ORDER OF THE COURT (First Chamber)
8 October 2002 *

In Case C-190/02,

REFERENCE to the Court, under Article 234 EC, by the Giudice di Pace of Genoa-Voltri (Italy) for a preliminary ruling in the proceedings pending before that court between

Viacom Outdoor Srl

and

Giotto Immobilier SARL,

on the interpretation of Articles 2 EC; 3(1)(a), (b) and (c) EC; 23 EC; 27(a), (b) and (d) EC; 31(1) and (3) EC; 49 EC; 50 EC; 81 EC; 82 EC; 86 EC and 87 EC,

* Language of the case: Italian.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By order of 9 April 2002, received at the Court Registry on 22 May 2002, the Giudice di Pace (Magistrate) of Genoa-Voltri referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Articles 2 EC; 3(1)(a), (b) and (c) EC; 23 EC; 27(a), (b) and (d) EC; 31(1) and (3) EC; 49 EC; 50 EC; 81 EC; 82 EC; 86 EC and 87 EC.

2 Those questions were raised in proceedings arising out of a contract between Viacom Outdoor Srl (hereinafter 'Viacom'), established in Milan (Italy), and Giotto Immobilier SARL (hereinafter 'Giotto'), established in Menton (France).

Main proceedings and questions referred for a preliminary ruling

3 According to the order for reference, Viacom summoned Giotto to appear before the Giudice di Pace, seeking an order for payment of the sum of ITL 2 082 235 (EUR 1 075.38) for advertising services supplied to the defendant consisting in the posting of bills in the territory of the commune of Genoa, plus ITL 1 000 000 (EUR 516.46) by way of damages and interest.

4 Giotto disputed Viacom's claims, on the ground that the amount being claimed includes a communal advertising tax of ITL 439 385 (EUR 226.92), in addition to duties and charges payable to the commune of Genoa of ITL 277 850 (EUR 117.67).

5 Giotto maintained, *inter alia*, that the contract contained no specific description of the nature of the amounts being claimed over and above the service cost and that it could not have known of those amounts, since France has neither an advertising tax nor bill-posting duties and other charges payable to the communal authorities.

6 Giotto also contended that the applicable Italian law, particularly Legislative Decree No 507 of 15 November 1993, as amended, and related provisions, as well as the regulations provided for in that decree and adopted by the Italian communes — particularly that of Genoa, where the contested obligation originated — are not in compliance with certain provisions of the EC Treaty.

7 Thus, according to Giotto, the Italian legislation clearly infringes Articles 49 EC and 50 EC inasmuch as it restricts freedom to provide services within the Community.

8 Legislative Decree No 507/93, as amended, and the communal regulations adopted pursuant to its provisions also infringe the rules on competition laid down in Articles 81 EC, 82 EC, 86 EC and 87 EC.

9 The concept of public undertaking, as determined by Community law, applies to the activities engaged in by communes in regard to bill-posting. The Italian legislation therefore infringes Articles 81 EC and 82 EC inasmuch as it distorts the normal equilibrium of competition by encouraging abuse of the dominant position held by the communes in the exercise of that economic activity. It is also in breach of Article 86 EC in granting them special and exclusive rights, in breach of the provisions of the Treaty.

10 Giotto also stated that the Italian legislation governing the communal tax on advertising and public bill-posting infringes Article 87 EC since, by means of that tax and the other duties and charges at issue in the main proceedings, the Italian State is indirectly financing the commune's undertaking, even though the activity is operated directly by ad hoc agencies.

11 Moreover, the Giudice di Pace questions whether Articles 2 EC, 3(1)(a), (b) and (c) EC, 23 EC, 27(a), (b) and (d) EC and 31(1) and (3) EC preclude the Italian legislation at issue in the main proceedings, which subjects goods to a fiscal levy,

including for the part defined as duties, when those goods, accompanied by the necessary advertising, are ready to be offered for sale in Italian territory, whereas that levy does not affect Italian goods placed on the market in the rest of the territory of the Community.

12 In those circumstances, the Giudice di Pace of Genoa-Voltri referred the following questions to the Court for a preliminary ruling:

'(1) Infringement of Articles 49 EC and 50 EC

Is it contrary to the correct interpretation of Articles 49 EC and 50 EC for the law of the Italian State to establish, impose and govern advertising tax and bill-posting charges, restricting their management exclusively to Italian communes, and does the concept of the provision of services, as provided in Article 50 EC, include activities pursued by communal agencies or by bodies appointed to manage that field of economic activity?

