Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

14 November 2013*

(Requests for a preliminary ruling — Article 49 TFEU — Freedom of establishment — Article 56 TFEU — Freedom to provide services — Principles of equal treatment and non-discrimination — Obligation of transparency — Scope — Agreement concluded by public entities of one Member State and an undertaking of that Member State — Transfer, by those entities, of their television provision activities and, for a fixed period, the exclusive right to use their cable networks, to an undertaking in that Member State — Possibility for an economic operator of that same State to rely on Articles 49 TFEU and 56 TFEU before the courts of that Member State — No invitation to tender — Justification — Existence of an earlier agreement — Transaction intended to put an end to litigation concerning the interpretation of that agreement — Risk of depreciation of the transferred activity)

In Case C-221/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State van België (Belgium), made by decision of 2 May 2012, received at the Court on 11 May 2012, in the proceedings

Belgacom NV

v

Interkommunale voor Teledistributie van het Gewest Antwerpen (Integan),

Inter-Media,

West-Vlaamse Energie- en Teledistributiemaatschappij (WVEM),

Provinciale Brabantse Energiemaatschappij CVBA (PBE),

intervening parties:

Telenet NV,

Telenet Vlaanderen NV,

Telenet Group Holding NV,

THE COURT (Tenth Chamber),

composed of A. Rosas, acting as President of the Tenth Chamber, D. Šváby (Rapporteur) and C. Vajda, Judges,

Advocate General: Y. Bot,

* Language of the case: Dutch.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Belgacom NV, by B. Schutyser, advocaat,

— Interkommunale voor Teledistributie van het Gewest Antwerpen (Integan), Inter-Media, West-Vlaamse Energie- en Teledistributiemaatschappij (WVEM) and Provinciale Brabantse Energiemaatschappij CVBA (PBE), by D. D'Hooghe and P. Wytinck, advocaten,

— Telenet NV, Telenet Vlaanderen NV and Telenet Group Holding NV, by T. De Meese, advocaat,

— the Belgian Government, by J.-C. Halleux and C. Pochet, acting as Agents, assisted by S. Depré, avocat,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by C. Colelli, avvocato dello Stato,

— the European Commission, by T. van Rijn, I. Rogalski and A. Tokár, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Articles 49 TFEU and 56 TFEU.

2 The request has been made in proceedings between Belgacom NV ('Belgacom') and four inter-municipal associations, Interkommunale voor Teledistributie van het Gewest Antwerpen (Integan), Inter-Media, West-Vlaamse Energie- en Teledistributiemaatschappij (WVEM) and Provinciale Brabantse Energiemaatschappij CVBA (PBE) ('the inter-municipal associations'), concerning various decisions by which they approved, without organising a call for tenders, the conclusion of agreements providing for the transfer to Telenet NV ('Telenet') of its television broadcasting service activities and television subscription contracts signed by their clients and, for a fixed period, ancillary rights on their cable networks and the grant of long-term leasehold rights on those networks.

Legal context

3 Article 1 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114, corrigendum OJ 2004 L 351, p. 44), contains the following definitions:

'...

2. (a) "Public contracts" are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive.

...

(d) “Public service contracts” are public contracts other than public works or supply contracts having as their object the provision of services referred to in Annex II.

...

4. “Service concession” is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

...’

4 Under Article 17 of Directive 2004/18, that directive does not apply to service concessions.

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

5 The inter-municipal associations have only public shareholders. Initially they provided cable services through their own cable networks.

6 In 1996, under a contribution agreement (Inbrengakte) and acting through a cooperative company governed by general law, Interkabel, acquired a 1.51% share in Telenet when that company was established, in return for allowing Telenet to make partial use of their cable networks for a period of 50 years. Those rights of use consisted in an exclusive right to use those networks for the provision of so-called ‘point to point telecommunications services’ and a non-exclusive right for the provision of so-called ‘multimedia’ services, with the inter-municipal associations retaining the exclusive right to use their networks for the provision of broadcasting services.

7 The contribution agreement also gave Telenet a right of pre-emption in the event of transfer of the proprietary rights to the inter-municipal associations’ cable networks and a preferential right in the event of the grant of rights of use to a third party for the provision of multimedia services.

