



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 65/11

Luxembourg, 30 June 2011

Judgment in Case C-212/08
Zeturf Ltd v Premier ministre

A monopoly on off-course betting on horseracing may be justified if it pursues the objective of combating the dangers linked to games of chance in a consistent and systematic manner

The restriction on the freedom to provide services constituted by such a monopoly must be assessed in relation to all the marketing channels for that betting

French legislation confers on the Groupement d'Intérêt Économique Pari Mutuel Urbain (PMU) a monopoly for the management of off-course betting on horseracing.

In July 2005, Zeturf Ltd, a Maltese company that provides horserace betting services on the internet, applied to the French authorities seeking the repeal of that legislation. Zeturf has a licence issued by the Maltese gambling regulation authority and offers, inter alia, betting on French horse races on its website.

The Conseil d'Etat (France), before which the case was brought, asks the Court of Justice whether the restriction on the freedom to provide services constituted by the French legislation regarding betting on horseracing is justified. It also seeks to ascertain whether the justification for the restriction on freedom to provide services must be assessed solely from the point of view of the restrictions placed on offering on-line horserace betting or in relation to the entire horserace betting sector, in whatever form such betting is offered and is accessible to bettors.

In its judgment today, the Court recalls that Member States are, in principle, free to set the objectives of their policy on betting and gaming and, where appropriate, to define in detail the level of protection sought. As the Court has acknowledged in its decisions, a Member State that is seeking to ensure a particularly high level of consumer protection in the gambling sector may take the view that it is only by granting exclusive rights to a single body, subject to strict control by the public authorities, that it can tackle with sufficient effectiveness the risks connected with that sector and pursue the objective of preventing incitement to squander money on gambling and of combating addiction to gambling.

In this regard, the Court provides two clarifications in relation to the evaluation of the objectives pursued by the national legislation and the control actually exercised by the public authorities over the PMU.

In relation to **the objectives pursued**, the Court notes that, according to the information provided to it, the French legislation pursues two objectives in particular: first, to combat fraud and money laundering in the horserace betting sector and, second, to protect society, having regard to the effects of gambling on individuals and on society. Those objectives may, in principle, justify restrictions on the freedom to provide gambling services. However, the establishment of a measure as restrictive as a monopoly can be justified only in order to ensure a particularly high level of protection with regard to those objectives. Consequently, it will be for the national court to determine whether the national authorities genuinely sought, at the material time, to ensure such a particularly high level of protection and whether, having regard to the level of protection sought, the establishment of a monopoly was necessary.

With regard to **the control of the PMU's activities**, the Court notes that there appears to be particularly strict State control over the organisation of betting on horseracing in France. Thus, the French State exercises direct control over the functioning of the exclusive operator, the organisation of the events on which bets are placed, the types of bet authorised and their channels of distribution, including the proportion of the winnings to the stakes and the conduct and supervision of those regulated activities.

However, the Court recalls that **national legislation is appropriate for ensuring attainment of the objective pursued** – combating criminal and fraudulent activities and protecting society – **only if it genuinely reflects a concern to attain it in a consistent and systematic manner**. Consequently, the national court must determine, in the light of, inter alia, the development of the market for games of chance in France, whether the State controls of the PMU's activities are actually implemented in the consistent and systematic pursuit of the objectives sought by the establishment of the system whereby exclusive rights are conferred on the PMU.

In relation to the question whether the market for online betting on horseracing can be regarded as distinct from the sector as a whole, the Court points out that the internet constitutes a simple channel through which games of chance may be offered. The market in horserace betting should, therefore, in principle, be considered in its entirety, independently of the question whether the bets concerned are offered by traditional channels, at physical locations, or by the internet. Thus, the national court should examine any restriction on the activity of collecting bets independently of the medium through which they are made.

In that regard, the Court has already had occasion to draw attention to some particularities relating to the offering of games of chance on the internet. It has thus observed in particular that, because of the lack of direct contact between consumer and operator, games of chance accessible via the internet involve different and more substantial risks of fraud by operators against consumers compared with the traditional markets for such games. Furthermore, the particular ease and the permanence of access to games offered over the internet and the potentially high volume and frequency of such an international offer, in an environment which is also characterised by isolation of the player, anonymity and an absence of social control, constitute many factors likely to foster the development of gambling addiction and the related squandering of money, and are thus likely to increase the associated negative social and moral consequences.

Consequently, the Court holds that, in order to assess the restriction on freedom to provide services by a system conferring exclusive rights to organise horse-race betting, the national courts must take into account all the channels of marketing for that betting, unless the consequence of using the internet is to increase the risks linked to the games of chance concerned beyond those that exist in relation to games marketed through traditional channels.

Accordingly, in the case of national legislation such as that in force at the material time, which applies in the same way to on-line betting and to betting by traditional channels and in respect of which the national legislature has not considered it necessary to draw any distinction between the various marketing channels, **an assessment should be made of the restriction on the freedom to provide services from the point of view of restrictions placed on the entire sector concerned**.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355