

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 12 September 2007 in Case T-348/03 *Koninklijke Friesland Foods NV (formerly Friesland Coberco Dairy Foods Holding NV) v Commission* annulling Article 2 of Commission Decision 2003/515/EC of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities (OJ 2003 L 180, p. 52) in so far as it excludes from the transitional scheme those operators who, as at 11 July 2001, had already lodged a request with the Netherlands tax authority for application of the aid scheme in question but whose request had not yet been determined by that date.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 12 September 2007 in Case T-348/03 *Koninklijke Friesland Foods v Commission*;
2. Refers the case back to the Court of First Instance of the European Communities;
3. Reserves the costs.

⁽¹⁾ OJ C 37, 9.2.2008.

Judgment of the Court (First Chamber) of 17 September 2009 — Commission of the European Communities v MTU Friedrichshafen GmbH

(Case C-520/07 P) ⁽¹⁾

(Appeals — Restructuring aid — Decision ordering the recovery of aid incompatible with the common market — Article 13(1) of Regulation (EC) No 659/1999 — Joint and several liability)

(2009/C 267/23)

Language of the case: German

Parties

Appellant: Commission of the European Communities (represented by: K. Gross and B. Martenczuk, acting as Agents)

Other party to the proceedings: MTU Friedrichshafen GmbH (represented by: Th. Lübbig and M. le Bell, Rechtsanwälte)

Re:

Appeal brought against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) delivered

on 12 September 2007 in Case T-196/02 *MTU Friedrichshafen v Commission*, in which the Court of First Instance annulled Article 3(2) of Commission Decision 2002/898/EC of 9 April 2002 on the State aid implemented by Germany for SKL Motoren- und Systembautechnik GmbH, in so far as it orders MTU Friedrichshafen GmbH to repay jointly and severally a sum of EUR 2,71 million — Limits and conditions on the application of Article 13(1) of Council Regulation (EC) No 659/1999 of 22 March 1999, allowing the Commission to adopt a final decision finding aid to be incompatible with the common market on the basis of the information available if a Member State fails to comply with an information injunction

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders the Commission of the European Communities to pay the costs.

⁽¹⁾ OJ C 22, 26.1.2008.

Judgment of the Court (Third Chamber) of 10 September 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy)) — Sea s.r.l. v Comune di Ponte Nossa

(Case C-573/07) ⁽¹⁾

(Public procurement — Award procedures — Contract relating to a service for the collection, transport and disposal of urban waste — Awarded without any call for tenders — Awarded to a company limited by shares whose capital is wholly owned by public bodies but under whose statutes a private capital holding is possible)

(2009/C 267/24)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Sea s.r.l.

Defendant: Comune di Ponte Nossa

Third party: Servizi Tecnologici Comuni — Se.T.Co. SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per la Lombardia (Italy) — Interpretation of Articles 12 EC, 43 EC, 49 EC and 86 EC — Procedures for the award of public contracts — Public services for the collection, transport and disposal of urban waste — Direct award of a contract to a limited company with share capital belonging entirely to the public sector but where the statutes of that company allow for the possibility of private investment

Operative part of the judgment

It is not contrary to Articles 43 EC and 49 EC, the principles of equal treatment and of non-discrimination on grounds of nationality or the obligation of transparency arising therefrom for a public service contract to be awarded directly to a company limited by shares with wholly public capital so long as the public authority which is the contracting authority exercises over that company control similar to that which it exercises over its own departments and so long as the company carries out the essential part of its activities with the authority or authorities controlling it.

Without prejudice to the determination by the court making the reference of the effectiveness of the relevant provisions of the statutes, the control exercised over that company by the shareholder authorities may be regarded as similar to that which they exercise over their own departments in circumstances such as those of the case in the main proceedings, when:

- that company's activity is limited to the territory of those authorities and is carried on essentially for their benefit, and
- through the bodies established under the company's statutes made up of representatives of those authorities, the latter exercise conclusive influence on both the strategic objectives of the company and on its significant decisions.

⁽¹⁾ OJ C 64, 8.3.2008.

Judgment of the Court (First Chamber) of 3 September 2009 (Reference for a preliminary ruling from the VAT and Duties Tribunal, London — United Kingdom) — RCI Europe v Commissioners for Her Majesty's Revenue and Customs

(Case C-37/08) ⁽¹⁾

(Sixth VAT Directive — Fiscal connection — Supply of services connected with immovable property — Services consisting in facilitating the exchange by owners of rights to occupy holiday homes)

(2009/C 267/25)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicant: RCI Europe

Defendant: Commissioners for Her Majesty's Revenue and Customs

Re:

REFERENCE for a preliminary ruling — VAT and Duties Tribunal, London — Interpretation of Articles 9(2)(a) and 26 of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Determination of the place where supplies are deemed to be provided — Supplies of services consisting in facilitating the exchange by the holders of rights to occupy a property intended for use by holidaymakers who are members of an association established by the taxable person for that purpose, for the rights of other owners.

Operative part of the judgment

Article 9(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that the place where services are supplied by an association whose business consists in organising the exchange between its members of their timeshare usage rights in holiday accommodation, in return for which that association receives from its members enrolment, annual subscription and exchange fees, is the place where the property in respect of which the member concerned holds timeshare usage rights is situated.

⁽¹⁾ OJ C 92, 12.4.2008.

Judgment of the Court (Fourth Chamber) of 10 September 2009 (reference for a preliminary ruling from the Korkein oikeus (Finland)) — Akavan Erityisalojen Keskusliitto AEK ry and Others v Fujitsu Siemens Computers Oy

(Case C-44/08) ⁽¹⁾

(Preliminary ruling procedure — Directive 98/59/EC — Approximation of the laws of the Member States relating to collective redundancies — Article 2 — Protection of workers — Informing and consulting with workers — Group of undertakings — Parent company — Subsidiary)

(2009/C 267/26)

Language of the case: Finnish

Referring court

Korkein oikeus