JUDGMENT OF THE COURT (Third Chamber)

22 December 2010 *

In Case C-338/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Unabhängiger Verwaltungssenat Wien (Austria), made by decision of 29 July 2009, received at the Court on 24 August 2009, in the proceedings

Yellow Cab Verkehrsbetriebs GmbH

v

Landeshauptmann von Wien,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby, R. Silva de Lapuerta, E. Juhász (Rapporteur) and T. von Danwitz, Judges,

* Language of the case: German.

Advocate General: P. Cruz Villalón,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Yellow Cab Verkehrsbetriebs GmbH, by W. Punz, Rechtsanwalt,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato,

— the Commission of the European Communities, by G. Braun, N. Yerrell and I. Rogalski, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 September 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the relevant provisions of European Union law on the freedom of establishment, the freedom to provide services and competition, applicable in the transport sector.

2 The reference has been made in proceedings between Yellow Cab Verkehrsbetriebs GmbH ('Yellow Cab'), established in Munich (Germany), and the Landeshauptmann von Wien (first minister of Vienna), concerning the rejection of the application made by that company for authorisation to operate a bus service within the territory of the City of Vienna (Austria).

Legal context

European Union legislation

3 On the basis of Article 71(1)(a) EC, now Article 91(1)(a) TFEU, which empowered the Council of the European Union to establish, in accordance with the procedure laid down in that provision, common rules applicable to international transport to or

from the territory of a Member State or passing across the territory of one or more Member States, the Council adopted Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ 1992 L 74, p. 1), which was amended by Council Regulation (EC) No 11/98 of 11 December 1997 (OJ 1998 L 4, p. 1) ('Regulation No 684/92').

4 Article 7(4) of Regulation No 684/92, entitled 'Authorisation procedure' provides:

'Authorisation shall be granted unless:

…

(d) it is shown that the service in question would directly compromise the existence of regular services already authorised, except in cases in which the regular services in question are carried out by a single carrier or group of carriers only;

(e) it appears that the operation of services covered by the application is aimed only at the most lucrative of the services existing on the links concerned;

…'

5 On the basis of Article 71(1)(b) EC, now Article 91(1)(b) TFEU, which empowered the Council to establish the conditions under which non-resident carriers may operate transport services within a Member State, the Council adopted Regulation (EC) No 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ 1998 L 4, p. 10), Article 1 of which states:

'Any carrier who operates road passenger transport services for hire or reward, and who holds the Community licence provided for in Article 3a of Council Regulation (EEC) No 684/92 …, shall be permitted, under the conditions laid down in this Regulation and without discrimination on grounds of the carrier's nationality or place of establishment, temporarily to operate national road passenger services for hire or reward in another Member State, hereinafter referred to as the "host Member State", without being required to have a registered office or other establishment in that State.

Such national transport services are hereinafter referred to as "cabotage transport operations".'

6 Article 2 of that regulation states the following:

'For the purposes of this Regulation:

(1) "Regular services" means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. Regular services shall be open to all — subject, where appropriate, to compulsory reservation.

The fact that the operating conditions of the service may be adjusted shall not affect its classification as a regular service.

(2) "Special regular services" means regular services which provide for the carriage of specified categories of passengers, to the exclusion of other passengers, at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points.

Special regular services shall include:

(a) the carriage of workers between home and work;

(b) carriage to and from the educational institution for school pupils and students;

(c) the carriage of soldiers and their families between their homes and the area of their barracks.

The fact that a special service may be varied according to the needs of users shall not affect its classification as a regular service.

(3) "Occasional services" means services which do not fall within the definition of regular services, including special regular services, and whose main characteristic is that they carry groups constituted on the initiative of a customer or of

the carrier himself. These services shall not cease to be occasional services solely because they are provided at certain intervals.

…'

7 Article 3 of the regulation provides:

'Cabotage transport operations shall be authorised for the following services:

(1) special regular services provided that they are covered by a contract concluded between the organiser and the carrier;

(2) occasional services;

(3) regular services, provided they are performed by a carrier not resident in the host Member State in the course of a regular international service in accordance with Regulation (EEC) No 684/92.

