



Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 21 December 2016¹

Case C-253/16

**Flibtravel International SA
Leonard Travel International SA**

v

**AAL Renting SA
Haroune Tax SPRL
Saratax SCS
Ryad SCRI
Taxis Bachir & Cie SCS
And Others**

(Request for a preliminary ruling from the Cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium))

((Article 96(1) TFEU — Scope — National legislation concerning the conditions for the provision of taxi services — Private hire vehicle services — Prohibition of grouping customers together — Prohibition of touting for custom — Prohibition of offering individual seats to customers — Prohibition of predetermining the destination))

1. This request for a preliminary ruling concerns one of the arguably less well-known provisions of the Treaty on the Functioning of the European Union. It turns on the scope of Article 96(1) TFEU. That provision prohibits the Member States from imposing, in the context of transport operations carried out within the European Union, rates and conditions involving support or protection in the interest of one or more particular undertakings or industries, unless those rates and conditions are authorised by the Commission. The Court has not, to date, provided guidance on the interpretation of that provision in the context of the preliminary ruling procedure.

2. Given the relative obscurity of Article 96(1) TFEU and the uncertainty as to its scope, the referring court asks the Court to determine whether that provision falls to be applied in relation to national legislation that governs the conditions under which taxi services are to be provided in the capital area of Brussels.

3. Below, I will set out the reasons why Article 96(1) TFEU does not fall to be applied in circumstances such as those underlying the present request for a preliminary ruling.

¹ — Original language: English

I. Legal framework

A. EU law

4. Article 96 TFEU, in Title VI entitled ‘Transport’, provides:

- ‘1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by the Commission.
2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

...’

B. National law

5. The Ordonnance relative aux services de taxis et aux services de location de voitures avec chauffeur (the Order on taxi services and private hire vehicle services) of 27 April 1995 contains the following provisions:

‘Article 2. For the purposes of this Order, the following terms shall bear the following meanings:

1. “taxi services”: services which involve the transport of passengers for remuneration by motor vehicle with a driver, and which fulfil the following conditions:

...

- (c) where the vehicle is used as a taxi, provision of the transport shall relate to the whole vehicle and not to the individual seats, and where it is used as a shared taxi with the authorisation of the Government of the Brussels-Capital Region, provision of the transport shall relate to individual seats and not to the vehicle itself;

- (d) the destination shall be decided by the client;

2. “private hire vehicle services”: all services, other than taxi services, involving the transport of passengers by motor vehicle for remuneration which are operated with cars, goods/passenger vehicles or minibuses, with the exception of vehicles equipped as ambulances;

...

Article 3. No person may, without authorisation from the Government [of the Brussels-Capital Region], operate a taxi service with one or more vehicles departing from a public road or any other location not open to public traffic situated in the territory of the Brussels-Capital Region. ...

...

Article 16. No person may, without authorisation from the Government [of the Brussels-Capital Region], operate in the Brussels-Capital Region a private hire vehicle service with one or more vehicles.

Only operators holding an authorisation issued by the Government [of the Brussels-Capital Region] may provide services of which the point of departure for the user is situated in the territory of the Brussels-Capital Region.’

6. The Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif aux services de taxis et aux services de location de voitures avec chauffeur (the Decree of the Government of the Brussels-Capital Region on taxi services and private hire vehicle services) of 29 March 2007,² as amended by the Decree of 27 March 2014,³ provides:

‘Article 31. Drivers shall be prohibited from:

...

7. touting for custom or having others tout on their behalf;

...’

II. Facts, procedure and the questions referred

7. The appellants in the main proceedings, Flibtravel International SA and Leonard Travel International SA, are companies operating regular coach services between the Gare du Midi train station in Brussels and Charleroi Airport in Belgium.

