

Operative part of the judgment

The concept of 'competitive disadvantage', for the purposes of subparagraph (c) of the second paragraph of Article 102 TFEU, must be interpreted to the effect that, where a dominant undertaking applies discriminatory prices to trade partners on the downstream market, it covers a situation in which that behaviour is capable of distorting competition between those trade partners. A finding of such a 'competitive disadvantage' does not require proof of actual quantifiable deterioration in the competitive situation, but must be based on an analysis of all the relevant circumstances of the case leading to the conclusion that that behaviour has an effect on the costs, profits or any other relevant interest of one or more of those partners, so that that conduct is such as to affect that situation.

⁽¹⁾ OJ C 14, 16.1.2017.

Judgment of the Court (First Chamber) of 11 April 2018 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos v SEB bankas AB

(Case C-532/16) ⁽¹⁾

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Limitation of the right to deduct input tax — Adjustment of the deduction of input tax paid — Supply of land — Mischaracterisation as 'taxable activity' — Indication of VAT on the initial invoice — Amendment of that indication by the supplier)

(2018/C 200/09)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Defendant: SEB bankas AB

Operative part of the judgment

- 1) Article 184 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the obligation to adjust undue value added tax (VAT) deductions set down in that article also applies to cases where the initial deduction could not be made lawfully because the transaction giving rise to that deduction was exempt from VAT. By contrast, Articles 187 to 189 of Directive 2006/112 must be interpreted as meaning that the mechanism for the adjustment of undue VAT deductions provided for in those articles is not applicable in such cases, in particular in a situation such as that at issue in the main proceedings, where the initial VAT deduction was unjustified as it concerned a VAT-exempt transaction relating to the supply of land.
- 2) Article 186 of Directive 2006/112 must be interpreted as meaning that, in cases where the initial deduction of VAT could not be made lawfully, it is for the Member States to determine the date on which the obligation to adjust the undue VAT deduction arises and the time period for which that adjustment must be made, in accordance with the principles of EU law, in particular the principles of legal certainty and legitimate expectations. It is for the national court to determine whether, in cases such as that at issue in the main proceedings, those principles have been respected.

⁽¹⁾ OJ C 6, 9.1.2017.