Appeal brought on 30 January 2009 by Société des plantations de Mbanga SA (SPM) against the judgment of the Court of First Instance (Eighth Chamber) delivered on 13 November 2008 in Case T-128/05 SPM v Council and Commission

(Case C-39/09 P)

(2009/C 90/16)

Language of the case: French

Parties

Appellant: Société des plantations de Mbanga SA (SPM) (represented by: A. Farache, avocat)

Other parties to the proceedings: Council of the European Union, Commission of the European Communities

Form of order sought

The appellant claims the Court should:

— primarily:

— partially set aside the judgment of the Court of First Instance;

— order the Commission to pay damages and the costs of the case at first instance and on appeal, including those of the appellant;

— in the alternative:

— refer the case back to the Court of First Instance for it to rule again and make a decision as to the amount of damages to be paid.

Pleas in law and main arguments

The appellant essentially puts forward two pleas in law in support of its appeal.

First, it submits that the Court of First Instance erred in law in holding that the Community system for the import of bananas does not manifestly and seriously infringe the principle of maintaining effective competition, a principle which, according to the appellant, is a rule of law intended to confer rights on individuals.

In this connection the appellant alleges, first, the failure by the Court of First Instance to take into account the objectives of competition in so far as it based its judgment solely on the general objectives pursued specifically in the context of the organisation of the common market in the banana sector. Secondly, the appellant claims that the Court of First Instance incorrectly interpreted the connection between the Community legislation and the anti-competitive practices existing on the banana market in so far as it refused to concede that the Community provisions enable, by means of import licences, the grant of economic advantages to certain privileged operators, whose position on the market is strengthened by the existing rules.

By its second plea, the appellant pleads the infringement, by the Court of First Instance, of general principles of law and, inter alia, of the principle of sound administration in so far as it held that that principle, in itself, is not a rule of law intended to confer rights on individuals. That principle has been affirmed many times in case-law and has the effect, in the present case, of putting the Commission under an obligation to take into consideration the particular circumstances of the market and of the producers who are not able to obtain the status of operators at the time of the adoption of the Community legislation.

Reference for a preliminary ruling from VAT and Duties Tribunal, Manchester (United Kingdom) made on 29 January 2009 — Astra Zeneca UK Limited v Commissioners for Her Majesty's Revenue and Customs

(Case C-40/09)

(2009/C 90/17)

Language of the case: English

Referring court

VAT and Duties Tribunal, Manchester

Parties to the main proceedings

Applicant: Astra Zeneca UK Limited

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1) In the circumstances of this case, where an employee is entitled under the terms of his or her contract of employment to opt to take part of his or her remuneration as a face value voucher, is Article 2(1) of the Sixth Council Directive 77/388/EEC [1] [now Article 2(1)(c) of the Principal VAT Directive] to be interpreted such that the provision of that voucher by the employer to the employee constitutes a supply of services for consideration?

2) If the answer to question 1 is no, is Article 6(2)(b) [now Article 26(1)(b)] to be interpreted as requiring the provision of the voucher by the employer to the employee in accordance with the contract of employment to be treated as a supply of services, in circumstances where the voucher is to be used by the employee for his or her private purposes?

3) If the provision of the voucher is neither a supply of services for consideration within the meaning of Article 2(1) nor is to be treated as a supply of services under Article 6(2)(b), is Article 17(2) [now Article 168] to be interpreted so as to permit the employer to recover the value added tax it has incurred in purchasing and providing the voucher to the employee in accordance with the contract of employment in circumstances where the voucher is to be used by the employee for his or her private purposes?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment OJ L 145, p. 1

Action brought on 30 January 2009 — Commission of the European Communities v Republic of Estonia

(Case C-46/09)

(2009/C 90/18)

Language of the case: Estonian

Parties

Applicant: Commission of the European Communities (represented by: E. Randvere and K. Simonsson)

Defendant: Republic of Estonia

Form of order sought

The applicant claims that the Court should:

— declare that, since it has not correctly transposed into national law the provisions of Directive 2000/59/EC ([1]) of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, the Republic of Estonia has failed to fulfil its obligations under Article 11 of Directive 2000/59/EC;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

It follows from Article 11(2)(a) of Directive 2000/59 that the Republic of Estonia is under an obligation to establish criteria in order to select ships, other than fishing vessels and recreational craft authorised to carry no more than 12 passengers, for inspection.

Article 11(2)(c) of Directive 2000/59 provides that, if the relevant authority is not satisfied with the results of this inspection, it must ensure that the ship does not leave the port until it has delivered its ship-generated waste and cargo residues to a port reception facility in accordance with Articles 7 and 10.

The Republic of Estonia has stated its intention to supplement the Estonian legislation in order to correctly transpose those provisions of the directive. The Commission does not have any information on the adoption of such amendments.

([1]) OJ 2000 L 332, p. 81

Reference for a preliminary ruling from the Tingsrätt Stockholm (Sweden) lodged on 6 February 2009 — Konkurrensverket v TeliaSonera Sverige AB

(Case C-52/09)

(2009/C 90/19)

Language of the case: Swedish

Referring court

Tingsrätt Stockholm

Parties to the main proceedings

Applicant: Konkurrensverket

Intervener: Tele2 Sverige Aktiebolag

Defendant: TeliaSonera Sverige AB

Questions referred

1. Under what conditions does an infringement of Article 82 EC arise on the basis of a difference between the price charged by a vertically integrated dominant undertaking for the sale of input ADSL products to competitors on the wholesale market and the price which the same undertaking charges on the end-user market?

2. Is it only the prices of the dominant undertaking to end-users which are relevant or should the prices of competitors on the end-user market also be taken into account in the consideration of question 1?