

JUDGMENT OF THE COURT (First Chamber)

10 March 2005*

In Case C-336/03,

REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Chancery Division (United Kingdom), 21 July 2003, received at the Court on 30 July 2003, for a preliminary ruling in the proceedings

easyCar (UK) Ltd

v

Office of Fair Trading,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues, K. Schiemann and M. Ilešič (Rapporteur), Judges,

* Language of the case: English.

Advocate General: C. Stix-Hackl,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 29 September 2004,

after considering the observations submitted on behalf of:

- easyCar (UK) Ltd, by D. Anderson QC, K. Bacon, Barrister, and D. Burnside, Solicitor,

- the United Kingdom Government, by C. Jackson, acting as Agent, and M. Hoskins, Barrister,

- the Spanish Government, by S. Ortiz Vaamonde, acting as Agent,

- the French Government, by R. Loosli-Surrans, acting as Agent,

- the Commission of the European Communities, by N. Yerrell and M.-J. Jonczy, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 November 2004,

gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the interpretation of Article 3(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19, hereinafter ‘the directive’).

- 2 The reference was made in the context of a dispute between the company easyCar (UK) Ltd (hereinafter ‘easyCar’) and the Office of Fair Trading (hereinafter ‘the OFT’) concerning the terms and conditions of the car hire contracts offered and concluded by easyCar.

Law

Community legislation

- 3 The object of the directive, as stated in Article 1, is to harmonise the provisions applicable in the Member States to distance contracts between consumers and suppliers.

- 4 Under Article 3(2) of the directive, Articles 4, 5, 6 and 7(1) of the directive do not apply ‘... to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period ...’.
- 5 Article 6(1) of the directive provides, in respect of distance contracts, for a right of withdrawal for the consumer. Under Article 6(2), where the right of withdrawal has been exercised, the supplier must reimburse the sums paid by the consumer free of charge, except for the cost of returning the goods.

National legislation

- 6 The directive was transposed into United Kingdom law by the Consumer Protection (Distance Selling) Regulations 2000 (‘the national regulations’).
- 7 The exemption referred to in Article 3(2) of the directive was transposed into national law by Regulation 6(2).
- 8 The right of withdrawal provided for in Article 6(1) of the directive was transposed into national law by Regulation 10, and the obligation under Article 6(2) to reimburse by Regulation 14.

- 9 Regulation 27 of the national regulations authorises the OFT to apply for an injunction against any person who appears to it to be responsible for a breach.

The main proceedings and the question referred for a preliminary ruling

- 10 easyCar is a self-drive car hire undertaking. It operates in the United Kingdom and in several other Member States. The company's customers can book cars offered for hire only via the internet. Under the terms and conditions of the car hire contract offered and concluded by easyCar, a customer cannot obtain a refund of sums paid if that contract is cancelled, except in 'unusual and unforeseeable events beyond [his] control including ...: serious illness of the driver which results in the driver being unfit to drive; natural disaster ...; acts or restraints of governments or public authorities; war, riot, civil commotion or acts of terrorism' or 'at the discretion of our Customer Service Manager in other extreme circumstances'.
- 11 In the view of the OFT, which received a number of complaints from consumers relating to hire contracts which they had concluded with easyCar, the terms and conditions of those contracts infringe Regulations 10 and 14, which provide, for the purpose of implementing the directive, for a right of withdrawal, together with full reimbursement of sums paid by the consumer, within a specific period after the conclusion of the contract.
- 12 easyCar submits that the hire contracts which it offers are covered by the exemption laid down for 'contracts for the provision of ... transport ... services' within the meaning of Regulation 6(2) of the national regulations and Article 3(2) of the

directive, and that it is therefore not subject to the requirements of Regulations 10 and 14. The OFT, on the other hand, contends that car hire cannot be characterised as a 'transport service'.

- 13 Both easyCar and the OFT brought proceedings before the High Court of Justice of England and Wales, Chancery Division. easyCar sought a declaration that its rental agreements are exempted from the right of withdrawal provided for by the national regulations, whereas the OFT sought an injunction to restrain easyCar from infringing the national regulations by refusing to offer its customers the right to withdraw and to receive a refund of sums paid.
- 14 It was in those circumstances that the High Court of Justice of England and Wales, Chancery Division, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does the term "contracts for the provision of ... transport ... services", in Article 3(2) of [the directive], include contracts for the provision of car hire services?'

The application for reopening of the oral procedure

- 15 By application lodged at the Registry of the Court of Justice on 13 December 2004, easyCar sought the reopening of the oral procedure.

- 16 In that regard, it should be recalled that the Court may order that the oral procedure be reopened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see Joined Cases C-270/97 and C-271/97 *Deutsche Post* [2000] ECR I-929, paragraph 30, and Case C-299/99 *Philips* [2002] ECR I-5475, paragraph 20).
- 17 The Court considers that there is no need in this case to order the reopening of the oral procedure. Consequently, the application for a reopening must be rejected.

