Reference for a preliminary ruling by the Commission litiges voyages by order of that court of 4 December 2003 in the case of Guy Denuit and Betty Cordenier against Transorient – Mosaïque Voyages and Culture SA

(Case C-125/04)

(2004/C 156/05)

Reference has been made to the Court of Justice of the European Communities by order of the Commission litiges voyages (Belgium), of 4 December 2003, received at the Court Registry on 8 March 2004, for a preliminary ruling in the case of Guy Denuit and Betty Cordenier against Transorient – Mosaïque Voyages and Culture SA on the following question:

1. Where a clause in a contract between a consumer and a [travel] organiser and/or retailer provides only for the possibility of an upward price revision and states precisely how the calculations is to be made, solely in order to take account of variations set down in an exhaustive list by Article 4(4) of Directive 90/314/EEC, must that article be interpreted as implicitly requiring downward price revision according to the same method of calculation?

2. Where a clause in a contract between a consumer and an organiser and/or retailer provides for the possibility of both upward and downward price revision without stating precisely how the calculation is to be made, and solely in order to take account of variations set down in an exhaustive list by Article 4(4)(a) of Directive 90/314/EEC, must that article be interpreted as invalidating the entire clause or as limiting that invalidity to upward price revision?

3. Where a clause in a contract between a consumer and an organiser and/or retailer gives only the organiser and/or retailer the possibility of revising prices upwards or downwards states precisely how the calculation is to be made, solely to take account of variations set down in an exhaustive list down by Article 4(4)(a) of Directive 90/314/EEC, must that article be interpreted as rendering the whole clause void, or is its invalidity limited to upward price revision?

4. Where a clause in the contract between a consumer and an organiser and/or retailer gives, both the travel organiser and/or retailer and the consumer the possibility of benefiting from upward and downward price revision, and states precisely how the calculation is to be made, solely to take account of the variations set down in an exhaustive list by Article 4(4)(a) of Directive 90/314/EEC, must that article be interpreted as requiring the travel organiser and/or retailer revise the price downwards if the consumer has not asked it to do so?

Action brought on 2 April 2004 by the Commission of the European Communities against the Hellenic Republic

(Case C-166/04)

(2004/C 156/06)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 2 April 2004 by the Commission of the European Communities, represented by Maria Patakia and Michel Van Beek, Legal Advisers in its Legal Service.

The Commission claims that the Court should:

— declare that, by failing to take all the measures necessary for laying down and implementing a cohesive, specific and integrated legal regime capable of ensuring sustainable management and effective protection of Special Protection Area GR2310001 'Acheloos Delta, Messolonghi/Aitolikon Lagoon and the estuary of the River Evinos and Echinades Islands', in the light of the conservation objectives of Directive 79/409/EEC on the conservation of wild birds, [1] the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (2) of that directive;

— order the Hellenic Republic to pay the costs.

In accordance with settled case-law of the Court of Justice of the European Communities, a Member State cannot plead internal circumstances or difficulties to justify its failure to comply with obligations and time-limits flowing from Community law.

[1] OJ L 103, 25.4.1979, p. 1.

Appeal brought on 5 April 2004 by JCB Service against the judgment delivered on 13 January 2004 by the First Chamber of the Court of First Instance of the European Communities in case T-67/01 between JCB Service and the Commission of the European Communities.

(Case C-167/04 P)

(2004/C 156/07)

An appeal against the judgment delivered on 13 January 2004 by the First Chamber of the Court of First Instance of the European Communities in case T-67/01 [1] between JCB Service and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 5 April 2004 by JCB Service, established in Rocester, Staffordshire (United Kingdom), represented by E. Morgon de Rivery, lawyer.

