

to manage a supplementary healthcare scheme, without any possibility for undertakings in that sector to be granted a waiver of the affiliation obligation, in compliance with Articles 81 EC and 82 EC, or are they such as to place the designated body in a dominant position constituting an abuse?

Reference for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 10 November 2009 — Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la Concurrence, Ministre de l'Economie de l'Industrie et de l'Emploi

(Case C-439/09)

(2010/C 24/49)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Pierre Fabre Dermo-Cosmétique SAS

Defendants: Président de l'Autorité de la Concurrence, Ministre de l'Economie de l'Industrie et de l'Emploi

Question referred

Does a general and absolute ban on selling contract goods to end users via the Internet, imposed on authorised distributors in the context of a selective distribution network, in fact constitute a 'hardcore' restriction of competition by object for the purposes of Article 81(1) EC which is not covered by the block exemption provided for by Regulation No 2790/1999⁽¹⁾ but which is potentially eligible for an individual exemption under Article 81(3) EC?

⁽¹⁾ Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336 p. 21)

Action brought on 11 November 2009 — Commission of the European Communities v Republic of Austria

(Case C-441/09)

(2010/C 24/50)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and B.-R. Killmann, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by applying a reduced rate of value added tax (VAT) to the supply, importation and intra-Community acquisitions of certain live animals, in particular horses, not intended for use in the preparation of foodstuffs for human or animal consumption, the Republic of Austria has failed to fulfil its obligations under Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system⁽¹⁾;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that Austrian law on VAT infringes Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system, by also applying a reduced rate of VAT to the supply of certain live animals (in particular horses), where those animals are not intended for the production of foodstuffs.

The expression 'live animals' in point 1 of Annex III to the Directive on the VAT system is not a separate category but encompasses only those animals which are normally used as foodstuffs for human or animal consumption. That interpretation is supported by the Spanish, French, English, Italian, Dutch, Portuguese and Swedish versions of that provision. In addition the fact that that provision is an exception requires according to settled case-law that it be interpreted strictly.

Particularly animals of the family of equids are clearly used principally as pack or riding animals (and not as foodstuffs for human or animal consumption).

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).