8 Subsequently, the inter-municipal associations established the economic interest grouping (‘economisch samenwerkingsverband’) IN.DI with a view to providing, inter alia, interactive digital television through their cable networks.

9 Telenet brought substantive proceedings and lodged an application for interim measures, seeking to have that activity prohibited, on the ground that it came within the scope of ‘point to point telecommunications services’ for the purposes of the 1996 contribution agreement. The judge hearing the application upheld it and granted interim relief by way of order, against which an appeal was brought.

10 Simultaneously, negotiations were undertaken by all the parties concerned with a view to reaching a settlement. Those negotiations led to an agreement in principle which the competent bodies of the inter-municipal associations approved by decisions reached in December 2007.

11 That agreement provided in particular for the grant to Telenet of a long-term lease covering the inter-municipal associations’ networks for a 38-year period, equal to the residual duration of their rights of use, which had initially been granted to them under the 1996 contribution agreement, in return for the payment of various fees for, inter alia, costs and depreciation, fixed capital and management costs, maintenance, expansion and upgrading of the cable network. Telenet was thus to have the exclusive right to use those networks to provide telephony, Internet access and analog, digital and interactive television services, which would enable it to offer, on the territory covered by

those networks, a range in line with current commercial standards, the so-called 'triple play', comprising the combined provision of those services. That agreement further provided, inter alia, for the transfer to Telenet of the provision of the inter-municipal associations' television services and for the subscription contracts for those services. The total expected fees were assessed at EUR 350 million.

12 That agreement in principle led to the conclusion of a final agreement ('the agreement in dispute'). The total value of the fees owing by Telenet was, however, raised to EUR 425 million, which was EUR 5 million more than the 'non-binding' offer initially made by Belgacom for the acquisition of the inter-municipal associations' analog and digital television signal distribution activities and the subscription contracts for those services and non-exclusive rights of use of the inter-municipal associations' cable networks for the provision of television services. That agreement was finalised following a new series of decisions adopted by the inter-municipal associations in June 2008.

13 Those decisions, like the decisions referred to in paragraph 10 above, were the subject of proceedings brought by Belgacom before the Raad van State van België (Council of State) (Belgium).

14 Belgacom had previously challenged the inter-municipal associations about the conclusion of the agreement in principle, expressing interest in the acquisition of certain rights the transfer of which was provided for under that agreement. In response, the inter-municipal associations had stated that Belgacom could not be considered a potential partner, given the restrictions in the 1996 contribution agreement and the fact that transferring rights to Belgacom would amount to ensuring a monopoly for it, since Belgacom was already offering a complete range of television services through its own network on the territory covered by the inter-municipal associations' cable networks. Belgacom replied that those networks could be shared, which would allow effective competition to be maintained. Subsequently – although before the conclusion of the agreement in dispute – Belgacom made the offer referred to in paragraph 12 of this judgment.

15 In the main proceedings, Belgacom is basing its actions inter alia on Articles 43 EC and 49 EC, now Articles 49 TFEU and 56 TFEU. It argues that the principles of equal treatment and non-discrimination and the principle of proportionality must be applied, irrespective of how the agreement in dispute is categorised, and that there are no overriding reasons in the public interest liable to justify the omission of a competitive process before the conclusion of the agreement in dispute.

16 The inter-municipal associations argue, by contrast, that the application of the principle of equal treatment does not preclude the conclusion of a contract without any prior recourse to competition if the initiating public authorities have precise reasons for doing so which, whilst not necessarily linked to the general interest, are factually correct and legally acceptable, which corresponds to the concept of 'objective circumstances' in the Court's case-law. That would be the case here, given, first, the preferential rights and rights of pre-emption which Telenet had under the 1996 contribution agreement, which should be regarded as giving rise to an exclusive right precluding any effective recourse to competition and, secondly, the pending proceedings between the inter-municipal associations and Telenet as to the scope of that contribution agreement, given the foreseeable length of proceedings and the risk of heavy sanctions to which the inter-municipal associations would have been exposed had it been held in a definitive decision that they had breached that agreement.

