



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 March 2017*

(Reference for a preliminary ruling — Article 96 TFEU — Applicability — National legislation prohibiting taxi services from offering individual seats — National legislation prohibiting taxi services from predetermining their destination — National legislation prohibiting taxi services from touting for custom)

In Case C-253/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), made by decision of 21 April 2016, received at the Court on 3 May 2016, in the proceedings

FlibTravel International SA,

Léonard Travel International SA

v

AAL Renting SA,

Haroune Tax SPRL,

Saratax SCS,

Ryad SCRI,

Taxis Bachir & Cie SCS,

Abdelhamid El Barjraji,

Abdelouahab Ben Bachir,

Sotax SCRI,

Mostapha El Hammouchi,

Boughaz SPRL,

Sahbaz SPRL,

Jamal El Jelali,

* Language of the case: French.

Mohamed Chakir Ben Kadour,
Taxis Chalkis SCRL,
Mohammed Gheris,
Les délices de Fes SPRL,
Abderrahmane Belyazid,
E.A.R. SCS,
Sotrans SPRL,
B.M.A. SCS,
Taxis Amri et Cie SCS,
Aramak SCS,
Rachid El Amrani,
Mourad Bakkour,
Mohamed Agharbiou,
Omar Amri,
Jmili Zouhair,
Mustapha Ben Abderrahman,
Mohamed Zahyani,
Miltotax SPRL,
Lextra SA,
Ismail El Amrani,
Farid Benazzouz,
Imad Zoufri,
Abdel-Ilah Bokhamy,
Ismail Al Bouhali,
Bahri Messaoud & Cie SCS,
Mostafa Bouzid,
BKN Star SPRL,

M.V.S. SPRL,
A.B.M.B. SCS,
Imatrans SPRL,
Reda Bouyaknouden,
Ayoub Tahri,
Moulay Adil El Khatir,
Redouan El Abboudi,
Mohamed El Abboudi,
Bilal El Abboudi,
Sofian El Abboudi,
Karim Bensbih,
Hadel Bensbih,
Mimoun Mallouk,
Abdellah El Ghaffouli,
Said El Aazzoui,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- FlibTravel International SA and Léonard Travel International SA, by P. Frühling, avocat,
- AAL Renting SA and Haroune Tax SPRL, by V. Defraiteur, avocat,
- Saratax SCS, Ryad SCRI, Taxis Bachir & Cie SCS, Abdelhamid El Barjraji, Abdelouahab Ben Bachir, Sotax SCRI, Mostapha El Hammouchi, Boughaz SPRL, Sahbaz SPRL, Jamal El Jelali, Mohamed Chakir Ben Kadour, Taxis Chalkis SCRL, Mohammed Gheris, Les délices de Fes SPRL, Abderrahmane Belyazid, E.A.R. SCS, Sotrans SPRL, B.M.A. SCS, Taxis Amri et Cie SCS, Aramak SCS, Rachid El Amrani, Mourad Bakkour, Mohamed Agharbiou, Omar Amri, Jmili Zouhair, Mustapha Ben Abderrahman, Mohamed Zahyani, Miltotax SPRL, Lextra SA, Ismael El Amrani, Farid Benazzouz, Imad Zoufri, Abdel-Ilah Bokhamy, Ismail Al Bouhali, Bahri Messaoud & Cie

SCS, Mostafa Bouzid, BKN Star SPRL, M.V.S. SPRL, A.B.M.B. SCS, Imatrans SPRL, Reda Bouyaknouden, Ayoub Tahri, Moulay Adil El Khatir, Redouan El Abboudi, Mohamed El Abboudi, Bilal El Abboudi, Sofian El Abboudi, Karim Bensbih, Hadel Bensbih, Mimoun Mallouk, Abdellah El Ghaffouli and Said El Aazzoui, by D. Ribant and I. Ferrant, avocats,

— the European Commission, by W. Mölls and J. Hottiaux, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 December 2016,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 96(1) TFEU.
- 2 The request has been made in proceedings seeking a prohibitory injunction brought by FlibTravel International SA ('FlibTravel') and Léonard Travel International SA ('Léonard Travel'), companies operating regular coach services, against natural and legal persons carrying out the activity of taxi drivers and taxi operators, respectively, on grounds of unfair competition which the former claim they have been subject to on the part of the latter.

