Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 October 2015*

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/20/EC — Article 13 — Fee for rights to install facilities — Scope — Municipal regulations making owners of mobile telephone transmission pylons and masts subject to payment of a tax)

In Case C-346/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Mons (Belgium), made by decision of 7 June 2013, received at the Court on 25 June 2013, in the proceedings

Ville de Mons

v

Base Company SA, formerly KPN Group Belgium SA,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader, E. Jarašiūnas (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: N. Wahl,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 13 May 2015,

after considering the observations submitted on behalf of:

— the ville de Mons, by N. Fortemps, avocate,

— Base Company SA, formerly KPN SA, by A. Verheyden, S. Champagne and M. Derijke, avocats,

— the Belgian Government, by J. Van Holm, acting as Agent and by J. Bourtembourg, avocat,

— the European Commission, by J. Hottiaux and L. Nicolae, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 July 2015,

gives the following

* Language of the case: French.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

2 The request has been made in proceedings between Base Company SA, formerly KPN Group Belgium SA ('Base Company'), and the ville de Mons (the city of Mons; 'the city of Mons') concerning a tax on mobile telephone transmission pylons and masts located in that city.

Legal context

EU law

3 Article 1 of the Authorisation Directive, entitled 'Objective and scope', provides in paragraph 2:

'This Directive shall apply to authorisations for the provision of electronic communications networks and services.'

4 Article 2(2)(a) of that directive contains the following definition:

'"general authorisation" means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.'

5 Article 13 of that directive, entitled 'Fees for rights of use and rights to install facilities', reads as follows:

'Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of [Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33)].'

Belgian law

6 On 5 March 2007, the municipal council of the city of Mons adopted a tax regulation introducing a tax on mobile telephone transmission pylons and masts ('the tax regulation'), which was applicable from the 2007 fiscal year onwards.

7 Article 1 of the tax regulation, entitled 'Purpose of the tax', provides that that tax applies to 'transmission pylons or masts of a certain size which are free-standing structures, in place during the fiscal period, intended to support the various types of antennas necessary for the proper functioning of the mobile telecommunications network, and which it was not possible to place on an existing site (roof, church …)'.

8 Article 3 of the tax regulation, entitled 'Liability', provides, in its first paragraph, that that tax is payable by 'any natural or legal person which owns one of the structures referred to in Article 1 [of the tax regulation]'.

9 Article 4 of the tax regulation, entitled 'Tax rate', provides that the amount of the tax at issue in the main proceedings, payable per mobile telephone transmission pylon or mast, is EUR 2 500.

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

10 According to the documents before the Court, Base Company is the operator of a public telecommunications network and, for that purpose, owns and operates a network of pylons supporting telecommunications antennas for mobile telephones in the city of Mons.

11 The authorities of the city of Mons issued Base Company with three notices of assessment pursuant to the tax regulation, imposing the tax at issue in the main proceedings in respect of the 2008 fiscal year in a total amount of EUR 7 500. An objection was lodged against those notices of assessment with the local authority of the city of Mons. After that objection had been rejected, an action was brought against the notices of assessment at the Tribunal de première instance de Mons (Court of First Instance, Mons), which annulled them. The city of Mons has brought an appeal against that judgment before the referring court. That court has doubts as to the applicability of Article 13 of the Authorisation Directive to the case in the main proceedings.

12 In those circumstances, the cour d'appel de Mons decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 13 of [the Authorisation Directive] preclude local authorities from introducing a tax, for budgetary or other reasons, on the economic activity of telecommunications operators, in the form of the presence on their territory of [mobile radiotelecommunications] pylons, masts or antennas used for the purposes of that activity?'

The question referred for a preliminary ruling

13 By its question the referring court asks, in essence, whether Article 13 of the Authorisation Directive must be interpreted as precluding a tax, such as that at issue in the main proceedings, being imposed on the owner of free-standing structures, such as transmission pylons or masts intended to support the antennas required for the functioning of the mobile telecommunication network, and which it was not possible to place on an existing site.

