Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

24 January 2013*

(Articles 43 and 49 EC — National legislation granting an exclusive right for the running, management, organisation and operation of games of chance to a single undertaking, in the form of a public limited company listed on the stock exchange — Advertising of the games and expansion in other Member States of the European Union — State controls)

In Joined Cases C-186/11 and C-209/11,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Symvoulio tis Epikrateias (Greece), made by decisions of 21 January 2011, received at the Court on 20 April 2011 (C-186/11) and 4 May 2011 (C-209/11), in the proceedings

Stanleybet International Ltd (C-186/11),

William Hill Organization Ltd (C-186/11),

William Hill Plc (C-186/11),

Sportingbet plc (C-209/11)

v

Ypourgos Oikonomias kai Oikonomikon,

Ypourgos Politismou,

intervening parties:

Organismos prognostikon agonon podosfairou AE (OPAP),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, acting President of the Fourth Chamber, J.-C. Bonichot, C. Toader (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: J. Mazák,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 June 2012,

* Language of the case: Greek.

after considering the observations submitted on behalf of:

— Stanleybet International Ltd, by G. Dellis, P. Kakouris, and G. Troufakos, dikigoroi, and by R.A. Jacchia, I. Picciano, A. Terranova and D. Agnello, avvocati,

— William Hill Organization Ltd and William Hill plc, by G.A. Antonakopoulos, dikigoros,

— Sportingbet plc, by S. Alexandris and P. Anestis, dikigoroi,

— the Ypourgos Oikonomias kai Oikonomikon and the Ypourgos Politismou, by S. Detsis, acting as Agent,

— the Organismos prognostikon agonon podosfairou AE (OPAP), by G. Gerapetritis and G. Ganotis, dikigoroi,

— the Greek Government, by G. Papadaki and E.-M. Mamouna and also E. Synoikis and I. Bakopoulos, acting as Agents,

— the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents, assisted by P. Vlaemminck, advocaat,

— the Polish Government, by D. Lutostańska and P. Kucharski and M. Szpunar, acting as Agents,

— the Portuguese Government, by A. Silva Coelho, acting as Agent,

— the European Commission, by M. Patakia and I. Rogalski, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2012,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 43 EC and 49 EC.

2 The requests were made in two sets of proceedings between, in the first case (C-186/11), Stanleybet International Ltd ('Stanleybet') and William Hill Organization Ltd and William Hill plc ('William Hill') and, in the second (C-209/11), Sportingbet plc ('Sportingbet') and the Ypourgos Oikonomias kai Oikonomikon (Minister for Economic Affairs and Finance) and the Ypourgos Politismou (Minister for Culture), concerning the Greek authorities' tacit rejection of the applications made by Stanleybet, William Hill and Sportingbet to be granted permission to provide betting services in Greece, the Organismos prognostikon agonon podosfairou AE ('OPAP') being intervener in each set of proceedings.

Legal context

Greek law

Law 2433/1996

3 It is apparent from the explanatory memorandum for Law No 2433/1996 (FEK A' 180), which established the State monopoly in the sector of games of chance, that the principal objective of that legislation is to crack down on illicit betting, which 'in recent years has taken the form of an epidemic in [Greece]', whilst the need to increase income for sport is a secondary objective. In addition, the explanatory memorandum states that 'it is considered necessary to impose a form for every kind of betting … in order to increase the effectiveness in [Greece] of the crackdown on illicit bets, which inter alia have the direct effect of exporting currency because the companies which currently organise illicit gaming in Greece cooperate with foreign companies and also take such bets on their behalf'.

4 Articles 2 and 3 of that Law are worded as follows:

'Article 2

1. A presidential decree … shall authorise the issue of a form for betting with "fixed or variable winnings" on all manner of individual or team sports and on events whose nature is conducive to betting … [OPAP] is designated as administrator of the form concerned ...

2. Anyone who organises a bet without being so entitled … shall be liable to a term of imprisonment ...

Article 3

1. The annual costs of advertising the gaming ... which OPAP organises or is to organise in the future shall be divided proportionally between OPAP and the other bodies which participate in the rights deriving from each OPAP game …

5. OPAP may use 10% of the advertising space in State and municipal stadia and gymnasia free of charge for the purpose of placing advertising signs for its products. ...'