Cabotage transport cannot be performed independently of such international service.

Urban and suburban services shall be excluded from the scope of this point.

"Urban and suburban services" means transport services meeting the needs of an urban centre or conurbation, and transport needs between it and the surrounding areas.'

8 Regulations Nos 684/92 and 12/98 were repealed, with effect from 4 December 2011, by Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ 2009 L 300, p. 88). Therefore, Regulations Nos 684/92 and 12/98 are applicable *ratione temporis* to the facts in the main proceedings.

9 Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ, English Special Edition 1969 (I), p. 276), as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 (OJ 1991 L 169, p. 1) ('Regulation No 1191/69'), which is applicable *ratione temporis* to the facts in the main proceedings, contains the following definition in Article 2(1) thereof:

'"Public service obligations" means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions.'

10 Regulation No 1191/69 was repealed, with effect from 3 December 2009, by Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1). Article 2(e) of that

regulation contains a definition of 'public service obligation', whose content is essentially the same as that of Article 2(1) of Regulation No 1191/69.

National legislation

11 Paragraph 1 of the Austrian law on motor vehicle services (Kraftfahrliniengesetz, BGBl. I, 203/1999), in the version applicable to the case in the main proceedings (BGBl. I, 153/2006) ('the KflG'), entitled 'Definitions, content and scope of licences', provides:

'1. Motor vehicle services are services which provide for the carriage of passengers by motor vehicles operated by transport undertakings on specified routes and on a regular basis, in which passengers may be taken up and set down at predetermined stopping points. Motor vehicle services shall be open to all — subject, where appropriate, to compulsory reservation.

…

3. National and cross-border motor vehicles services as for the purposes of subparagraph 1 require a licence and cross-border motor vehicle services which terminate in the territory of a Member State … or a State party to the Agreement on the European Economic Area or Switzerland require authorisation which is the equivalent of a licence.'

12 Paragraph 2 of the KflG, entitled 'Obligation to apply for a licence and authorisation, content of a licence application', provides that the grant of a licence or authorisation

requires that an application be made by the transport operator directly to the competent authority, and sets out the information which that application must contain, such as the identity and place of establishment of the applicant, his reliability, his technical expertise, his financial capacity, the route of the service applied for, the desired duration of the licence, the transport fares to be charged and the fittings of the vehicles to be used.

13 Paragraph 3(1) of that law, entitled 'Supervisory authorities', states that the Landeshauptmann is responsible for granting the licences provided for in Paragraph 1 of the KflG.

14 Paragraph 7(1) of the KflG, entitled 'Conditions and grounds of exclusion from the grant of a licence', provides:

'A licence is to be granted where:

(1) the licence applicant or, where necessary, the operator provided for in Paragraph 10(5), is reliable and suitably qualified and the licence applicant is, in addition, of appropriate financial standing;

(2) the licence applicant, as a natural person, has Austrian nationality and the undertaking (Paragraph 1(2)(2)) has its registered office in Austria. Nationals of other Member States … or other States party to the Agreement on the European Economic Area which also have a registered office or a permanent branch in Austria are to be treated in the same way as Austrian licence applicants;

(3) the type of route ensures that the relevant transport requirements are met in an appropriate and economic manner, and

(4) the grant of a licence is not otherwise contrary to the public interest. This ground for exclusion obtains in particular where

…

(b) the motor vehicle service applied for might jeopardise the performance of transport functions by the transport undertaking in whose transport area (Paragraph 14(1) to (3)) the service applied for falls in full or in part, or

(c) the motor vehicle service applied for anticipates an organisation of transport, which is more consistent with the public need, by the transport undertakings in whose transport area (Paragraph 14(4)) the service applied for falls in full or in part, and one of those undertakings makes the necessary improvement to transport provision within an appropriate period of time, not exceeding six months, to be fixed by the supervisory authority.'

