

Judgment of the Court of Justice

Second Chamber

10 May 2012

Baranzate



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Facts



- Collection of taxes and local authority revenue
- Tender procedure
- Parties:
 - Duomo Gpa Srl
 - Gestione Servizi Pubblici Srl
 - Irtel Srl
 - Comune di Baranzate
 - Comune di Venegono Inferiore
- Agenzia Italiana per le Pubbliche Amministrazioni SpA (AIPA)
- National Court:
 - Tribunale amministrativo regionale per la Lombardia



Italian law 1

- If it has been decided to award of collection of taxes and other revenue to third parties, activities shall be awarded to:
 - Persons entered in register
 - Operators from other Member States that present a certificate certifying that they comply with equivalent requirements
 - Companies with a share capital belonging entirely to the public sector

Italian law 2

Decree-Law of November 2008 on emergency measures to support labour, employment and enterprise and to reorganise the national strategic framework in the context of efforts to combat the crisis:

- Condition for entry into register:
 - The minimum amount of fully paid up share capital shall be fixed at an amount of no less than € 10 million
 - Undertakings entered in the register shall be required to bring their share capital up to the minimum level
- The award of services to undertakings which fail to satisfy the financial requirement shall be null and void

Dispute

- Duomo, GSP and Irtel are excluded from the award procedures
- Submission Italian legislation is contrary to:
 - Directive 2004/18/EC (Public procurement directive)
 - Principle of Equal treatment
 - Principle of Fair competition
 - Directive 2006/123/EC (Services directive)
- Claim:
 - Annulment of the decisions to exclude Duomo, GSP and Irtel

Request for a preliminary ruling

Do

- Art. 15 and 16 Services Directive
- Art. 3, 10, 81 EC
- Art. 43 EC
- Art. 49 EC

preclude Italian law (previous slides)

- Directive 2004/18/EC (Public procurement directive)
 - Estimated value: € 57 000 (Baranzate)/ € 49 000 (Venegono)

Services directive



- Standstill provision
- Time-limit for transposition (28 december 2009)of directive has not expired
 - Italian law 2008
 - Contested decisions: February 2009
- could Services Directive be applied
 - Conditions for direct effect

Competition rules

- What is the competition law problem ?



- Order for reference lacks factual and legal information necessary to determine the conditions under which a provision as that at issue might fall within the scope of the competition rules (para. 23)

Free movement

- Does case concern internal market ?



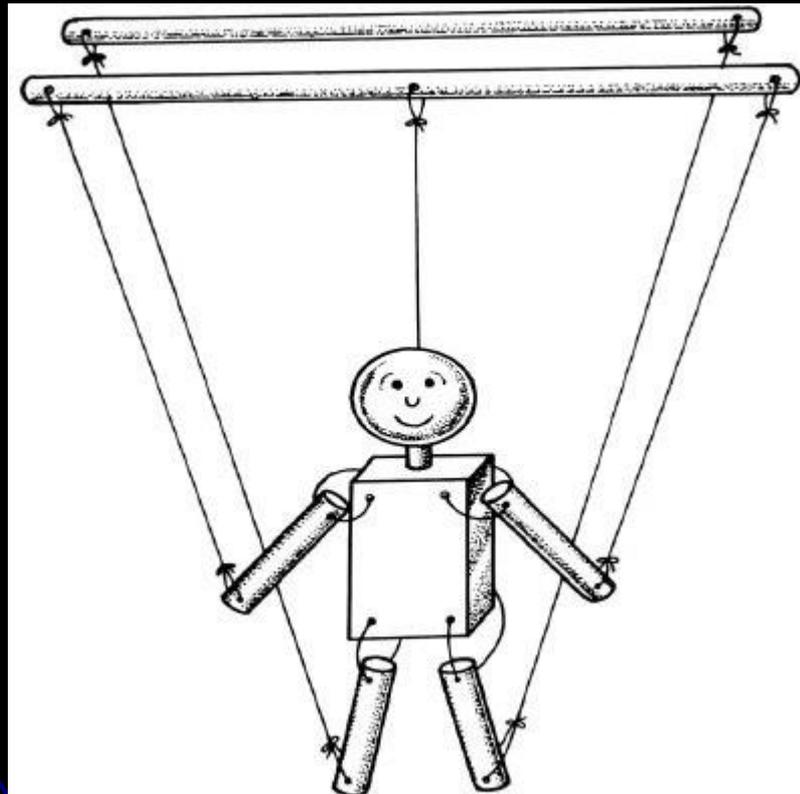
Free movement

- Which market freedom could be applicable



Free movement

- Restriction



- Justification

crime lives!

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is nuttiness
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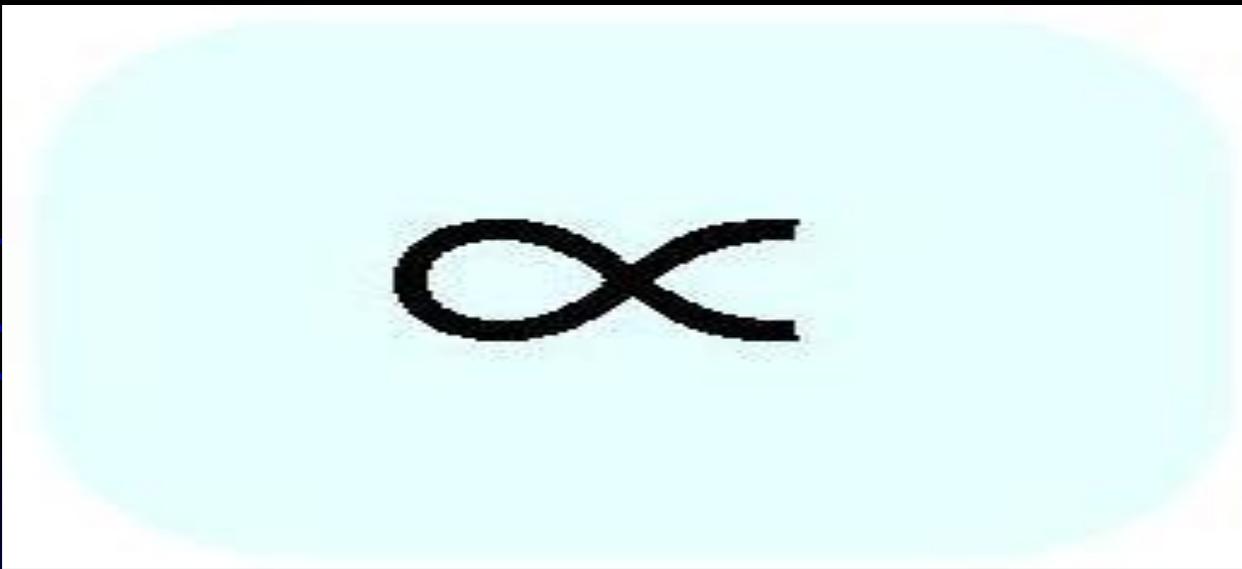
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Proportionality

- Appropriate
- Does not go beyond what is necessary
- Consistent and systematic



Importance of this judgment

- Referring court
- In general



