



Court of Justice of the European Union

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Press and Information

Judgment in Case C-347/09
Criminal proceedings against Jochen Dickinger and Franz Ömer

A monopoly on the operation of internet casino games is justifiable only if it seeks in a consistent and systematic manner to combat the risks connected with such games

When assessing the proportionality of a monopoly, the national courts are not required to take into account the monitoring and control systems regulating companies established in another Member State

Austrian legislation has created a monopoly in relation to gambling, which means that the right to organise and operate games of chance is reserved to the Austrian State.

Casino games marketed over the internet are treated as lotteries and accordingly subject to the concession rules governing lotteries which permit only one concession, covering all such games, to be in force at any one time. The holder of the concession must be a capital company established in Austria and come under the supervision of the Austrian authorities. At present, the holder of the sole concession until 2012 is Österreichische Lotterien GmbH.

The organisation of games of chance without a concession is a criminal offence.

Jochen Dickinger and Franz Ömer, both Austrians, are the founders of the multinational on-line games group bet-at-home.com. Members of that group include a number of Maltese subsidiaries which offer games of chance and sporting bets on the internet at the website www.bet-at-home.com and which hold Maltese licences for these activities. The website is accessible in several languages, including German. The Maltese subsidiaries used, until December 2007 at least, a server in Linz (Austria) made available to them by Bet-at-home.com Entertainment GmbH, of which Mr Dickinger and Mr Ömer were directors, which also maintained the website and the software needed for the games, and provided customer support.

Criminal proceedings were brought against Mr Dickinger and Mr Ömer in their capacity as directors of Bet-at-home.com Entertainment GmbH, alleging infringements of the Austrian law on games of chance. The Bezirksgericht Linz (District Court, Linz), the court before which those proceedings were brought, is uncertain whether the Austrian rules are compatible with EU law – and, in particular, with the freedom of establishment and the freedom to provide services – and accordingly decided to refer a number of questions to the Court of Justice for a preliminary ruling.

In its judgment, the Court notes that, according to its case-law, a monopoly on games of chance constitutes a restriction of the freedom to provide services but that such a restriction may nevertheless be justified by overriding reasons in the public interest, such as the objective of ensuring a particularly high level of consumer protection.

The Court states that, in the context of a reference for a preliminary ruling, the question of which objectives are actually being pursued by the national legislation, and the assessment of the proportionality of the measures adopted in pursuance of those objectives, are matters which fall within the jurisdiction of the referring court, which the Court provides with certain criteria in its judgment.

In that connection, the Court refers in particular to its case-law to the effect that, to be consistent with the objective of fighting crime and reducing opportunities for gambling, national legislation establishing a monopoly which allows the holder of the monopoly to follow an expansionist policy must genuinely be based on a finding that the crime and fraud linked to gaming are a problem in the Member State concerned, which could be remedied by expanding authorised regulated activities. The Court emphasises, however, that the objective of maximising public revenue alone cannot permit such a restriction of the freedom to provide services.

In that context, the Court also states that only advertising which is moderate and strictly limited to what is necessary to channel consumers towards controlled gaming networks is permissible. An expansionist commercial policy whose aim is to expand the overall market for gaming activities is not consistent with the objective of fighting crime and fraud.

Lastly, the Court considers the question whether checks on operators of games of chance carried out in other Member States – such as those to which, in the present case, the Maltese subsidiaries are subject in Malta – must be taken into account by the authorities of another Member State (in the present case, Austria). Mr Dickinger and Mr Ömer argue, as does the Maltese Government, that Malta has developed an efficient regulatory system for controlling and monitoring online games of chance, which adequately serves the objective of protecting players against fraud.

In that connection, the Court states that, given the absence of harmonisation at EU level of the relevant legislation, no duty of mutual recognition of authorisations issued by other Member States can exist in the current state of EU law and that the mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the need for and proportionality of the relevant provisions.

The Court goes on to state that its case-law to the effect that it is not compatible with the freedom to provide services for the host Member State to make a provider subject to restrictions for safeguarding the public interest, in so far as that interest is already safeguarded in the Member State where the provider is established, does not apply, in the present state of development of EU law, in a field such as that of games of chance, which is not harmonised at EU level and in which the Member States have a wide discretion in relation to the objectives they wish to pursue and the level of protection they seek.

The Court states in that connection that the various Member States do not necessarily have the same technical means available for controlling online games of chance. The fact that a particular level of protection of consumers against fraud by an operator may be achieved in a particular Member State by applying sophisticated control and monitoring techniques does not support the conclusion that the same level of protection can be achieved in other Member States which do not have those technical means available or have made different choices. A Member State may legitimately wish to monitor an economic activity which is carried on in its territory, and that would be impossible if it had to rely on checks made by the authorities of another Member State using regulatory systems outside its control.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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