15 Paragraph 14 of the KflG, entitled 'Transport area', states the following:

'1. The transport area referred to in Paragraph 7(1)(4)(b) shall extend to cover situations in which a motor vehicle service applied for may have the effect of jeopardising public transport which has already been licensed.

2. Performance of transport functions is jeopardised where a transport undertaking is seriously affected as regards the provision of its public transport. This is the case where it suffers a drop in revenue which substantially calls into question the profitability of the jeopardised service.

3. If a transport undertaking claims that it is suffering from a drop in revenue which substantially calls into question the balance of its commercial operation as a result of the grant of a new licence or a licence with an amended route, it shall submit to the supervisory authority the information, some of which may be confidential, which shall enable that authority to evaluate the effects which the drop in revenue will have on the profitability of the service concerned.

4. "Transport area" as referred to in Paragraph 7(1)(4)(c) is to be understood as meaning the area within which the existing motor vehicle service meets the transport requirement.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 On 25 January 2008, Yellow Cab applied to the Landeshauptmann von Wien, pursuant to the KflG, for authorisation to operate a fixed-route bus service exclusively within the territory of the City of Vienna.

17 Another company operates a bus service on almost all of that route, pursuant to a licence granted on 17 May 2005.

18 Yellow Cab's application was rejected by the competent administrative authority, essentially on the following grounds. First, Yellow Cab is established in another Member State and does not have a seat or permanent establishment in Austrian territory, contrary to Paragraph 7(1)(2) of the KflG. Second, the undertaking which currently operates a bus service on the same route as the one applied for by Yellow Cab was consulted in accordance with Paragraph 7(1)(4)(b) of the KflG and stated that it would no longer be possible to operate that service in sustainable economic conditions if the licence applied for were granted.

19 Yellow Cab appealed against that decision before the Unabhängiger Verwaltungssenat Wien (Independent Administrative Chamber, Vienna), which harbours doubts as to the compatibility of the national legislation at issue with the rules of the EC Treaty on freedom of establishment, freedom to provide services and competition.

20 Yellow Cab states, in essence, that the requirement of a seat or permanent establishment within Austrian territory in order to be licensed to operate a regular bus service constitutes a specific obstacle only for applicants who do not originate in Austria, in so far as Austrian applicants, whether natural or legal persons, are in principle established within the territory of the Republic of Austria. Even though regular passenger transport services are in the public interest, the national court doubts whether it is necessary to restrict the freedom of establishment and the freedom to provide services to such an extent.

21 Furthermore, in so far as concerns the requirement that the new service applied for must not jeopardise the economic viability of an already licensed service, the national court considers that the relevant provision of the national legislation protects from competition above all undertakings which have operated poorly and in an unprofitable manner the transport services which they have been licensed to operate. The

national court points out that, in the present case, the applicant undertaking was proposing, for practically the same bus service, a significantly lower price than that currently charged by the competing undertaking which is already licensed.

22 Finally, the national court points out that, although the Treaty provisions on competition are aimed primarily at undertakings, the Member States must also refrain from taking any measures which may render ineffective the competition rules applicable to undertakings. The result of the national legislation at issue in the main proceedings is to prevent an undertaking, which is in a position to offer a regular bus service at more competitive prices, from gaining access to the market, even though a system of transport services functioning correctly and at competitive prices would satisfy a significant public interest.

23 In the light of those considerations, the Unabhängiger Verwaltungssenat Wien decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Is it compatible with the freedom of establishment and the freedom to provide services within the meaning of Article [49 et seq. TFEU and Article 56 et seq. TFEU] and with EU competition law for the purposes of Article [101 et seq. TFEU] for a provision of national law relating to the grant of authorisation to operate a motor vehicle service, and thus to provide public transport, where fixed

stopping points are called at regularly in accordance with a timetable, to lay down the following as conditions for such authorisation:

(a) that the EU undertaking making the application must already have a registered office or a branch in the State of the authorising authority before commencing operation of the service and in particular at the time the licence is granted;

(b) that the EU undertaking making the application must already have a registered office or a branch in the State of the authorising authority at the latest from the time operation of the service commences?