Presidential Decree No 228/1999

5 Articles 1 and 2 of Presidential Decree No 12/1999 (FEK A' 193) provide:

'Article 1

A public limited company is hereby incorporated under the name [OPAP]. ... The company shall in the public interest on the basis of the rules of the private economy. ...

Article 2

1. [OPAP] shall have as its object:

(a) to organise, operate and run, either alone or in collaboration with third parties, PRO-PO [football pools] and any other games of chance introduced in future by the board of directors throughout the country or abroad on behalf of the Greek State …

(b) The above games and any others run in future shall be managed exclusively by [OPAP] on behalf of the Greek State.

Law No 2843/2000

6 Article 27 of Law No 2843/2000 (FEK A' 219), as amended by Law NO 2912/2001 (FEK A' 94) ('Law No 2843/2000') is worded as follows:

'1. The State may offer to investors via the Athens Stock Exchange up to forty-nine per cent (49%) of the share capital [of OPAP].

2.

a. By a contract concluded between the Greek State, represented by the Ministers for Finance and Culture responsible for sport … and OPAP, OPAP shall be granted an exclusive right for twenty (20) years to run, manage, organise and operate the games which it currently runs, in accordance with the provisions in force, and the games BINGO LOTTO, KINO …

b. Regulations for every OPAP game, regulating matters pertaining to the subject-matter of the games, their organisation and operation in general and the financial terms on which games are run and, in particular, the percentage paid out to players in winnings, the percentage of winnings for each category of winner, the price per column and the percentage of agents' commission, shall be issued by decision adopted by the board of directors of OPAP and approved by the Ministers for Finance and Culture responsible for sport. …

c. The contract referred to in paragraph 2(a) shall lay down the terms for the exercise by OPAP, and for any renewal, of the right provided for in that paragraph, the consideration for that right, the method of payment thereof, the more specific obligations incumbent upon OPAP and, in particular, matters pertaining to the principles of transparency of the procedures for running the games and of protection of public order and players. …

9.

a. If it is permitted by law to run any new game in addition to those referred to in paragraph 2a, a special committee shall be set up … to lay down the terms and conditions of, and the consideration for, the right granted to OPAP to run the game. … If OPAP refuses to take on the running of the game, … the State may take it on itself. If the running of the game in question is allowed to be entrusted to a third party, the consideration shall be no lower than that proposed to OPAP Any future game relating to sporting events may be run exclusively and solely by OPAP.'

Law No 3336/2005

7 Article 14(1) of Law No 3336/2005 (FEK A' 96) amended Article 27 of Law No 2843/2000, which henceforth provides as follows:

'The State may offer to investors via the Athens Stock Exchange up to sixty-six per cent (66%) of the share capital of [OPAP]. The State's shareholding in OPAP shall not fall below thirty-four per cent (34%) at any time.'

Law No 3429/2005

8 It is apparent from Article 20 of Law No 3429/2005 (FEK A' 314) that the State's right to appoint the majority of the members of the board of directors was abolished.

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

9 Stanleybet, William Hill and Sportingbet are companies with their registered office in the United Kingdom, where they hold bookmakers' licences.

10 The orders for reference indicate that, in Greece, under Law No 2433/1996 and Law No 2843/2000, and under the contract concluded by OPAP and the Greek State in 2000, the exclusive right to run, organise and operate games of chance and betting forms with fixed or variable winnings was granted to OPAP for a period of 20 years ending in 2020.

11 OPAP, which started trading as a public corporation wholly owned by the Greek State, was converted into a public limited company in 1999 and listed on the Athens Stock Exchange in 2001, with the State retaining 51% of OPAP's shares at the time of the stock exchange listing.

12 In 2005, the State decided to become minority shareholder and reduce its holdings to 34% of the shares in OPAP. Since the entry into force of Law No 3336/2005, although the Greek State had kept only a minority shareholding in OPAP, it retained the right to appoint the majority of the members of its board of directors. That right was repealed by Article 20 of Law No 3429/2005, inasmuch as it was contrary to Codified Law No 2190/1920 on public limited companies (FEK A' 37), which provides that the members of the board of directors of public limited companies are to be elected exclusively by the general meeting.