8. Van-type taxis, which drive mainly to Charleroi Airport, pull over in front of the parking area for coaches at the Gare du Midi. The drivers approach travellers who are leaving the station and moving towards the coaches and offer to take them by taxi at a rate of EUR 13 per person. Sometimes, the drivers hold up a small laminated sign which has, on one side, the text ‘shuttle to airport Charleroi [EUR 13]’ along with photographs of a taxi van and an aeroplane, and, on the other side, the text ‘bus [EUR 17]’. The taxis set off once they have seven or eight passengers on board.

9. The appellants claim that the practices described above are performed in disregard of the legislation applicable to taxi services. They seek an order preventing the continuation of those practices.

10. By a ruling of 11 February 2015, the action was dismissed at first instance on the ground that the facts complained of had not been sufficiently substantiated.

11. By application of 13 July 2015, the appellants subsequently brought the matter before the Cour d’appel de Bruxelles (Court of Appeal, Brussels, Belgium). That court considered that the facts had been established.

² — *Moniteur belge* of 3 May 2007, p. 23526.

³ — *Moniteur belge* of 17 April 2014, p. 33241.

12. The referring court found that the practices complained of constitute an infringement of the legislation in force and that the action therefore seems to be well founded. However, given its doubts as to whether the legislation at issue complies with EU law, that court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Must Article 96(1) TFEU be interpreted as falling to be applied to rates and conditions imposed by a Member State on taxi service operators where:
- (a) the taxi journeys concerned are only exceptionally made across national borders,
 - (b) a significant proportion of the customers of those taxis consists of EU nationals or residents who are not nationals or residents of the Member State in question, and
 - (c) in the specific circumstances of the case, the taxi journeys at issue are, for the passenger, very often no more than one stage in a longer trip the final destination or point of departure of which is in an EU country other than the Member State in question?
- (2) Must Article 96(1) TFEU be interpreted as being applicable to operating conditions other than fare conditions and the criteria for obtaining authorisation to carry on the transport activity in question, such as, in this case, a prohibition preventing taxi operators from making available individual seats rather than the vehicle in its entirety, and a prohibition on those operators determining themselves the final destination of the journey that they are offering to customers, which has the effect of preventing those operators from grouping together customers who are travelling to the same final destination?
- (3) Must Article 96(1) TFEU be interpreted as prohibiting, unless authorised by the Commission, measures such as those referred to in the second question
- (a) the general aim of which, among other objectives, is to protect taxi operators from competition from private hire vehicle companies and
 - (b) the specific effect of which, in the particular circumstances of the case, is to protect coach service operators from competition from taxi operators?
- (4) Must Article 96(1) TFEU be interpreted as prohibiting, unless authorised by the Commission, a measure which prohibits taxi operators from touting for custom where the effect of that measure in the particular circumstances of the case is to reduce their capacity to attract customers away from a competing coach service?

13. Written observations were submitted by Flibtravel International, Leonard Travel International, Saratax SCS and AAL Renting SA, as well as the Commission. Pursuant to Article 76(2) of the Rules of Procedure of the Court, no hearing was held.

III. Analysis

A. Introductory remarks

14. The referring court has put several questions to the Court. Although approaching the issue from somewhat different angles, all those questions essentially aim at determining the scope of Article 96(1) TFEU. More specifically, the main question is as follows: does that provision fall to be applied with regard to national legislation that governs the conditions under which taxi services are to be provided?

15. Taking account of the wording of Article 96(1) TFEU alone, the referring court's doubts as to the purview of that provision are, to a certain extent, understandable. However, in considering the broader (historical and systemic) context and aim of that provision, any doubts as to whether Article 96 TFEU falls to be applied in circumstances such as those underlying the present case should rapidly be dispersed.

16. Indeed, as alluded to above, Article 96 TFEU has been employed unusually sparingly, not only by the Commission, but also by the Court in its case-law. Therefore, it is necessary to anchor the interpretation of that provision to its broader systemic context, keeping in mind also the historical characteristics and discussions of the founders of the Union with regard to that provision.