Belgian legal context

- 3 The ordonnance de la Région de Bruxelles-Capitale du 27 avril 1995, relative aux services de taxis et aux services de location de voitures avec chauffeur (the Order of the Brussels – Capital Region of 27 April 1995 on taxi services and private hire vehicle services) (*Moniteur belge* of 1 June 1995, p. 15510), as amended by the ordonnance du 20 juillet 2006 (Order of 20 July 2006) (*Moniteur belge* of 29 September 2006) ('the Order of 27 April 1995') provides, in Article 2(1) and (2) thereof, as follows:

'(1) taxi services: services which involve the transport of passengers for remuneration by motor vehicle with a driver, and which fulfil the following conditions:

- (a) the vehicle, namely a car, goods/passenger vehicle or minibus, as provided for in the arrêté royal du 15 mars 1968 portant règlement général sur les conditions techniques auxquelles doivent répondre les véhicules automobiles et leurs remorques, leurs éléments ainsi que les accessoires de sécurité (Royal Decree of 15 March 1968 laying down general rules on the technical standards which motor vehicles, their trailers, their components and safety equipment must satisfy) shall be, in terms of its type of construction and its equipment, suitable for transporting a maximum of nine persons — including the driver — and intended for that purpose;
- (b) the vehicle shall be made available for public transport, either at a predetermined parking place on a public road as provided for in the general regulation of road traffic, or in any other place not open to public traffic;
- (c) where the vehicle is used as a taxi, provision of the transport shall relate to the whole vehicle and not to the individual seats, and where it is used as a shared taxi with the authorisation of the Government of the Brussels-Capital Region, provision of the transport shall relate to individual seats and not to the vehicle itself;
- (d) the destination shall be decided by the client;

(2) private hire vehicle services: all services, other than taxi services, involving the transport of passengers by motor vehicle for remuneration which are operated with cars, goods/passenger vehicles or minibuses, with the exception of vehicles equipped as ambulances.’

- 4 Under the first paragraph of Article 3 of that Order:

‘No person may, without authorisation from the Government, operate a taxi service with one or more vehicles departing from a public road or any other location not open to public traffic situated in the territory of the Brussels-Capital Region.’

- 5 Article 16 of that Order is worded as follows:

‘No person may, without authorisation from the Government, operate in the Brussels-Capital Region a private hire vehicle service with one or more vehicles.

Only operators holding an authorisation issued by the Government may provide services of which the point of departure for the user is situated in the territory of the Brussels-Capital Region.

...’

- 6 The arrêté du Gouvernement de la Région de Bruxelles-Capitale du 29 mars 2007, relatif aux services de taxis et aux services de location de voitures avec chauffeur (Decree of the Government of the Brussels-Capital Region of 29 March 2007 on taxi services and private hire vehicle services) (*Moniteur belge* of 3 May 2007, p. 23526), as amended by the arrêté du Gouvernement de la Région de Bruxelles-Capitale du 27 mars 2014 (Decree of the Government of the Brussels-Capital Region of 27 March 2014) (*Moniteur belge* of 17 April 2014) provides, in Article 31, point 7, thereof, that drivers are to be prohibited from ‘touting for custom of having others tout on their behalf’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 7 Under a sub-concession agreement concluded with Brussels South Charleroi Airport, FlibTravel and Léonard Travel operate a regular coach service linking, in particular, the Bruxelles-Midi train station in Brussels (Belgium) with Charleroi Airport (Belgium).
- 8 On 21 May 2014, FlibTravel and Léonard Travel brought an action against the defendants in the main proceedings before the président du tribunal de commerce francophone de Bruxelles (President of the Commercial Court (French-speaking), Brussels, Belgium) seeking an order preventing the continuation of practices which the former claim are acts contrary to honest market practice, in so far as they are carried out in breach of Article 2(1)(c) and (d) of the Order of 27 April 1995.
- 9 In support of their action seeking that order, they submit that the defendants in the main proceedings, or persons working on their behalf, tout for custom among passengers at the Bruxelles-Midi train station who are travelling to Charleroi Airport in order to group them together in ‘van-type taxis’ to subsequently, when those taxis are full, drive them to that destination. They therefore allege that those defendants, in particular, group passengers together who have the same destination, charge for the service by passenger and not by car and tout for custom.
- 10 By a judgment of 11 February 2015, the President of that court dismissed all the claims brought by FlibTravel and Léonard Travel, considering that the facts complained of had not been proven.
- 11 On 13 July 2015, the applicants in the main proceedings brought an appeal against that judgment before the cour d’appel de Bruxelles (Court of Appeal, Brussels, Belgium).