13 The Greek State continued to supervise OPAP, however, especially by approving the regulations governing its activities and by monitoring the procedure applied in order to organise the games. In the view of the majority of the members of the national court, however, OPAP is supervised only superficially by the State.

14 OPAP has expanded its activities in Greece and abroad. Thus, as at 31 March 2005, OPAP had already established 206 agencies in Cyprus, pursuant to an agreement between Greece and Cyprus. In order to develop its activities in Cyprus, OPAP incorporated the company OPAP Kiprou Ltd. in 2003 and the company OPAP International Ltd. in 2004.

15 It is common ground that OPAP fixes the maximum amount of the bet and winnings per form and not by player and that it enjoys preferential conditions for the advertising of the games of chance it organises because it may use up to 10% of the advertising space in State and municipal stadia and gymnasia free of charge.

16 On 25 November 2004, Stanleybet brought an action before the national court seeking annulment of the Greek authorities' tacit rejection of its application to be granted permission to provide sport betting services in Greece. Two other actions with a similar subject-matter were brought before the national court, by William Hill on 18 July 2007 and by Sportingbet on 5 January 2007, the latter having also sought permission to organise games of chance already existing on the Greek market. OPAP was granted leave to intervene in those proceedings.

17 The majority of the members of the national court takes the view that the national legislation at issue in the main proceedings, which grants OPAP a monopoly, cannot be upheld as justified under Articles 43 EC and 49 EC. They consider that there can be no justification for the national legislation giving rise to that situation on grounds of the need to reduce the supply of games of chance in a

coherent, effective manner and to restrict related activities. Nor can such a restriction be justified by the stated objective of combating criminality linked to games of chance since, in the view of the majority of the members of the national court, the expansion of the supply of games of chance in Greece cannot be said to be controlled.

18 In the view of the minority of the members of the national court, the monopoly conferred by the national legislation at issue in the main proceedings is justified under Articles 43 EC and 49 EC, since the principal objective pursued by that legislation is not the need to reduce the supply of games of chance but the goal of combating criminality linked to those games, an objective which is pursued through a policy of controlled expansion in the sector of games of chance.

19 In those circumstances, the Symvoulio tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Is national legislation which, in order to attain the objective of restricting the supply of games of chance, grants the exclusive right to run, manage, organise and operate games of chance to a single undertaking, which has the form of a public limited company and is listed on the stock exchange, compatible with Articles 43 EC and 49 EC where, moreover, that undertaking advertises the games of chance which it organises and it expands abroad, players participate freely and the maximum bet and winnings are set per form and not per player?

2. If the answer to the first question referred is in the negative, is national legislation which, in seeking exclusively to combat criminality by exercising control over the undertakings that operate in the sector at issue so as to ensure that those activities are carried out solely within controlled systems, grants a single undertaking the exclusive right to run, manage, organise and operate games of chance compatible with Articles 43 EC and 49 EC even where grant of the right results in parallel in unrestricted expansion of the supply in question? Or is it necessary in every case, in order for that restriction to be considered suitable for achieving the objective of combating criminality, that the expansion of supply be controlled in any event, that is to say, be only as great as is required in order to achieve that objective? If that expansion must in any event be controlled, can expansion be considered controlled from that point of view if the exclusive right in the sector in question is granted to a body with the attributes described in the first question referred? Finally, if grant of the exclusive right in question is considered to result in controlled expansion of the supply of games of chance, does its grant to just a single undertaking go beyond what is necessary, in the sense that the same objective can also be profitably served by granting that right to more than one undertaking?

3. If, following the above two questions referred, it were to be held that the grant, by the national provisions relevant in the case in point, of an exclusive right to run, manage, organise and operate games of chance is not compatible with Articles 43 EC and 49 EC:

(a) is it permissible, for the purposes of those provisions of the Treaty, for the national authorities not to examine, during a transitional period necessary in order to enact rules compatible with the EC Treaty, applications to engage in the activities in question submitted by persons lawfully established in other Member States?

