ORDER OF THE COURT (Second Chamber)

24 March 2009 *

In Case C-525/06,

REFERENCE for a preliminary ruling under Article 234 EC from the rechtbank van koophandel te Hasselt (Belgium), made by decision of 15 December 2006, received at the Court on 22 December 2006, in the proceedings

De Nationale Loterij NV

v

Customer Service Agency BVBA,

* Language of the case: Dutch.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, K. Schiemann (Rapporteur), P. Kūris, L. Bay Larsen and C. Toader, Judges,

Advocate General: Y. Bot,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Article 49 EC.

2 The reference was made in the course of proceedings brought by De Nationale Loterij NV ('the Nationale Loterij') against Customer Service Agency BVBA ('Customer Service Agency'), seeking (i) a declaration that Customer Service Agency's activities,

consisting in the recruitment of people to participate, as a group and individually, in Euro Millions — a type of lottery organised at European level — are contrary to honest trading practices and in breach of the statutory monopoly granted to the Nationale Loterij with regard to the organisation of public lotteries and (ii) an order directing Customer Service Agency to cease those activities immediately.

3 The rechtbank van koophandel te Hasselt, uncertain as to the compatibility with Community law of the Belgian rules concerning gambling which it was required to apply — in particular, the Law on the rationalisation of the operation and administration of the Nationale Loterij (Wet tot rationalisiering van de werking en het beheer van de Nationale Loterij) of 19 April 2002 (*Belgisch Staatsblad*, 4 May 2002, p. 18828) — and especially as to the compatibility with Article 49 EC of the Nationale Loterij's statutory monopoly for the organisation of public lotteries, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is Article 49 of the EC Treaty to be interpreted as meaning that restrictive national provisions, such as Article 37 of the Law of 19 April 2002, which obstruct the access to the market of an undertaking wishing to sell for profit group participation forms in Euro Millions, are still permitted having regard to the public interest (prevention of squandering through gaming), in the knowledge that:

(a) the Nationale Loterij, which acquired a statutory monopoly from the Belgian State and pays a monopoly rent for it and which has the objective of channelling man's inherent compulsion to gamble, regularly advertises participation in Euro Millions thereby in reality strengthening that compulsion;

(b) the regular advertising by Nationale Loterij and its sales methods have a foreclosure effect, in which the Nationale Loterij is induced to maximise turnover (financial reasons) rather than channel the citizens' inherent compulsion to gamble;

(c) less obstructive measures, such as restriction of possible stakes and winnings, would better achieve the objective pursued, namely the channelling of the inherent compulsion to gamble?

2. Is a restrictive national provision such as Article 37 of the Law of 19 April 2002, which prevents the access to the market of an undertaking intending to sell, for profit, group participation forms in Euro Millions, contrary to the freedom to provide services (Article 49 EC) where the defendant itself does not organise a lottery but in fact seeks to organise, for profit, merely participation as a group in Euro Millions via the Nationale Loterij's own participation forms?'

4 Subsequent to the reference to the Court, the Nationale Loterij brought an appeal against the order for reference before the hof van beroep te Antwerpen (Court of Appeal, Antwerp).

5 By judgment of 8 November 2007, the hof van beroep te Antwerpen reversed the order for reference and ordered Customer Service Agency, on grounds of non-compliance with the national rules, to cease its activities on pain of a penalty of EUR 5 000 per infringement established. In its judgment, the hof van beroep te Antwerpen held that the court ruling at first instance was fully entitled to raise the question of the compatibility of the national rules with Article 49 EC. However, according to the hof van beroep te Antwerpen, the answer to that question was clear and, in consequence, it

was not necessary to make a reference to the Court for a preliminary ruling. After examining the national rules in the light of Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, it held that those rules were compatible with Community law.

6 It is clear from the case-law of the Court that, in the case of a court or tribunal against whose decisions there is a judicial remedy under national law, Article 234 EC does not preclude decisions of such a court by which questions are referred to the Court for a preliminary ruling from remaining subject to the remedies normally available under national law (Case 146/73 *Rheinmühlen-Düsseldorf* [1974] ECR 139, paragraph 3, and Case C-210/06 *Cartesio* [2008] ECR I-9641, paragraph 89).

7 Furthermore, the interpretation of Article 234 EC in paragraph 98 of the judgment in *Cartesio* is not relevant in the main proceedings in the present case. In *Cartesio*, the Court had to consider rules of national law, relating to the right of appeal against a decision making a reference for a preliminary ruling, under which the main proceedings remain pending before the referring court in their entirety, the order for reference alone being the subject of a limited appeal. The Court went on in paragraph 98 of that judgment to hold that the second paragraph of Article 234 EC is to be interpreted as meaning that the jurisdiction conferred by that provision of the Treaty on any national court or tribunal to make a reference to the Court for a preliminary ruling cannot be called into question by the application of such rules, where they permit the appellate court to vary the order for reference, to set aside the reference and to order the referring court to resume the domestic law proceedings. Such an interpretation cannot be applied to the main proceedings in the present case because the dispute is no longer pending before the referring court.

8 In fact, the hof van beroep te Antwerpen itself adjudicated the dispute between the parties to the main proceedings, thereby assuming responsibility for ensuring compliance with Community law.

9 It must therefore be held that there is no longer any dispute before the referring court.

10 As the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (see, inter alia, Case C-225/02 *García Blanco* [2005] ECR I-523, paragraph 28), a reply to the questions referred is no longer necessary.

11 Thus, in the present case, even though the referring court — whose responsibility it is, in principle, to draw the proper inferences from a judgment delivered on an appeal against its decision to refer and, in particular, to come to a conclusion as to whether it is appropriate to maintain the reference for a preliminary ruling, or to amend it or to withdraw it (see, to that effect, *Cartesio*, paragraph 96) — has not withdrawn the reference for a preliminary ruling, it must be held that there is no need to reply to that reference.

12 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 (Second Chamber) hereby orders:

There is no need to reply to the reference for a preliminary ruling in Case C-525/06.

[Signatures]