17 The referring court states that all the parties to the main proceedings acknowledge that the agreement in dispute does not come within the scope of one of the directives governing public procurement. It adds that, however the agreement in dispute is categorised, the inter-municipal associations' decisions which gave rise to it form part of a framework of State intervention intended to regulate the exercise of an economic activity and the margin of discretion the authorities have within that framework is

circumscribed by the principle of equal treatment and the obligation of transparency. It also considers that, given the import of the transaction in question, it is probable that, had it been put out to tender, undertakings established abroad would have shown their interest.

18 The referring court observes that the agreement in dispute was concluded with a view to putting an end to the dispute which had arisen between the inter-municipal associations and Telenet as to the scope of the 1996 contribution agreement and that that dispute had arisen solely due to technological developments which the contracting parties could not have foreseen at the time the agreement was drawn up. Specifically, the distribution of the rights to use the inter-municipal associations' cable networks as provided for under that agreement did not allow any of the parties to offer a complete range of television services, as interactive television services came within Telenet's exclusive rights, whereas only the inter-municipal associations could operate cable services.

19 The referring court also finds, however, that the agreement in dispute goes beyond what was necessary to put an end to that dispute, by making radical changes to the rights of use of the inter-municipal associations' cable networks provided for in the 1996 contribution agreement, by granting Telenet rights not initially granted to it and which were not the subject of the dispute. Under that agreement, in return for payment of a fee of EUR 425 million, Telenet henceforth has a global exclusive right of use of those networks, which enables it to offer, on the territory covered by those networks, representing roughly one-third of its area of activity, complete television services and, therefore the so-called 'triple play' in line with current commercial standards, in the same manner as it was already doing on the other two-thirds of the area in which it was active.

20 The referring court also takes the view that the existence of the 1996 contribution agreement cannot by itself justify the conclusion of the agreement in dispute. First, a system of shared use could have been put in place. Secondly, Telenet's preferential rights and rights of pre-emption under that agreement are not such as to preclude other candidates from being treated in an equal manner and, therefore, their bids from undergoing a genuine comparative examination.

21 The referring court asks, however, whether the overall context, characterised not only by the 1996 contribution agreement but also by the dispute which arose subsequently as to the scope of that agreement due to technological developments and the judicial decision handed down in the context of that dispute, might not be grounds for not having conducted a tendering procedure. The transfer to a third party of rights which would have been transferred to Telenet by that agreement would have inevitably given rise to fresh litigation and increased legal uncertainty. Moreover, a failure to resolve the dispute with Telenet would have left the inter-municipal associations unable to provide a complete range of television services for a long time, which would have caused not only significant financial losses – as Belgacom could occupy the market – but would have also had an impact on consumers.

22 In such a context, the referring court then considers the possibility that the agreement in dispute, which puts down on paper the settlement reached by Telenet and the inter-municipal associations, might be viewed as a legitimate complement to the 1996 contribution agreement, rather than as an autonomous agreement which can only be concluded in compliance with Articles 49 TFEU and 56 TFEU.

23 Lastly, the referring court observes that, in Case C-231/03 *Coname* [2005] ECR I-7287, paragraph 19, the Court considered the possibility of justifying, by 'objective circumstances', a difference in treatment amounting to indirect discrimination on the basis of nationality resulting from the direct award of a service concession. The referring court is, however, uncertain as to the scope of that concept in the light of the concept of 'overriding reasons in the public interest'.

24 In those circumstances, the Raad van State van België decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Should Articles 49 or 56 TFEU be interpreted in such a way that an undertaking established in Belgium may rely on the fundamental rules of European Union law before the Belgian courts, in particular, on the obligation of transparency which is derived from the aforementioned Articles, in respect of an agreement which does not fall within the scope of any of the directives concerning public tenders, under which a Belgian authority transfers rights to another Belgian undertaking without having organised an invitation to tender?