(b) if the answer is in the affirmative, on the basis of what criteria is the duration of that transitional period determined?

(c) if no transitional period is allowed, on the basis of what criteria must the national authorities rule on the applications?’

Consideration of the questions referred

The first and second questions

20 By its first and second questions, which should be examined together, the national court asks in essence whether Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which grants the exclusive right to run, manage, organise and operate games of chance to a single entity inasmuch as, whilst the objective of the national legislation is either to restrict the supply of games of chance or to support the effort to combat criminality linked to games of chance, the undertaking on which the right has been conferred pursues a commercial policy of expansion.

21 It is common ground that a Member State's legislation, such as that described by the national court, constitutes a restriction on the freedom to provide services guaranteed by Article 49 EC or on the freedom of establishment guaranteed by Article 43 EC inasmuch as it provides for a monopoly for OPAP and prohibits providers such as Stanleybet, William Hill and Sportingbet, established in another Member State, from offering games of chance on Greek territory (see, to that effect, Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07 *Stoß and Others* [2010] ECR I-8069, paragraph 68 and the case-law cited).

22 It is necessary, however, to determine whether such a restriction may be allowed as a derogation, on grounds of public policy, public security or public health, as expressly provided for under Articles 45 EC and 46 EC, which are applicable in the area of freedom to provide services by virtue of Article 55 EC, or justified, in accordance with the case-law of the Court, by overriding reasons in the public interest (Case C-470/11 *Garkalns* [2012] ECR, paragraph 35 and the case-law cited).

23 Thus, the Court has consistently held that restrictions on betting and gaming may be justified by overriding requirements in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling (*Garkalns*, paragraph 39 and the case-law cited).

24 In that regard the Court has consistently held that the legislation on games of chance is one of the areas in which there are significant moral, religious and cultural differences between the Member States. In the absence of Community harmonisation in the field, it is for each Member State to determine in those areas, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected (Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 57 and the case-law cited).

25 In the present case, it should be borne in mind that the declared objectives pursued by the legislation at issue in the main proceedings, namely restricting the supply of games of chance and combating criminality linked to those games by channelling them through controlled expansion, are among those recognised by the case-law as capable of justifying restrictions on fundamental freedoms in the sector of games of chance (see, to that effect, Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR, paragraph 61 and the case-law cited).

26 However, the identification of the objectives which are in fact pursued by the national legislation is, in the context of a case referred to the Court under Article 267 TFEU, within the jurisdiction of the national court (Case C-347/09 *Dickinger and Ömer* [2011] ECR I-8185, paragraph 51).

27 It should also be remembered that restrictive measures imposed by Member States must satisfy the relevant conditions of proportionality and non-discrimination, as laid down in the Court's case-law. Thus, national legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner (see, to that effect, *Liga Portuguesa de Futebol Profissional and Bwin International*, paragraphs 59 to 61 and the case-law cited).

28 The mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the proportionality of the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the level of protection which they seek to ensure (Case C-176/11 *HIT and HIT LARIX* [2012] ECR, paragraph 25 and the case-law cited).

29 A Member State seeking to ensure a particularly high level of protection may consequently, as the Court has acknowledged in its case-law, be entitled to take the view that it is only by granting exclusive rights to a single entity which is subject to strict control by the public authorities that it can tackle the risks connected with the betting and gaming sector and pursue the objective of preventing incitement to squander money on gambling and combating addiction to gambling with sufficient effectiveness (see Case C-212/08 *Zeturf* [2011] ECR I-5633, paragraph 41).

30 Provided that they comply with the abovementioned requirement of proportionality, the national public authorities may indeed legitimately consider that the fact that, in their capacity as overseer of the body holding the monopoly, they will have additional means of influencing the latter's conduct outside the statutory regulating and monitoring mechanisms is likely to secure for them a better command over the supply of games of chance and better guarantees that implementation of their policy will be effective than in the case where those activities are carried on by private operators in a situation of competition, even if the latter are subject to a system of authorisation and a regime of supervision and penalties (*Zeturf*, paragraph 42).