2. Is it compatible with the freedom of establishment and the freedom to provide services within the meaning of Article [49 et seq. TFEU and Article 56 et seq. TFEU] and with EU competition law for the purposes of Article [101 et seq. TFEU] for a provision of national law relating to the grant of authorisation to operate a motor vehicle service, and thus to provide public transport where fixed stops are called at regularly in accordance with a timetable, to provide that authorisation is to be refused where, if the motor vehicle service applied for commences, the revenues of a competing undertaking running on a partially or entirely identical short route will be so substantially reduced by this service that the continued running of the service operated by the competing undertaking will no longer be economically viable?'

Consideration of the questions referred

Preliminary observations

24 It should be pointed out at the outset that, in its two questions, the national court refers in particular to the European Union competition law laid down in Article 101 et seq. TFEU.

25 It should be noted, in that regard, that, although it is true that Articles 101 TFEU and 102 TFEU are concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, those articles, read in conjunction with Article 4(3) TEU, which lays down a duty to cooperate, none the less require Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings (see Case C-198/01 *CIF* [2003] ECR I-8055, paragraph 45 and the case-law cited, and Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 46).

26 The Court has held that Articles 4(3) TEU and 101 TFEU are infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Article 101 TFEU or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere (see *CIF*, paragraph 46 and the case-law cited, and *Cipolla and Others*, paragraph 47).

27 However, the national legislation at issue in the main proceedings does not fall within any of those cases. Consequently, there is no need to examine the present reference for a preliminary ruling from the point of view of European Union competition law.

The first question

28 By this question, the national court essentially asks whether the provisions of European Union law on the freedom to provide services and the freedom of establishment must be interpreted as opposing the legislation of a Member State, such as that at issue in the main proceedings, which, for the purposes of the grant of authorisation to operate a public urban bus service, where fixed stopping points are called at regularly in accordance with a timetable, requires applicant economic operators, even those established in other Member States, to hold a seat or another establishment in the territory of that Member State.

29 In order to answer that question, it is to be stressed that free movement of services in the transport sector is not governed by Article 56 TFEU, which concerns freedom to provide services in general, but by a specific provision, namely Article 58(1) TFEU, according to which '[f]reedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport' (see, to that effect, Case 4/88 *Lambregts Transportbedrijf* [1989] ECR 2583, paragraph 9).

30 Application of the principles governing freedom to provide services must therefore be achieved, according to the Treaty, by introducing a common transport policy (see Case C-17/90 *Pinaud Wieger* [1991] ECR I-5253, paragraph 7).

31 It should also be noted that the transport at issue in the main proceedings does not fall within the scope of the provisions adopted by the Council, on the basis of Article 71(1) EC, in order to liberalise transport services.

32 First, it is not disputed that the operation of the bus service envisaged by Yellow Cab does not constitute international transport and thus does not fall within the scope of Regulation No 684/92. Second, as regards Regulation No 12/98, it needs to be pointed out that the conditions for its application are not met in the case in the main proceedings, given that the regular transport services envisaged by Yellow Cab do not constitute the national segment of a regular international service, for the purposes of Article 3(3) of that regulation, and that, since they are intended to be provided exclusively within the territory of the City of Vienna, they constitute urban or suburban services which are excluded from the scope of the regulation by means of Article 3(3) thereof.

33 In those circumstances, the national legislation at issue in the main proceedings falls to be assessed in the light of the provisions of the TFEU on freedom of establishment, which are applicable directly to transport, and not on the basis of the Title of that Treaty on transport.

34 In that regard, it must be pointed out that the requirement of a seat or another establishment in the territory of the host Member State cannot logically constitute, as such, a barrier to, or restriction on, the freedom of establishment. As rightly pointed out by the Austrian Government, that obligation does not impose the slightest restriction on the freedom of economic operators established in other Member States to create agencies or other establishments in that territory.