14 It is appropriate to bear in mind, at the outset, that, under Article 1(2) of the Authorisation Directive, that directive applies to authorisations for the provision of electronic communications networks and services (judgment in *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 35).

15 That directive lays down not only rules governing the procedures for granting general authorisations or rights to use radio frequencies or numbers and the content of those authorisations but also rules setting out the nature and scope of the financial payments related to those procedures which Member States may impose on undertakings in the electronic communications services sector (judgment in *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 29 and the case-law cited).

16 Thus, according to the Court's settled case-law, Member States may not, within the framework of the Authorisation Directive, levy any charges or fees in relation to the provision of networks and electronic communication services other than those provided for by that directive (see, to that effect, judgments in *Vodafone España and France Telecom España*, C-55/11, C-57/11 and C-58/11, EU:C:2012:446, paragraphs 28 and 29, and in *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 30 and the case-law cited).

17 It follows that, as the Advocate General notes, in essence, in points 33 to 36 of his Opinion, for the provisions of the Authorisation Directive to be applicable to a tax such as that at issue in the main proceedings, the trigger for that tax must be linked to a general authorisation procedure, which ensures, under Article 2(2)(a) of the Authorisation Directive, rights for the provision of electronic communications networks or services (see, to that effect, judgments in *Commission* v *France*, C-485/11, EU:C:2013:427, paragraphs 30, 31 and 34; *Vodafone Malta and Mobisle Communications*, C-71/12, EU:C:2013:431, paragraphs 24 and 25; and *Fratelli De Pra and SAIV*, C-416/14, EU:C:2015:617, paragraph 41).

18 In that respect, the Court has stated, as regards Article 13 of the Authorisation Directive, to which the question of the referring court relates in the present case, that that article does not concern all fees to which infrastructure permitting the provision of networks and electronic communication services are subject (judgment in *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 34).

19 In fact, that article concerns the conditions under which fees may be imposed for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property (judgment in *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 31 and the case-law cited).

20 In the present case, the order for reference states that the tax at issue in the main proceedings 'is payable by any natural or legal person which owns one of the structures', namely 'transmission pylons or masts of a certain size which are free-standing structures … intended to support the various types of antennas necessary for the proper functioning of the mobile telecommunications network, and which it was not possible to place on an existing site (roof, church …)'.

21 According to the case-law of the Court, the terms 'facilities' and 'install', used in Article 13 of the Authorisation Directive, refer to the physical infrastructure enabling provision of electronic communications networks and services and to their physical installation on the public or private property concerned, respectively (judgment in *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 33 and the case-law cited).

22 Accordingly, although the tax at issue in the main proceedings is imposed on owners of transmission pylons or masts intended to support antennas necessary for the proper functioning of the mobile telecommunications network, which constitute physical infrastructure enabling provision of electronic communications networks and services, it does not appear that that tax has the characteristics of a fee which is imposed on undertakings providing electronic communications networks and services in return for the right to install facilities.

23 In addition, as the observations submitted to the Court reveal, the trigger for that tax, which is imposed on any owner of transmission pylons or masts, whether or not it is the holder of an authorisation granted under the Authorisation Directive, does not appear to be linked to the general authorisation procedure entitling the undertakings to provide electronic communications networks or services, a matter which is, however, for the referring court to determine.

24 Having regard to the foregoing considerations, the answer to the question referred is that Article 13 of the Authorisation Directive must be interpreted as not precluding a tax, such as that at issue in the main proceedings, being imposed on the owner of free-standing structures, such as transmission pylons or masts intended to support the antennas required for the functioning of the mobile telecommunication network, and which it was not possible to place on an existing site.

Costs

25 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 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) must be interpreted as not precluding a tax, such as that at issue in the main proceedings, being imposed on the owner of free-standing structures, such as transmission pylons or masts intended to support the antennas required for the functioning of the mobile telecommunication network, and which it was not possible to place on an existing site.

[Signatures]