a decision to eliminate a tenderer — Requirement to ensure that decisions taken by the contracting authorities may be reviewed effectively and as rapidly as possible — Principles of equal treatment and transparency

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the European Commission to pay the costs.*

[1] OJ C 233, 26.9.2009.

Judgment of the Court (First Chamber) of 10 February 2011 — Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) v European Commission

(Case C-260/09 P) [1]

(Appeal — Article 81 EC and Article 53 of the EEA Agreement — Market for Nintendo video games consoles and games cartridges — Limitation of parallel exports in that market — Agreement between a manufacturer and an exclusive distributor — Distribution agreement allowing passive sales — Proof of a concurrence of wills in the absence of direct documentary evidence that passive sales were to be restricted — Standard of proof necessary to establish the existence of a vertical agreement)

(2011/C 103/05)

Language of the case: English

Parties

Appellant: Activision Blizzard Germany GmbH (formerly CD-Contact Data GmbH) (represented by: J.K. de Pree and E.N.M. Raedts, advocaten)

Other party to the proceedings: European Commission (represented by: S. Noë and F. Ronkes Agerbeek, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber) of 30 April 2009 in Case T-18/03 *CD-Contact Data GmbH* v *Commission of the European Communities* by which the Court reduced the fine imposed on the appellant and dismissed as to the remainder an action for annulment of Commission Decision 2003/675/EC of 30 October 2002 relating to a proceeding pursuant to Article 81 of the EC Treaty (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega — Nintendo) concerning a complex of agreements and concerted practices in the markets for Nintendo consoles and video games cartridges compatible with Nintendo consoles designed to restrict parallel exports of those consoles and cartridges

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*