35 Therefore, what is important in a situation such as that in the case in the main proceedings is to examine whether the detailed rules surrounding the requirement of a seat or another establishment in the territory of the host Member State, as a prerequisite for obtaining authorisation to operate a regular bus service, may constitute a barrier to the exercise of the right of establishment.

36 In that regard, the national court makes reference, firstly, to the fact that interested foreign business operators are required to hold a seat or another establishment in the territory of the host Member State before authorisation to operate is granted and, secondly, to the fact that they must satisfy that requirement after authorisation has been granted and, at the latest, from the time operation of the authorised regular service commences.

37 However, requiring an economic operator, established in another Member State and wishing to obtain authorisation to operate a regular bus service in the host Member State, to hold a seat or another establishment in the territory of that State even before authorisation has been granted to operate that service has a dissuasive effect. An economic operator exercising ordinary care would not be willing to make investments, which may well be significant, if completely unsure whether such authorisation will be granted or not.

38 It should be added that the restriction brought about by such a requirement does not appear to be justified in any way by the objectives claimed by the Austrian Government relating to the need to ensure equal conditions for competition in the operation of bus services, and to ensure that the social and employment law in force in Austria is respected.

39 Consequently, such a requirement constitutes a restriction which is contrary to the rules of the European Union on the right of establishment.

40 By contrast, a requirement to be established in Austrian territory is not contrary to European Union law where it is applied after authorisation to operate has been granted and before the business operator commences operation of the service.

41 In the light of the foregoing considerations, the answer to the first question is that Article 49 TFEU must be interpreted as opposing the legislation of a Member State, such as that at issue in the main proceedings, which, for the purposes of the grant of authorisation to operate a public urban bus service, where fixed stopping points are called at regularly in accordance with a timetable, requires applicant economic operators established in another Member State to hold a seat or another establishment in the territory of the host Member State even before being authorised to operate that service. By contrast, Article 49 TFEU must be interpreted as not precluding national legislation which provides for an establishment requirement where such a requirement does not apply until after that authorisation has been granted and before the applicant commences operation of that service.

The second question

42 By this question, the national court asks whether the provisions of European Union law on freedom to provide services and freedom of establishment must be interpreted as opposing national legislation, such as that at issue in the main proceedings, which provides that the authorisation applied for to operate an urban bus service, where fixed stops are called at regularly in accordance with a timetable, must be refused where the income of a competing undertaking, which has already been granted

authorisation to operate a transport service using a route which is partially or entirely identical to the service applied for, would be so substantially reduced as a consequence of the grant of that authorisation, that the continued running of the licensed service would no longer be economically viable.

43 In the light of the reasoning in paragraphs 29 to 33 above, this question must be examined exclusively from the point of view of freedom of establishment.

44 It should be noted, at the outset, that, according to the information provided in the file, the bus services at issue in the main proceedings are primarily aimed at tourists, with the result that the obligations inherent in the operation of such services are not public service obligations within the meaning of the definition in Article 2(1) of Regulation No 1191/69.

45 National legislation, such as that at issue in the main proceedings, which requires authorisation to be obtained in order to operate a tourist bus service, constitutes, in principle, a restriction of freedom of establishment within the meaning of Article 49 TFEU, in that it seeks to restrict the number of service providers, notwithstanding the alleged absence of discrimination on grounds of the nationality of the persons concerned (see, by analogy, Case C-160/07 *Hartlauer* [2009] ECR I-1721, paragraphs 36 and 39).

46 Consequently, it is necessary to examine whether the legislation at issue in the main proceedings may be justified objectively.

47 It needs to be pointed out that, as is apparent from the documents before the Court, Paragraph 7(1)(4) of the KflG, entitled 'Conditions and grounds of exclusion from the grant of a licence', refers to incompatibility with the public interest as a criterion for refusal to grant authorisation to operate and refers, in points (b) and (c) thereof, to situations in which that ground of exclusion applies in particular. A drop in revenue of an authorised transport services undertaking which would substantially call into question the profitability of its commercial operation is referred to in Paragraph 14 of that law, entitled 'Transport area'.