Is the absence in the other Member States of legislation similar to the Italian legislation, in the light of the interpretation of those articles of the Treaty, considered to be an obstacle to the real and substantive freedom to provide services within the European Community? And is freedom to provide services in the territory of the Community impeded:

(a) by the existence of a tax such as that at issue,

(b) by the need to obtain specific authorisations subject to the approval of committees where the right to vote is restricted exclusively to members who are employed by the commune and not to the economic categories allowed to appoint their own representatives but without voting rights, or

(c) by restrictions and limitations on the areas in which activities are carried out and by the payment of duties and fees even where bills are posted on privately owned sites?

(2) Infringement of Articles 81 EC, 82 EC, 86 EC and 87 EC

Must the above articles be construed as meaning that they preclude legislation which, by providing for a tax on outdoor advertising or a duty on bill-posting payable to the communes within whose territories those economic activities take place and by allowing the communes exclusively to carry out the activity of posting advertisements, in effect indirectly finances the commune's advertising undertaking? It would appear from the Italian legislation in force that, in the activity of bill-posting, the Italian communes occupy a dominant position in the advertising market in the national territory by eluding free competition. Indeed, by granting the communes and their bill-posting undertakings special and exclusive rights, contrary to Community law, the Italian state could be infringing Article 86 EC. Furthermore, since the service at issue does not constitute a service of general economic interest, any more than the primary, common-interest mission of the duties entrusted to the communal authorities can lie in engaging in an economic activity such as posting advertising bills — which is clearly a business activity — what is the precise interpretation of Article 87 EC in respect of

the derogations which it provides, and can the conditions and circumstances set out in the Italian legislation at issue be regarded as derogations permitted by the Treaty, in the light of the Court's judgment of 20 March 1985 in Case 41/83 (*Italy* v *Commission* [1985] ECR 873), according to which: "The application of Article 90(2) of the Treaty [now Article 86(2) EC] is not left to the discretion of the Member State which has entrusted an undertaking with the operation of a service of general economic interest. Article 90(3) [now Article 86(3) EC] assigns to the Commission the task of monitoring such matters, under the supervision of the Court."?

(3) Infringement of Article 2 EC, Article 3(1)(a), (b) and (c) EC, Article 23 EC, Article 27(a), (b) and (d) EC, and Article 31(1) and (3) EC

May the Articles concerned be construed as meaning that they preclude a law of a Member State — in this instance, Italy — which provides for a tax on advertising and imposes duty on public bill-posting, including that tax, payable to communes which engage in the posting of bills on an exclusive basis?'

Findings of the Court

13 It is necessary to ascertain, after hearing the parties referred to in Article 20 of the EC Statute of the Court of Justice, whether the order for reference contains the necessary elements to enable the Court to give an interpretation of Community law which will be helpful to the referring court.

14 In this connection it must be recalled that the information provided in orders for reference do not serve merely to enable the Court to give helpful answers, but also to enable the governments of the Member States and other interested parties to submit observations in accordance with Article 20 of the EC Statute of the Court of Justice (see order in Case C-422/98 *Colonia Versicherung and Others* [1999] ECR I-1279, paragraph 5). It is the Court's duty to ensure that that possibility is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the order for reference is notified to the interested parties (see judgment in Joined Cases 141/81 to 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6; order in Case C-326/95 *Banco de Fomento e Exterior* [1996] ECR I-1385, paragraph 7; judgment in Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 23 and order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 14).

15 The Court has consistently held that the need to provide an interpretation of Community law which will be of use to the national court makes it necessary for the referring court to define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, *inter alia*, judgment in Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6; orders in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4, in Joined Cases C-128/97 and C-137/97 *Testa and Modesti* [1998] ECR I-2181, paragraph 5, in Case C-9/98 *Agostini* [1998] ECR I-4261, paragraph 4 and in *Colonia Versicherung and Others*, cited above, paragraph 4; judgment in *Lehtonen and Castors Braine*, cited above, paragraph 22; and order in *Laguillaumie*, cited above, paragraph 15).