31 As regards the first objective, that of restricting the supply of games of chance, as referred to in paragraph 25 above, it is for the national courts to ensure, in the light, in particular, of the actual rules for applying the restrictive legislation concerned, that that legislation genuinely meets the concern to reduce opportunities for gambling and to limit activities in that domain in a consistent and systematic manner (see, to that effect, *Garkalns*, paragraph 44 and the case-law cited).

32 In that context, the national court may legitimately take account of the various features of the legislative framework governing OPAP and the manner in which it operates in practice, as outlined in the order for reference, such as the fact that OPAP enjoys certain rights and privileges for advertising the games of chance it organises, or the fact that the maximum bet is fixed per form and not per player. It is for that court, however, to determine whether those features, as well as any other relevant aspects, are such as to lead to the conclusion that the legislation at issue in the main proceedings does not satisfy the requirements referred to in the preceding paragraph.

33 As regards the second objective, that of combating criminality linked to games of chance, it is also for the national court to determine, in the light of, inter alia, the development of the national market for games of chance, whether the State controls to which the activities of the undertaking holding the monopoly are subject are actually implemented in the consistent and systematic pursuit of the objectives sought by the establishment of the system whereby exclusive rights are conferred on such an undertaking (see, to that effect, *Zeturf*, paragraph 62 and the case-law cited).

34 It should be borne in mind in that regard that the effectiveness of those State controls must be assessed by the national court in the light of the fact that a measure as restrictive as a monopoly must, inter alia, be subject to strict control by the public authorities (see, to that effect, *Zeturf*, paragraph 58).

35 Although some of the aspects highlighted in the order for reference, including in particular the fact that OPAP is a listed public limited company and the finding that the Greek State's supervision of OPAP is merely superficial, tend to suggest that the requirements referred to in paragraphs 33 and 34 above might not be satisfied, it is nevertheless for the national court to determine whether that is the case by taking into account those aspects and also any others which might turn out to be relevant in that perspective.

36 In the light of all those considerations, the answer to the first and second questions is that Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which grants the exclusive right to run, manage, organise and operate games of chance to a single entity, where, firstly, that legislation does not genuinely meet the concern to reduce opportunities for gambling and to limit activities in that domain in a consistent and systematic manner and, secondly, where strict control by the public authorities of the expansion of the sector of games of chance, solely in so far as is necessary to combat criminality linked to those games, is not ensured. It is for the national court to ascertain whether this is the case.

Consideration of the first and second parts of the third question

37 On a reading of the first part of the third question, the national court asks in essence whether, in the event that the national legislation governing the organisation of games of chance is incompatible with the Treaty provisions on the freedom to provide services and the freedom of establishment, the national authorities may refrain from considering applications, such as those at issue in the main proceedings, for permission to operate in the sector of games of chance, during a transitional period.

38 The Court has held previously in that regard that, by reason of the primacy of directly-applicable European Union law, national legislation concerning a public monopoly on games of chance which, according to the findings of a national court, comprises restrictions that are incompatible with the freedom of establishment and the freedom to provide services, because those restrictions do not contribute to limiting betting activities in a consistent and systematic manner, cannot continue to apply during a transitional period (Case C-409/06 *Winner Wetten* [2010] ECR I-8015, paragraph 69).

39 Consequently, the answer to the first part of the third question is that in the event that the national legislation governing the organisation of games of chance is incompatible with the Treaty provisions on the freedom to provide services and the freedom of establishment, the national authorities may not refrain from considering applications, such as those at issue in the main proceedings, for permission to operate in the sector of games of chance, during a transitional period.

40 Having regard to the answer to the first part of the third question, there is no need to answer the second part.

Consideration of the third part of the third question

41 On a reading of the third part of the third question, the national court seeks in essence to elucidate, in the light of the answers given to the previous questions, the basic criteria on the basis of which the competent national authorities must examine applications such as those at issue in the main proceedings and the inferences to be drawn from a refusal to allow a transitional period as regards the outcome of the procedure for examining such applications.