- 12 That court takes the view that under Article 2(1)(c) and (d) of the Order of 27 April 1995, taxi operators may neither make individual seats available to their passengers rather than the vehicle in its entirety, or predetermine their destination. It also considers the practices at issue to constitute touting for custom within the meaning of Article 31, point 7, of the Decree of the Government of the Brussels-Capital Region of 29 March 2007 on taxi services and private hire vehicle services, as amended by the Decree of the Government of the Brussels-Capital Region of 27 March 2014. It is of the opinion that those practices constitute infringements of those provisions and acts contrary to honest market practice. Therefore, in its view, those practices are prohibited and may, on application by an interested party, be the subject of an order preventing their continuation.
- 13 However, the referring court has doubts as to whether the provisions concerned are consistent with Article 96(1) TFEU, in the light, in particular, of the failure to notify the Commission of the Order of 27 April 1995.
- 14 Specifically, it raises the issue of whether, in order for Article 96(1) TFEU to be found applicable to the case pending before it, in so far as that provision covers ‘transport operations carried out within the Union’, the transport operation concerned must have a transnational dimension. It states that, given that the train station and airport concerned have an international dimension, the transport services at issue before it are not provided solely to Belgian nationals. It also raises the issue of the interpretation of the words ‘rates and conditions’ in that provision together with that of whether the protection of particular industries allowed under it applies to a transport industry, such as one offering a taxi service.
- 15 In those circumstances, and having requested the parties to state their view concerning the consistency of the provisions of the Order of 27 April 1995 with Article 96(1) TFEU, the *cour d’appel de Bruxelles* (Court of Appeal, Brussels, Belgium) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 96(1) TFEU be interpreted as falling to be applied to rates and conditions imposed by a Member State on taxi service operators where:
- (a) the taxi journeys concerned are only exceptionally made across national borders,
 - (b) a significant proportion of the customers of those taxis consists of EU nationals or residents who are not nationals or residents of the Member State in question, and
 - (c) in the specific circumstances of the case, the taxi journeys at issue are, for the passenger, very often no more than one stage in a longer trip the final destination or point of departure of which is in an EU country other than the Member State in question?
- (2) Must Article 96(1) TFEU be interpreted as being applicable to operating conditions other than fare conditions and the criteria for obtaining authorisation to carry on the transport activity in question, such as, in this case, a prohibition preventing taxi operators from making available individual seats rather than the vehicle in its entirety, and a prohibition on those operators determining themselves the final destination of the journey that they are offering to customers, which has the effect of preventing those operators from grouping together customers who are travelling to the same final destination?
- (3) Must Article 96(1) TFEU be interpreted as prohibiting, unless authorised by the Commission, measures such as those referred to in the second question:
- (a) the general aim of which, among other objectives, is to protect taxi operators from competition from private hire vehicle companies and
 - (b) the specific effect of which, in the particular circumstances of the case, is to protect coach service operators from competition from taxi operators?

- (4) Must Article 96(1) TFEU be interpreted as prohibiting, unless authorised by the Commission, a measure which prohibits taxi operators from touting for custom where the effect of that measure in the particular circumstances of the case is to reduce their capacity to attract customers away from a competing coach service?’

Consideration of the questions referred

- 16 By its second question, which it is appropriate to deal with first, the referring court asks, in essence, whether Article 96(1) TFEU must be interpreted as meaning that it is applicable to national legislation, such as that at issue in the main proceedings, governing the conditions under which taxi services are to be provided.
- 17 That provision stipulates that the imposition by a Member State, in respect of transport operations carried out within the European Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries is to be prohibited, unless authorised by the Commission.
- 18 According to settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 16 November 2016, *Hemming and Others*, C-316/15, EU:C:2016:879, paragraph 27 and the case-law cited).
- 19 In this connection, it is apparent from the wording of Article 96(1) TFEU, that it is intended to govern the national legislation applicable to transport operations carried out within the European Union in relation to rates and conditions involving any element of support or protection in the interest of one or more particular ‘undertakings’ or industries.
- 20 The purpose of that provision is to prevent Member States from adopting supportive or protective measures indirectly benefiting the customers of the operator concerned, which applies those rates and conditions to them, without adopting supportive or protective measures directly benefiting other operators which are in competition with the operator concerned.
- 21 That interpretation is borne out by Article 96(2) TFEU, pursuant to which the Commission, in order to authorise a measure in principle prohibited by Article 96(1) TFEU, must take into consideration, in particular, the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances.
- 22 Therefore Article 96(1) of the Treaty should be interpreted as not applying to legislation such as that in issue in the main proceedings.
- 23 The contrary interpretation, advocated by the defendants in the main proceedings, would moreover be such as to undermine the effectiveness of Article 58 TFEU, which implies, in accordance with Article 91 TFEU, that application of the principles governing freedom to provide transport services must be achieved by introducing a common transport policy (see judgment of 22 December 2010, *Yellow Cab Verkehrsbetrieb*, C-338/09, EU:C:2010:814, paragraph 30), inasmuch as Article 96(1) TFEU would thus have the effect of directly prohibiting a large proportion of the measures which could be described as restrictions on the freedom to provide transport services without such a rule having been adopted by the EU legislature.
- 24 Having regard to the foregoing, the answer to the second question is that Article 96(1) TFEU must be interpreted as not applying to restrictions, such as those at issue in the main proceedings, imposed on taxi operators.

- 25 Having regard to the answer provided to the second question, there is no need to answer the other questions referred.

Costs

- 26 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 96(1) TFEU must be interpreted as not applying to restrictions, such as those at issue in the main proceedings, imposed on taxi operators.

[Signatures]