B. Scope of Article 96(1) TFEU

1. A historical provision

17. Article 96 TFEU has remained largely unchanged since the beginning of European integration. Its paragraph 1 deals with rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries in respect of transport operations within the Union. Given its roots that reach all the way to the ECSC Treaty, Article 96 TFEU, and in particular paragraph 1 thereof, must be placed in its historical context.

18. That historical context illustrates why, on the one hand, the transport operations referred to in Article 96 TFEU must be understood as alluding to the transport of goods (and not of persons) and why, on the other hand, the rates and conditions at issue here comprise solely tariffs and conditions imposed by Member States that may have a bearing on the financial conditions under which goods are transported.

19. The preparatory documents pertaining to Article 80 EEC, which is now Article 96 TFEU, clearly explain that that provision aims to ensure that prices and conditions applied by Member States to transport operations do not involve effects equivalent to customs duties or discrimination or subventions in relation to the goods transported.⁴ On that basis alone, it seems clear to me that Article 96(1) TFEU aims to protect the free movement of goods rather than the competitive situation of transport operators as such. Simply put, that provision prohibits State measures, in particular special transport tariffs for specific goods, entailing an economic advantage to specific undertakings or industries.

20. Article 96(2) TFEU points to the same conclusion. That provision lists potential justifications (needs of underdeveloped areas and problems of areas seriously affected by political circumstances) for measures prohibited under the first paragraph of Article 96 TFEU. The focus on the need to assist regions met with financial or political hardship confirms, to my mind, that the provision under consideration does not regulate the provision of transport services. Indeed, regional disparities or

⁴ — Comité Intergouvernemental créé par la Conférence de Messine, Rapport des Chefs de Délégation aux Ministres des Affaires Étrangères, 21 April 1956, Mae 120 F/56 (Corrigé), (Report of the Heads of Delegation to the Ministers of Foreign Affairs; 'the Spaak Report'), pp. 67 to 69. That report explains, inter alia, that support tariffs for certain goods are to be dealt with in a similar manner as subventions.

problems arising from political circumstances can hardly be remedied by treating more favourably certain transport service providers as compared to others. In fact, as the limited number of decisions taken by the Commission in the field shows,⁵ Article 96(2) TFEU concerns the use, by Member States, of preferential prices and conditions benefiting products originated from affected regions.⁶

21. As is already clear from the above, Article 96 TFEU is not designed to safeguard the free provision of transport services, let alone local taxi services. In fact, one may wonder what function Article 96 TFEU might still have in present-day Europe.⁷ In the early days of European integration, that provision certainly had a role to play.⁸ That was so, owing to the discriminatory tariffs which were, on occasion, applied by Member States in the field of transport for protectionist ends.

22. The broader systemic context of Article 96(1) TFEU too corroborates the view that rules governing the provision of taxi services are not governed by that provision of the Treaty.

2. Systemic considerations

23. To begin with, it is worth observing that Articles 95 and 97 TFEU both deal with the behaviour of the transport operator vis-à-vis its clients (discrimination and behaviour amounting to effects equivalent to customs duties). In such a legislative context, it would seem counter-intuitive to argue that Article 96 TFEU deals, instead, with a completely different matter, namely, the freedom to provide services in the field of transport.

24. However, the most compelling argument for that view is found elsewhere in the Treaty.

25. Most fundamentally, the application of Article 96(1) TFEU to national legislation governing the provision of taxi services would stand in stark contrast to the express wording of Article 58 TFEU. That provision specifically excludes transport services from the purview of the rules governing the free provision of services.⁹ That implies that the free provision of services in the context of transport is to be put in place by means of the common transport policy, in accordance with Article 91 TFEU.¹⁰ Yet, to date, no such measures have been taken.