42 It follows from paragraph 38 above that, as a rule, the primacy of directly-applicable European Union law precludes a transitional period from being allowed.

43 The question remains, however, as to whether a finding of incompatibility of the national legislation at issue with Articles 43 EC and 49 EC, together with a refusal to allow a transitional period, is such as to force the national authorities to grant the permission sought, such as that at issue in the main proceedings, at the end of the examination procedure.

44 It should be borne in mind that, in the specific area of the organisation of games of chance, national authorities enjoy a sufficient measure of discretion to enable them to determine what is required in order to ensure consumer protection and the preservation of order in society and – provided that the conditions laid down in the Court's case-law are in fact met – it is for each Member State to assess whether, in the context of the legitimate aims which it pursues, it is necessary to prohibit, wholly or in part, betting and gaming or only to restrict them and, to that end, to lay down more or less strict supervisory rules (*Garkalns*, paragraph 38 and the case-law cited).

45 It is also common ground that, unlike the introduction of free, undistorted competition in a traditional market, the presence of that kind of competition in the very specific market of games of chance, that is to say, between several operators authorised to run the same games of chance, is liable to have detrimental effects owing to the fact that those operators would be led to compete with each other in inventiveness in making what they offer more attractive and, in that way, increasing consumers' expenditure on gaming and the risks of their addiction (see, to that effect, Case C-203/08 *Sporting Exchange* [2010] ECR I-4695, paragraph 58).

46 Accordingly, the refusal to allow a transitional period in the event of incompatibility of national legislation with Articles 43 EC and 49 EC does not necessarily lead to an obligation for the Member State concerned to liberalise the market in games of chance if it finds that such a liberalisation is incompatible with the level of consumer protection and the preservation of order in society which that Member State intends to uphold. Under European Union law as it currently stands, Member States remain free to undertake reforms of existing monopolies in order to make them compatible with Treaty provisions, inter alia by making them subject to effective and strict controls by the public authorities.

47 In any event, if the Member State concerned should find that a reform of an existing monopoly effected with a view to making it compatible with Treaty provisions is not feasible and that a liberalisation of the market in games of chance is the better measure for ensuring the level of consumer protection and the preservation of order in society which that Member State intends to uphold, it will be required to observe the fundamental rules of the Treaties, including in particular Articles 43 EC and 49 EC, the principles of equal treatment and of non-discrimination on grounds of nationality and the consequent obligation of transparency (see, to that effect, *Costa and Cifone*, paragraph 54 and the case-law cited). In such a case, the introduction in that Member State of an administrative permit scheme for the provision of certain types of games of chance must be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion so that it is not used arbitrarily (see, to that effect, Case C-46/08 *Carmen Media Group* [2010] ECR I-8149, paragraph 90, and *Costa and Cifone*, paragraph 56 and the case-law cited).

48 In the light of the foregoing considerations, the answer to the third part of the third question is that, in circumstances such as those of the main proceedings, the competent national authorities may examine applications for permission to organise games of chance submitted to them according to the level of consumer protection and the preservation of order in society that they intend to uphold solely on the basis of objective, non-discriminatory criteria.

Costs

49 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 (Fourth Chamber) hereby rules:

1. **Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which grants the exclusive right to run, manage, organise and operate games of chance to a single entity, where, firstly, that legislation does not genuinely meet the concern to reduce opportunities for gambling and to limit activities in that domain in a consistent and systematic manner and, secondly, where strict control by the public authorities of the expansion of the sector of games of chance, solely in so far as is necessary to combat criminality linked to those games, is not ensured. It is for the national court to ascertain whether this is the case.**

2. **In the event that the national legislation governing the organisation of games of chance is incompatible with the Treaty provisions on the freedom to provide services and the freedom of establishment, the national authorities may not refrain from considering applications, such as those at issue in the main proceedings, for permission to operate in the sector of games of chance, during a transitional period.**

3. **In circumstances such as those of the main proceedings, the competent national authorities may examine applications for permission to organise games of chance submitted to them according to the level of consumer protection and the preservation of order in society that they intend to uphold solely on the basis of objective, non-discriminatory criteria.**

[Signatures]