Request for a preliminary ruling from the Tribunal da Relação de Coimbra (Portugal) lodged on 10 August 2020 — Liberty Seguros SA v DR

(Case C-375/20)

(2020/C 348/14)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Coimbra

Parties to the main proceedings

Applicant: Liberty Seguros SA

Defendant: DR

Interveners: Fundo de Garantia Automóvel, VS, FN, JT, Seguradoras Unidas, SA

Question referred

Does [EU] law, and in particular Directive 2009/103/EC [1] of the European Parliament and of the Council, preclude national legislation which allows the nullity of a contract of insurance taken out against civil liability in respect of the use of motor vehicles to be relied on as against injured third parties and the Fundo de Garantia Automóvel (Portuguese motor vehicle insurance guarantee fund) where that nullity results from the fact that the policyholder has used the insured vehicle for the clandestine and illegal transport of persons and goods for remuneration and has concealed its use for that purpose from the insurer? Would the answer be the same even if the passengers had known that the transport was clandestine and unlawful?

[1] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 29 July 2020 — Servizio Elettrico Nazionale SpA and Others v Autorità Garante della Concorrenza e del Mercato and Others

(Case C-377/20)

(2020/C 348/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Servizio Elettrico Nazionale SpA, ENEL SpA, Enel Energia SpA

Defendants: Autorità Garante della Concorrenza e del Mercato, ENEL SpA, Servizio Elettrico Nazionale SpA, Eni Gas e Luce SpA, Eni SpA, Gala SpA, Axpo Italia SpA, E.Ja SpA, Green Network SpA, Ass.ne Codici — Centro per i Diritti del Cittadino

Questions referred

1. May conduct that constitutes an abuse of a dominant position be completely lawful in and of itself and be classified as 'an abuse' solely because of the (potentially) restrictive effect created in the reference market, or must that conduct also be characterised by a specific 'unlawful' component, represented by the use of 'competitive methods (or means) that are different' from those that are 'normal'? In the latter case, what criteria should be used to establish the boundary between 'normal' and 'distorted' competition?

2. Is the purpose of the concept of abuse to maximise the well-being of consumers, with the court being responsible for determining whether that well-being has been (or could be) reduced, or does the concept of an infringement of competition law have the function of preserving in itself the competitive structure of the market, in order to avoid the creation of economic power groupings that are, in any case, considered harmful for the community?

3. In the case of an abuse of a dominant position represented by an attempt to prevent the continuation or development of the existing level of competition, is the dominant undertaking in any case permitted to prove that the conduct did not cause any actual harm, despite its abstract ability to generate a restrictive effect? If the answer to that question is in the affirmative, for the purposes of assessing whether an atypical exclusionary abuse has occurred, must Article 102 TFEU be interpreted as meaning that the Authority has an obligation to examine specifically the economic analyses produced by the party concerning the actual ability of the conduct examined to exclude its competitors from the market?

4. Must an abuse of a dominant position be assessed solely in terms of its effects on the market (including merely potential effects), without regard to the subjective motive of the agent, or does a demonstration of restrictive intent constitute a parameter that may be used (even exclusively) to assess the abusive nature of the dominant undertaking's conduct? Does such a demonstration of the subjective component serve only to shift the burden of proof to the dominant undertaking (which would have the burden, at this stage, of providing evidence that the exclusionary effect is absent)?

5. In the case of a dominant position held by a number of undertakings belonging to the same corporate group, is membership of that group sufficient to assume that even those undertakings that have not implemented the abusive conduct have contributed to the infringement, so that the supervisory authority would merely need to demonstrate a conscious, albeit non-collusive, parallel approach by the undertakings operating within the collectively dominant group? Or (as is the case for the prohibition on cartels) is there in any case a need to provide evidence, even indirectly, of a specific situation of coordination and instrumentality among the various undertakings within the dominant group, in particular in order to demonstrate the involvement of the parent company?

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 11 August 2020 — B v Udlændingenævnet

(Case C-379/20)

(2020/C 348/16)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: B

Defendant: Udlændingenævnet

Question referred

Does Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 ([1]) on the development of the Association, which is linked to the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC ([2]) of 23 December 1963, preclude the introduction and application of a new national measure under which family reunification between an economically active Turkish national who is lawfully resident in the Member State in question and that person's child who is 15 years of age is subject to the condition that very specific grounds, including the consideration of family unity and the consideration of the best interests of the child, support such reunification?

([1]) Decision No 1/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families (OJ 1983 C 110, p. 60).

([2]) 64/732/EEC: Council Decision of 23 December 1963 on the conclusion of the Agreement establishing an Association between the European Economic Community and Turkey (OJ 1964 217, p. 3685).