

## Case C-284/04

**T-Mobile Austria GmbH and Others**

**v**

**Republik Österreich**

(Reference for a preliminary ruling  
from the Landesgericht für Zivilrechtssachen Wien)

(Sixth VAT Directive — Taxable transactions — Definition of ‘economic activity’ —  
Article 4(2) — Allocation of rights making it possible to use a defined part of the  
radio-frequency spectrum reserved for telecommunications services)

Opinion of Advocate General Kokott delivered on 7 September 2006 . . . . . I - 5191  
Judgment of the Court (Grand Chamber), 26 June 2007 . . . . . I - 5225

### Summary of the Judgment

*Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added  
tax — Economic activities within the meaning of Article 4(2) of the Sixth Directive  
(Council Directive 77/388, Art. 4(2))*

Article 4(2) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes must be interpreted as meaning that the allocation, by auction by the national regulatory authority responsible for spectrum assignment, of rights such as rights to use frequencies in the electromagnetic spectrum with the aim of providing the public with mobile telecommunications services does not constitute an economic activity within the meaning of that provision and, consequently, does not fall within the scope of that directive.

Such an activity constitutes a necessary precondition for the access of economic operators to the mobile telecommunications market and cannot constitute participation in that market by the competent national authority. Only those operators, who are the holders of the rights granted, operate on the relevant market by exploiting the property in question for the purpose of obtaining income therefrom on a continuing basis.

Therefore, in granting such authorisations, the competent national authority is not participating in the exploitation of property, consisting in the said user rights, for the purpose of obtaining income therefrom on a continuing basis. By means of that allocation procedure, that authority exclusively carries out the activity of controlling and regulating the use of the electromagnetic spectrum which has been expressly delegated to it.

Furthermore, the fact that the grant of the rights in question gives rise to a payment cannot affect the legal status of that activity.

(see paras 42, 44, 45, 49, operative part)