

European Court of Justice decides on Euro Millions

After several cases on sports betting the European Court of Justice (ECJ) will, once again, decide on a lottery case. A Belgian court, Rechtsbank van koophandel Hasselt, referred a case concerning the pan-European lottery Euro Millions to the ECJ (Case C-525/06, Nationale Lotterij). Plaintiff in the Belgian case is NV de Nationale Loterij, the monopoly operator in Belgium. The defendant is BVBA Customer Service Agency, which offers the participation as a group in Euro Millions.

The Belgian lottery monopoly has been justified by the public interest, mainly the prevention of squandering through gaming. The Belgian court somehow does not really seem to be convinced by this reasoning. It refers to the fact that advertising in reality strengthens gaming compulsion and that Nationale Loterij is induced by the present system to maximise turnover. It also raises the question whether there are less obstructive measures than a monopoly, such as restriction of possible stakes and winnings.

Apart from that, the Belgian court, in its second question to the ECJ, asks whether a distribution company as the defendant can argue with the freedom to provide services. Especially this question is relevant for EU Member States where gaming monopoly products are (also) distributed by private companies (e.g. Germany which tries to ban any private distribution with the planned Interstate Treaty on Gambling, Glücksspielstaatsvertrag).

The ECJ will have to answer following questions, the Belgian court referred to Luxembourg:

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;

© 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 of the EC Treaty) 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?