The Appellant claims that the Court should:

1. annul in its entirety the judgment of the Court of First Instance dated 13 January 2004 in case T-67/01, JCB Service against Commission of the European Communities in so far as it infringes EU law by violating the Appellant's rights of defence; or

2. annul the judgment of the Court of First Instance dated 13 January 2004 in case T-67/01, JCB Service against Commission of the European Communities, in so far as (i) it condemns an alleged general restriction on passive sales by authorised distributors in the United Kingdom, Ireland, France and Italy, and an alleged restriction on the sources of supply of distributors located in France and Italy, which prevented cross-supplies between distributors, and in so far as (ii) it imposes a fine on JCB Service for these alleged infringements; and

3. itself give final judgment on case T-67/01 pursuant to Article 61 of the Statute (EC) of the Court and accordingly annul, wholly or in part, the decision of the Commission dated 21 December 2000 in case COMP.F.1/35.918 ([2]) and, using its full jurisdiction, annul or reduce the fine of EUR 30 million imposed on JCB Service by the judgment of the Court of First Instance dated 13 January 2004 in case T-67/01, JCB Service against Commission of the European Communities; and

4. in all cases, order, in accordance with Article 69 of the Court's Rules of Procedure, the Commission to pay the Appellant's costs incurred both before the Court of First Instance and before this Court;

5. alternatively to 3., in the event that the Court does not itself decide on the case, reserve the costs and remand the case to the Court of First Instance for reconsideration in accordance with the Court's judgment.

Pleas in law and main arguments:

First plea in law

The Appellant submits that the Court of First Instance ('CFI') infringed Community law by refusing to address the claim that the Appellant's rights of defence had been abused. First, the Appellant contends that its rights of defence were breached due to the excessive duration of the procedure before the Commission, which lasted for 27 years (from the date of the notification to the date of the Commission Decision), preventing it from exercising its rights as a notifying party. The CFI erred in law by ignoring the consequences of such violation on the Appellant's ability to effectively defend itself. Second, the Appellant contends that its right to a presumption of innocence was also violated due to the CFI's failure to take into consideration certain exculpatory pieces of evidence, to apply the method of faisceau d'indices (bundle of indicators) in order to assess the relevant pieces of evidence, and to provide adequate and impartial reasoning.

([2]) OJ L 69, 12.03.2002, p. 1.

Second plea in law

The Appeallant contends that the CFI infringed Article 81 EC by condemning the Appellant (i) for imposing a general prohibition on passive sales on its distributors in the United Kingdom, Ireland, France and Italy, and (ii) for restricting the sources of supply of its distributors in France and Italy, on the basis of an erroneous legal characterisation of the facts, distortion of evidence and erroneous application of applicable EC competition rules. This in turn engendered an application of the prohibition laid down in Article 81 EC that is clearly inconsistent with the letter and the purpose of said provision.

Third plea in law

This concerns the computation of the fine. Here, the Appellant contends that the CFI infringed Article 15 of Regulation No 17 by violating major fundamental principles applicable to the ordering of the fine, i.e., the principle of sound administration, the legitimate expectations of private parties and the principle of equal punishment, as well as by incorrectly assessing the gravity and the duration of the alleged infringements and both the attenuating and aggravating circumstances.

([1]) OJ C 186, 30.06.2001, p. 9.

Reference for a preliminary ruling by the Högsta Domstolen (Sweden) by order of that court of 30 March 2004 in case of Klas Rosengren, Bengt Morelli, Hans Särman, Mats Åkerström, Åke Kempe, Anders Kempe, Mats Kempe, Björn Rosengren, Martin Lindberg, Jon Pieree and Tony Staf against Riksåklagaren

(Case C-170/04)

(2004/C 156/08)

Reference has been made to the Court of Justice of the European Communities by order of the Högsta Domstolen (Court of Appeal for Western Sweden) of 30 March 2004 received at the Court Registry on 6 April 2004, for a preliminary ruling in the case of Klas Rosengren, Bengt Morelli, Hans Särman, Mats Åkerström, Åke Kempe, Anders Kempe, Mats Kempe, Björn Rosengren, Martin Lindberg, Jon Pieree and Tony Staf against Riksåklagaren the following questions concerning the interpretation of Articles 28, 30 and 31 of the EC Treaty:

1. Can it be held that the above mentioned ban on imports constitutes part of the retail monopoly's manner of operation and that on that basis it is not precluded by Article 28 and is to be examined only in the light of Article 31?

2. If the answer to Question 1 is yes, is the ban on imports in such a case compatible with the conditions laid down for State monopolies in Article 31?