

arising from the inadequacy of the regular transport services under conditions of free competition can be demonstrated. It is for the national court to determine whether in the main proceedings those conditions are met.

(¹) OJ C 134, 22.5.2010.

Appeal brought on 10 November 2010 by Mariyus Noko Ngele against the order of the General Court (Third Chamber) made on 10 December 2009 in Case T-390/09 Mariyus Noko Ngele v European Commission

(Case C-525/10 P)

(2011/C 139/19)

Language of the case: French

Parties

Appellant: Mariyus Noko Ngele (represented by: F. Sabakunzi, avocat)

Other party to the proceedings: European Commission

By order of 10 March 2011, the Court of Justice (Eighth Chamber) declared the appeal inadmissible.

Action brought on 22 November 2010 — Transportes y Excavaciones J. Asensi S.L. v Kingdom of Spain

(Case C-540/10)

(2011/C 139/20)

Language of the case: Spanish

Parties

Applicant: Transportes y Excavaciones J. Asensi S.L. (represented by: C. Nicolau Castellanos, abogado)

Defendant: Kingdom of Spain

By order of 10 March 2011 the Court of Justice (Eighth Chamber) declared that it is clear that the Court has no jurisdiction to take cognisance of the action.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 4 February 2011 — Schutzverband der Spirituosen-Industrie eV v Sonnthurn Vertriebs GmbH

(Case C-51/11)

(2011/C 139/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Schutzverband der Spirituosen-Industrie eV

Defendant: Sonnthurn Vertriebs GmbH

Questions referred

1. Does the concept of health in the definition of the expression 'health claim' in Article 2(2)(5) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, (¹) last amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, (²) also cover general well-being?

2. If the answer to Question 1 is in the negative:

Is a statement made in commercial communications, whether in the labelling, presentation or advertising of foods, which are to be delivered as such to the final consumer, intended to cover at least also general well-being or merely health-related well-being where it refers to one of the functions mentioned in Article 13(1) and Article 14(1) of Regulation (EC) No 1924/2006 in the manner described in Article 2(2)(5) thereof?

3. If the answer to Question 1 is in the negative and a statement in the sense described in Question 2 is intended to cover at least also health-related well-being:

Having regard to the freedom of expression and information under Article 6(3) TEU, in conjunction with Article 10 of the ECHR, is it consistent with the Community law principle of proportionality to include in the scope of the prohibition laid down in the first sentence of Article 4(3) of Regulation (EC) No 1924/2006 a statement that a particular beverage containing more than 1,2 % by volume of alcohol does not place a strain on or adversely affect the body or its functions?

(¹) OJ 2006 L 404, p. 9.

(²) OJ 2010 L 37, p. 16.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — Vodafone España, S.A.

(Case C-55/11)

(2011/C 139/22)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Vodafone España, S.A.

Questions referred

1. Must Article 13 of Directive 2002/20/EC ⁽¹⁾ of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services?
2. In the event that the levy is found to be compatible with Article 13 of Directive 2002/20/EC, do the conditions in accordance with which the fee is required under the contested local regulation satisfy the requirements of objectivity, proportionality and non-discrimination laid down in that provision, together with the need to ensure the optimal use of the resources concerned?
3. Is it appropriate to recognise Article 13 of Directive 2002/20/EC as having direct effect?

⁽¹⁾ OJ L 108, p. 21

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — Vodafone España, S.A. v Ayuntamiento de Tudela

(Case C-57/11)

(2011/C 139/23)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Vodafone España, S.A.

Respondent: Ayuntamiento de Tudela

Questions referred

1. Must Article 13 of Directive 2002/20/EC ⁽¹⁾ of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services?

2. In the event that the levy is found to be compatible with Article 13 of Directive 2002/20/EC, do the conditions in accordance with which the fee is required under the contested local regulation satisfy the requirements of objectivity, proportionality and non-discrimination laid down in that provision, together with the need to ensure the optimal use of the resources concerned?
3. Is it appropriate to recognise Article 13 of Directive 2002/20/EC as having direct effect?

⁽¹⁾ OJ L 108, p. 21

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — France Telecom España, S.A.

(Case C-58/11)

(2011/C 139/24)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: France Telecom España, S.A.

Questions referred

1. Must Article 13 of Directive 2002/20/EC ⁽¹⁾ of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services?
2. In the event that the levy is found to be compatible with Article 13 of Directive 2002/20/EC, do the conditions in accordance with which the fee is required under the contested local regulation satisfy the requirements of objectivity, proportionality and non-discrimination laid down in that provision, together with the need to ensure the optimal use of the resources concerned?
3. Is it appropriate to recognise Article 13 of Directive 2002/20/EC as having direct effect?

⁽¹⁾ OJ L 108, p. 21