16 The Court has also stressed that it is important for the national court to state the precise reasons which caused it to raise the question of the interpretation of Community law and to consider it necessary to refer questions to the Court for a preliminary ruling (see orders in Case C-101/96 *Italia Testa* [1996] ECR I-3081, paragraph 6, in *Testa and Modesti*, cited above, paragraph 15, and in *Agostini*, cited above, paragraph 6). Thus, the Court has held that it is essential for the national court at least to give some explanation of the reasons for the choice of

the Community provisions which it requires to be interpreted and on the link it establishes between those provisions and the national legislation applicable to the dispute (see order in Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 9).

17 It is clear, however, that the order for reference does not contain sufficient information to satisfy those requirements.

18 In particular, the items challenged as being capable of constituting customs duties or charges having equivalent effect within the meaning of Article 23 EC, or restrictions within the meaning of Article 49 EC, or abuse of a dominant position within the meaning of Articles 82 EC and 86 EC, or State aid within the meaning of Article 87 EC, are described by the referring court as a 'communal tax on advertising' or 'duties and charges' payable to the commune of Genoa. However, no indication is given as to the conditions governing payment of the abovementioned tax, duties and charges.

19 Thus, owing to the imprecise description of the event giving rise to the tax, it cannot be determined whether it would be imposed when goods cross a border between Member States — the condition for applying Article 23 EC — or whether it would be liable to prohibit or impede more the activities of a service provider or recipient established in a Member State other than Italy (see, as regards discrimination against a service provider, Case C-17/00 *De Coster* [2001] ECR I-9445, paragraph 35).

20 Similarly, in the absence of information as regards the person liable to pay those amounts, it is not possible to ascertain the economic operator whose provision of services or access thereto might be hindered. Nor, given the absence of any

description of the general context of the legislation called in question, is it possible to formulate useful observations as to the possibility of an overriding reason of general interest relating, for example, to financial, planning or other matters, which might warrant the alleged obstacle.

21 As regards the application of the rules of competition, in the absence of information concerning the body entrusted by the law with managing bill-posting in the communes and its structure and financing, it cannot be determined, first, whether it is an 'undertaking' within the meaning of the relevant Community provisions on competition; secondly, whether, as stated by the referring court, that entity is a service of 'general economic interest' within the meaning of Article 86 EC; thirdly, whether the rates of duty applied may constitute an abuse of a dominant position within the meaning of Article 81 EC (see, in that regard, Case C-179/90 *Merci convenzionali porto di Genova* [1991] ECR I-5889, paragraphs 16 to 20); and fourthly, whether its financing is in breach of the Community rules on State aid (see, in that regard, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraphs 58 to 62).

22 In the absence of sufficient particulars, it is not possible to discern the specific problem of interpretation which might be raised in relation to each of the provisions of Community law in respect of which the national court seeks an interpretation. The need for precision with regard to the factual and legislative context applies especially in the area of competition, which is characterised by complex factual and legal situations (see order in *Banchero*, cited above, paragraph 5; judgment in *Lehtonen and Castors Braine*, cited above, paragraph 22; and order in *Laguillaumie*, cited above, paragraph 19).

23 It is true that the referring court has appended to its order various procedural documents, including several acts and regulations relating to bill-posting.

24 It should be recalled, however, that it is for the referring court to explain, in the order for reference, the factual and legislative context of the dispute in the main proceedings, the reasons which have led the court to raise the question of the interpretation of certain provisions of Community law in particular, and the connection which it establishes between those provisions and the national law applicable to the case (order in *Laguillaumie*, cited above, paragraph 23).

25 It is the decision to refer a case which serves as the basis of the proceedings before the Court. As has been pointed out in paragraph 14 hereof, it is that decision alone which is notified to the interested parties, in particular the Member States, accompanied by a translation into the official language of each State, in accordance with Article 20 of the EC Statute of the Court of Justice (order in *Laguillaumie*, cited above, paragraph 24).

26 In those circumstances the questions referred to the Court must be held, under Articles 92 and 103(1) of the Rules of Procedure, to be manifestly inadmissible.

Costs

27 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

hereby orders:

The reference for a preliminary ruling submitted by the Giudice di Pace of Genoa-Voltri by order of 9 April 2002 is inadmissible.

Luxembourg, 8 October 2002.

R. Grass — Registrar

M. Wathelet — President of the First Chamber