26. Against that background, if it were to be accepted that the scope of Article 96(1) TFEU encompasses not only support tariffs and conditions pertaining to the goods transported, but also rules adopted by Member States regarding the conditions under which taxi services are to be provided, that would entail devising, by means of judicial construction, a control mechanism for

5 — Commission Decision of 16 February 1962 authorizing Special Tariff No 201 of the Italian State Railways (OJ English Special Edition, Second Series IV, p. 3), Commission Decision 64/160/EEC of 26 February 1964 authorizing the maintenance of Annex B ter to the 'Conditions générales d'application des tarifs pour le transport des marchandises' (CGATM) of the Société nationale des chemins de fer français (SNCF) (OJ English Special Edition, Second Series IV, p. 14), Commission Decision 79/873/EEC of 11 October 1979 authorizing Special Tariff No 201 of the Italian State (OJ 1979 L 269, p. 29), Commission Decision 79/874/EEC of 11 October 1979 authorizing special tariff measures for the carriage of certain goods by rail and road in France (OJ 1979 L 269, p. 31) and Commission Decision 91/523/EEC of 18 September 1991 abolishing the support tariffs applied by the Italian railways to the carriage of bulk ores and products produced and processed in Sicily and Sardinia (OJ 1991 L 283, p. 20).

6 — See also order of 18 June 2012, *Transports Schiocchet - Excursions v Council and Commission*, T-203/11, not published, EU:T:2012:308, paragraphs 39 and 40.

7 — It has even been suggested that, in light of the evolution of the internal market subsequent to the entry into force of the Single European Act in 1986, Article 96 TFEU is a meaningless provision, see Gard, L., 'Article 76 CE' in Pingel, I. (ed.), *Commentaire article par article des traités UE et CE*, 2nd edition, Dalloz, Paris, 2010, pp. 675 to 677, at 677.

8 — Judgments of 10 May 1960, *Germany v High Authority*, 19/58, EU:C:1960:19, p. 234, of 10 May 1960, *Compagnie des hauts fourneaux and fonderies de Givors and Others v High Authority*, 27/58 to 29/58, EU:C:1960:20, p. 252, and of 9 July 1969, *Italy v Commission*, 1/69, EU:C:1969:34, paragraph 4.

9 — Judgment of 1 October 2015, *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:641, paragraph 47. See also Opinion of Advocate General Szpunar in *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:505, point 27.

10 — Judgments of 7 November 1991, *Pinaud Wieger*, C-17/90, EU:C:1991:416, paragraph 7, and of 22 December 2010, *Yellow Cab Verkehrsbetriebe*, C-338/09, EU:C:2010:814, paragraph 30.

transport services not dissimilar from that contained in Article 56 TFEU. That would be undesirable, not least because Article 58 TFEU specifically excludes transport services from the purview of Article 56 TFEU, but also because the EU legislature has not, to date, enacted secondary legislation in order to liberalise the provision of taxi services within the framework of the common transport policy.

27. In fact, rather than ensuring the free provision of services in the field of transport, Article 96(1) TFEU deals, as explained, with State measures that bear resemblance to State aid for one or more particular undertakings or industries. That is because regulatory action by State authorities to ensure favourable transport rates and conditions for certain goods may have an effect comparable to State aid. In that sense, Article 96 TFEU constitutes a form of *lex specialis* regarding transport rates and conditions, as compared to the general prohibition of State aid laid down in Article 107 TFEU. However, unlike Article 107 TFEU, Article 96(1) TFEU does not require that the measures under scrutiny involve the use of State resources. In any event, like other types of State aid, support tariffs and conditions are subject to the Commission's approval.¹¹

28. On the basis of the above, I conclude that Article 96(1) TFEU does not fall to be applied in relation to conditions imposed by a Member State on taxi service operators such as the conditions at issue in the main proceedings.

IV. Conclusion

29. In the light of the arguments presented, I propose that the Court should answer the questions referred by the Cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) as follows: Article 96(1) TFEU does not fall to be applied in relation to conditions imposed by a Member State on taxi service operators such as the conditions at issue in the main proceedings.

¹¹ — See footnote 5 for illustrative examples.