2. Can the efforts to prevent the infringement of an existing, in itself undisputed and very specific contractual framework between a legal person governed by public law and a private law undertaking, not controlled by itself, or the conclusion of a transaction or a settlement aimed at the resolution of an existing interpretation dispute regarding the aforementioned contractual framework, where that settlement is based on the rights of the parties in accordance with a provisional decision of a judge hearing an application for interim relief and where, without such a settlement, the relevant activity of [that legal person] can incur serious damage and depreciation, with the consumers, in the meanwhile, remaining deprived of services, be regarded as an overriding reason in the public interest, or at least an objective ground of justification, justifying the fact that legal persons governed by public law, by way of exception and contrary to the principle of equal treatment and the prohibition of discrimination on the grounds of nationality, which are laid down in Articles 49 and 56 TFEU and the obligation of transparency to which it gives rise, do not organise an invitation to bid and award the tender directly?

3. If the second question can be answered in the affirmative, should the aforementioned transaction or settlement, so as not to limit the aforementioned fundamental freedoms guaranteed by European Union law more than is necessary in order to achieve the aim pursued, then be limited to what is strictly required to put an end to the dispute which has arisen, or may the parties devise a more far-reaching settlement with a view to future challenges which have a reasonable and logical connection with the dispute and which at the same time safeguards the interests of the consumers and also entails maximising the value of the transferred activity concerned?’

Consideration of the questions referred

The first question

25 By its first question, the referring court asks, in essence, whether Articles 49 TFEU and 56 TFEU must be interpreted as meaning that an economic operator in a Member State may, before the courts of that Member State, allege an infringement of the obligation of transparency under those articles occurring at the time of conclusion of an agreement whereby one or more public entities of that Member State transfer, for consideration, to an economic operator of that same Member State, inter alia, the exclusive right to operate television service cable networks and to engage in the provision of television services and the subscription contracts associated with that provision.

26 Irrespective of the practical detailed rules and categorisations determined by the parties, an agreement such as the agreement in dispute, in transferring to Telenet the inter-municipal associations’ provision of television services and in conferring on it, inter alia in order to engage in that activity, the exclusive right to operate their cable networks, must be examined as a service concession within the meaning of Article 1(4) of Directive 2004/18.

27 First of all, in so far as it obliges the transferee to pursue the activity transferred, such an agreement is a public contract for the provision of services as referred to in Annex II to Directive 2004/18, apart from the remuneration method, as the consideration for the provision of television services consists in the right to operate the activity in question, in accordance with the definition in Article 1(4). Furthermore, the requirement that the risk of operation must be passed on to the transferee (see, to that effect, inter alia Case C-300/07 *Hans & Christophorus Oymanns* [2009] ECR I-4779, paragraph 72, and Case C-274/09 *Privater Rettungsdienst und Krankentransport Stadler* [2011] ECR I-1335, paragraph 26 and the case-law cited) is also fulfilled under that agreement.

28 Moreover, even though service concessions do not come within the scope of Directive 2004/18 by virtue of Article 17 thereof, the public authorities which grant such a concession are required to comply with the fundamental rules of the TFEU, the principles of non-discrimination on grounds of nationality and equal treatment, and also the obligation of transparency thereunder, since that concession is of certain cross-border interest (see, to that effect, inter alia Case C-347/06 *ASM Brescia* [2008] ECR I-5641, paragraphs 58 and 59 and the case-law cited).

29 A certain cross-border interest may result, inter alia, from the financial value of the planned agreement, from the location where it is to be performed (see, to that effect, *ASM Brescia*, paragraph 62 and the case-law cited) or from its technical characteristics (see, by analogy, Joined Cases C-147/06 and C-148/06 *SECAP and Santorso* [2008] ECR I-3565, paragraph 24).

30 It is for the referring court to carry out a detailed assessment of all the relevant facts in that regard (see, to that effect, Case C-376/08 *Serrantoni and Consorzio stabile edili* [2009] ECR I-12169, paragraph 25 and the case-law cited), which it has already done in this case since it found that, given the import of the agreement at issue in the main proceedings, it is probable that undertakings established in other Member States would have manifested their interest had the contact been put out to tender.