The question referred for a preliminary ruling

- 18 The order for reference indicates that it is common ground between the parties that the contracts concluded between easyCar and its customers are distance contracts within the meaning of the national regulations and of the directive, and that they constitute contracts for the provision of services. By its question, the national court seeks, in essence, to ascertain whether car hire services are transport services for the purposes of Article 3(2) of the directive.
- 19 easyCar submits that this question should be answered in the affirmative. The Spanish, French and United Kingdom Governments and the Commission of the European Communities maintain the opposite view.

- 20 In that regard, it must be stated from the outset that neither the directive nor the documents relevant for its interpretation, such as the *travaux préparatoires*, provide clarification of the exact scope of the concept of 'transport services' mentioned in Article 3(2) of the directive. Similarly, the general scheme of the directive shows only that its objective is to entitle consumers to extensive protection by conferring on them certain rights, including the right of withdrawal, and that Article 3(2) provides for an exemption from those rights in four closely-related sectors of economic activity, including that of transport services.
- 21 It is settled case-law that the meaning and scope of terms for which Community law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (Case C-128/94 *Hönig* [1995] ECR I-3389, paragraph 9, and Case C-164/98 P *DIR International Film and Others v Commission* [2000] ECR I-447, paragraph 26). When those terms appear, as in the main proceedings, in a provision which constitutes a derogation from a principle or, more specifically, from Community rules for the protection of consumers, they must, in addition, be interpreted strictly (Case C-83/99 *Commission v Spain* [2001] ECR I-445, paragraph 19, and Case C-481/99 *Heininger* [2001] ECR I-9945, paragraph 31).
- 22 So far as the term 'transport services' is concerned, it must be held that it represents, like each of the other categories of services listed, a sectoral exemption and that it therefore relates generally to services in the transport sector.
- 23 When the provisions on the exemption at issue in the main proceedings were drafted the legislature did not opt for the term 'contracts of carriage' commonly used in the legal systems of the Member States, which relates only to carriage of

passengers and goods performed by the carrier, but for the distinctly broader term ‘contracts for the provision of ... transport... services’, which can cover all contracts governing services in the field of transport, including those involving an activity which does not include, as such, the carriage of the customer or his goods, but which is aimed at enabling the customer to perform that carriage.

24 The wording of Article 3(2) of the directive thus demonstrates that the legislature intended to define the exemption laid down in that provision, not according to the type of contract, but in such a way that all contracts for the provision of services in the accommodation, transport, catering and leisure sectors come within the scope of that exemption, with the exception of those the performance of which is not due on a specific date or within a specific period

25 That interpretation is expressly supported by several language versions of Article 3 (2) of the directive, namely the German, Italian and Swedish versions, which mention, respectively, ‘Dienstleistungen in den Bereichen ... Beförderung’ (‘services in the transport sector’), ‘servizi relativi ... ai trasporti’ (‘services relating to transport’) and ‘tjänster som avser ... transport’ (‘services which concern transport’).

26 In everyday language, ‘transport’ refers not only to the action of moving persons or goods from one place to another, but also to the mode of transport and to the means used to move those persons and goods. Making a means of transport available to the consumer is thus one of the services involved in the transport sector.

- 27 Consequently, without exceeding the strict scope of the sectoral exemption relating to 'transport services', provided for in Article 3(2) of the directive, it must be held that that exemption covers car hire services, the essential nature of which is precisely the making available to the consumer of a means of transport.
- 28 In addition, so far as concerns the context in which the concept of 'transport services' is used and the objectives pursued by the directive, it is established, as the Advocate General noted in points 39 to 41 of her Opinion, that the intention of the legislature was to institute protection for the interests of consumers who use means of distance communication, but also protection for the interests of suppliers of certain services, in order that the latter should not suffer the disproportionate consequences arising from the cancellation at no expense and with no explanation of services which have given rise to a booking. In that regard, easyCar rightly maintains, without, moreover, being contradicted on this point either by the governments which submitted observations to the Court or by the Commission, that Article 3(2) of the directive is aimed at exempting suppliers of services in certain sectors on the ground that the requirements of the directive could affect those suppliers disproportionately, in particular where a service has given rise to a booking and that booking is cancelled by the consumer at short notice before the date specified for the provision of that service.
- 29 Clearly, car hire undertakings carry on an activity which the legislature intended to protect against such consequences by means of the exemption laid down in Article 3 (2) of the directive. Those undertakings must make arrangements for the performance, on the date fixed at the time of booking, of the agreed service and therefore, for that reason, suffer the same consequences in the event of cancellation as other undertakings operating in the transport sector or in the other sectors listed in Article 3(2).

- 30 It follows from the foregoing considerations that the interpretation to the effect that car hire services are transport services for the purposes of Article 3(2) of the directive is the only one which ensures that the exemption laid down in that provision has the character of a sectoral exemption and which enables the objective pursued by that provision to be achieved.
- 31 The answer to the question referred must therefore be that Article 3(2) of the directive is to be interpreted as meaning that 'contracts for the provision of transport services' includes contracts for the provision of car hire services.

Costs

- 32 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 (First Chamber) hereby rules:

Article 3(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts is to be interpreted as meaning that 'contracts for the provision of transport services' includes contracts for the provision of car hire services.

[Signatures]