48 The second question, as formulated, concerns the decisive role of the criterion based on such a drop in revenue and on how the operation of the undertaking concerned would be rendered unprofitable if a new operator were granted authorisation.

49 Therefore, the Court's analysis will take account of both the wording of the relevant provisions of the KflG and the interpretation of that law, as resulting from the wording of the second question.

50 In that regard, as the Commission rightly observes, the operation of bus services such as those at issue in the case in the main proceedings may serve an objective in the general interest, such as promotion of tourism, road safety by channelling tourist traffic to set routes, or protection of the environment by offering a collective mode of transport as an alternative to individual means of transport.

51 By contrast, the objective of ensuring the profitability of a competing bus service, as a reason of a purely economic nature, cannot, in accordance with the settled case-law,

constitute an overriding reason in the public interest justifying a restriction of a fundamental freedom guaranteed by the Treaty (see Case C-384/08 *Attanasio Group* [2010] ECR I-2055, paragraph 55 and the case-law cited).

52 As regards, in particular, the interest in preventing the authorisation of a transport service from directly compromising the existence of regular services already authorised, it should be noted that, under Regulation No 684/92, such an interest may justify the refusal of such authorisation, as is apparent from Article 7(4)(d) thereof. However, since that provision does not apply in the circumstances of the dispute in the main proceedings, it cannot be accepted that, outside that regulatory framework and where an application to operate a tourist bus service has been made, objectives similar to those provided for in that provision may justify a restriction on freedom of establishment.

53 In so far as concerns the examination of proportionality, it should be noted that a prior administrative authorisation scheme cannot render legitimate discretionary conduct on the part of the national authorities which is liable to negate the effectiveness of provisions of European Union law, in particular those relating to a fundamental freedom such as that at issue in the main proceedings. Also, if a prior administrative authorisation scheme is to be justified even though it derogates from a fundamental freedom, it must be based on objective, non-discriminatory criteria known in advance, in such a way as adequately to circumscribe the exercise of the national authorities' discretion (*Hartlauer*, paragraph 64 and the case-law cited).

54 Therefore, if the national legislation at issue in the main proceedings is interpreted as meaning that the assessment of an application for authorisation is to be carried out by the competent national authority on the sole basis of the statements made by the authorised service provider in relation to the profitability of his undertaking, even though that undertaking is a direct potential competitor of the undertaking applying for authorisation, such a means of assessment would be contrary to the rules of

the European Union for it would be liable to affect the objectivity and impartiality of the treatment of the application for authorisation (see, to that effect, *Hartlauer*, paragraph 69).

55 In the light of the foregoing considerations, the answer to the second question is that Article 49 TFEU must be interpreted as opposing national legislation which provides for the refusal of the grant of authorisation to operate a tourist bus service as a result of the reduced profitability of a competing undertaking which has been authorised to operate a service which is partially or entirely identical to the one applied for, on the sole basis of the statements of that competing undertaking.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 49 TFEU must be interpreted as opposing the legislation of a Member State, such as that at issue in the main proceedings, which, for the purposes of the grant of authorisation to operate a public urban bus service, where fixed stopping points are called at regularly in accordance with a timetable,**

requires applicant economic operators established in another Member State to hold a seat or another establishment in the territory of the host Member State even before being authorised to operate that service. By contrast, Article 49 TFEU must be interpreted as not precluding national legislation which provides for an establishment requirement where such a requirement does not apply until after that authorisation has been granted and before the applicant commences operation of that service.

2. **Article 49 TFEU must be interpreted as opposing national legislation which provides for the refusal of the grant of authorisation to operate a tourist bus service as a result of the reduced profitability of a competing undertaking which has been authorised to operate a service which is partially or entirely identical to the one applied for, on the sole basis of the statements of that competing undertaking.**

[Signatures]