31 Furthermore, there is certain cross-border interest, without its being necessary that an economic operator actually has manifested its interest. This is particularly true when, as in the main proceedings, the dispute concerns the lack of transparency surrounding the agreement in question. In such a case, economic operators established in other Member States do not have a genuine opportunity to manifest their interest in obtaining that concession (see, to that effect, *Coname*, paragraph 18, and Case C-458/03 *Parking Brixen* [2005] ECR I-8585, paragraph 55).

32 Moreover, once it has been established that there is certain cross-border interest in a given service concession , the obligation of transparency to be complied with by the concession-granting authority benefits any potential tenderer (see, to that effect, Case C-91/08 *Wall* [2010] ECR I-2815, paragraph 36), even where it is established in the same Member State as those authorities.

33 It should be observed that European Union law also imposes the same requirements on the concession-granting authority where the agreement at issue in the main proceedings did not oblige the tenderer to engage in the transferred activity, with the result that that agreement then confers authorisation to engage in an economic activity. Such an authorisation is no different from a service concession in terms of the obligation to comply with the fundamental rules of the Treaty and the principles flowing therefrom, as the exercise of that activity is liable to be of potential interest to economic operators in other Member States (see, to that effect, inter alia Case C-203/08 *Sporting Exchange* [2010] ECR I-4695, paragraphs 46 and 47, and Case C-64/08 *Engelmann* [2010] ECR I-8219, paragraphs 51 to 53).

34 In the light of the foregoing considerations, the answer to the first question referred is that Articles 49 TFEU and 56 TFEU must be interpreted as meaning that an economic operator in a Member State may, before the courts of that Member State, allege an infringement of the obligation of transparency under those articles occurring at the time of conclusion of an agreement whereby one or more public

entities of that Member State have either granted to an economic operator of that same Member State a licence for services of certain cross-border interest or granted an economic operator the exclusive right to engage in an economic activity of cross-border interest.

The second question

35 By its second question, the referring court asks, in essence, whether Articles 49 TFEU and 56 TFEU must be interpreted as meaning that circumstances such as those present in the main proceedings may be considered overriding reasons in the public interest or objective circumstances liable to justify the direct grant by public entities to an economic operator of a service concession for the provision of television services carried out by those entities through cable networks, by way of derogation from the principles of equal treatment and non-discrimination enshrined in those articles.

36 The circumstances thus referred to consist in the wish to respect certain rights which the entities in question have granted to that operator under a pre-existing agreement covering the use of those cable networks, as well as the wish to reach a settlement with a view to putting an end to a dispute relating to the scope of those rights in accordance with an interim judicial decision, whilst avoiding any depreciation in the provision of television services ensured by those entities through the cable networks and enabling a complete commercial range to be offered to the subscribers of those services.

37 It should be borne in mind that since such a concession is of certain cross-border interest, its award, in the absence of any transparency, to an undertaking located in the Member State to which the contracting authority belongs, amounts to a difference in treatment to the detriment of undertakings which might be interested in that concession but which are located in other Member States. In excluding those undertakings, that difference in treatment works primarily to their detriment and therefore amounts to indirect discrimination on grounds of nationality, which is, in principle, prohibited by Articles 49 TFEU and 56 TFEU (see, to that effect, *ASM Brescia*, paragraphs 59 and 60 and the case-law cited).

38 Such a measure might, exceptionally, be allowed on one of the grounds set out in Article 52 TFEU or justified by overriding reasons in the public interest, in accordance with the Court's case-law (see, by analogy, *Engelmann*, paragraphs 51 and 57 and the case-law cited, and Joined Cases C-357/10 to C-359/10 *Duomo Gpa and Others* [2012] ECR, paragraph 39 and the case-law cited). On this last point, it is clear from a combined reading of paragraphs 51 and 57 of *Engelmann* that no distinction need be drawn between objective circumstances and overriding reasons in the public interest. Objective circumstances must, ultimately, be accepted as overriding reasons in the public interest.

39 The grounds put forward in the application in the present case, whether considered separately or together, cannot be regarded as being overriding reasons in the public interest.

40 The principle of legal certainty, which is a general principle of European Union law, provides ample justification for observance of the legal effects of an agreement, including – in so far as that principle requires – in the case of an agreement concluded before the Court has ruled on the implications of the primary law on agreements of that kind and which, after the fact, turn out to be contrary to those implications (see, to that effect, *ASM Brescia*, paragraphs 69 and 70). However, that principle may not be relied on to give an agreement an extended scope which is contrary to the principles of equal treatment and non-discrimination and the obligation of transparency deriving therefrom. It is of no import in that regard that that extended scope may offer a suitable solution for putting an end to a dispute which has arisen between the parties concerned, for reasons outside their control, as to the scope of the agreement by which they are bound.

41 It is, moreover, settled case-law with respect to a risk of depreciation of an economic activity carried on by a public entity under a pre-existing contractual framework which turns out to be unsuitable due to technical and commercial developments that grounds of an economic nature cannot be accepted as overriding reasons in the public interest, justifying a restriction of a fundamental freedom guaranteed by the Treaty (see Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR, paragraph 59 and the case-law cited).

42 In the present case, the fact that the conclusion of the agreement in dispute coincides with the interests of consumers who, without it, would not have access to interactive television, or even to a commercially attractive combined offer of services, is not really distinguishable from the ground relating to the depreciation of that activity but, on the contrary, is inextricably linked to it. This aspect does not concern all consumers residing in the territory covered by the inter-municipal associations' cable networks, but only those who have subscribed to the television services provided by them as part of the activity the transfer of which to Telenet is the subject-matter of the main proceedings. The inter-municipal associations' inability to offer certain services to those subscribers due to the distribution of rights of use of their cable networks governed by the 1996 contribution agreement explains the loss of attractiveness of the commercial offer they are able to make on the market and, therefore, the depreciation of that activity.

43 Lastly, considerations which do not individually constitute overriding reasons in the public interest justifying a disregard of the principles of equal treatment and non-discrimination and the obligation of transparency do not acquire that quality by virtue of being bundled together.

44 In the light of the foregoing considerations, the answer to the second question referred is that Articles 49 TFEU and 56 TFEU must be interpreted as meaning that:

— the wish not to disregard certain rights which public entities have granted to an economic operator under a pre-existing agreement concerning the use of cable networks belonging to them cannot justify an extended scope being given to that agreement which is contrary to European Union law in the form of a direct grant of a service concession or an exclusive right to engage in an activity of certain cross-border interest, including when it is for the purpose of putting an end to a dispute which has arisen between the parties concerned, for reasons entirely outside their control, as to the scope of that agreement;

— grounds of an economic nature, such as the wish to avoid the depreciation of an economic activity, are not overriding reasons in the public interest liable to justify the direct grant of a licence for services relating to that activity or of an exclusive right to engage in that activity of certain cross-border interest, by way of derogation from the principles of equal treatment and non-discrimination enshrined in those articles.

The third question

45 In the light of the answer to the second question, there is no need to reply to the third question.

Costs

46 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 (Tenth Chamber) hereby rules:

1. **Articles 49 TFEU and 56 TFEU must be interpreted as meaning that an economic operator in a Member State may, before the courts of that Member State, allege an infringement of the obligation of transparency under those articles occurring at the time of conclusion of an agreement whereby one or more public entities of that Member State have either granted to an economic operator of that same Member State a licence for services of certain cross-border interest or granted an economic operator the exclusive right to engage in an economic activity of cross-border interest.**

2. **Articles 49 TFEU and 56 TFEU must be interpreted as meaning that:**

   — **the wish not to disregard certain rights which public entities have granted to an economic operator under a pre-existing agreement concerning the use of cable networks belonging to them cannot justify an extended scope being given to that agreement which is contrary to European Union law in the form of a direct grant of a service concession or an exclusive right to engage in an activity of certain cross-border interest, including when it is for the purpose of putting an end to a dispute which has arisen between the parties concerned, for reasons entirely outside their control, as to the scope of that agreement;**

   — **grounds of an economic nature, such as the wish to avoid the depreciation of an economic activity, are not overriding reasons in the public interest liable to justify the direct grant of a licence for services relating to that activity or of an exclusive right to engage in that activity of certain cross-border interest, by way of derogation from the principles of equal treatment and non-discrimination enshrined in those articles.**

[Signatures]