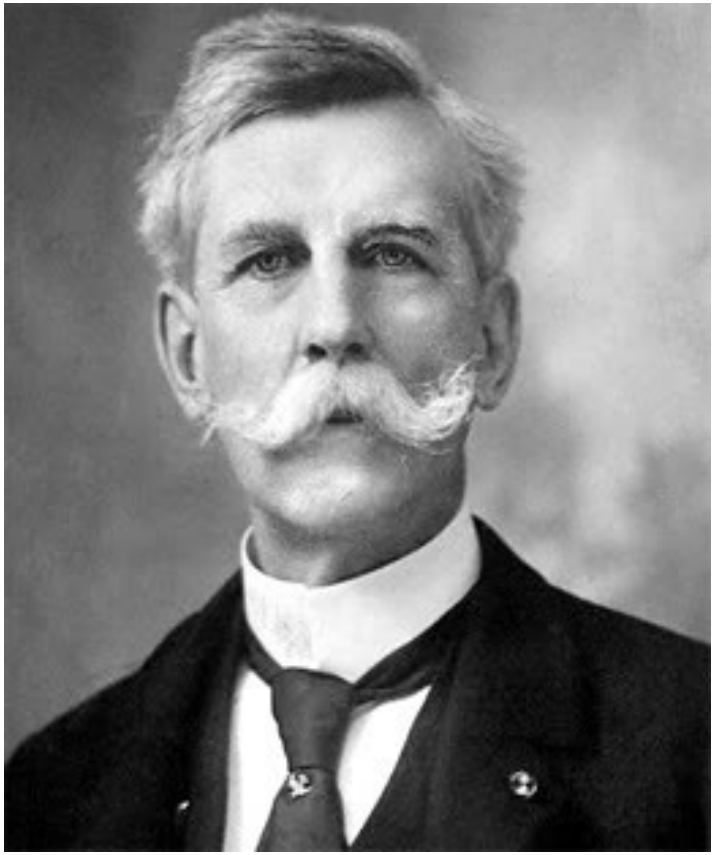
# „PASTI UPORABE KONKURENČNEGA PRAVA V SODNI PRAKSI“

*DA MIHI FACTA DABO TIBI IUS / DA MIHI IUS DABO TIBI FACTUM*



*Oliver Wendell Holmes, Jr. (1841–1935)*

**„The copy is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible, which is one man's alone. That something he may copyright ...”**

*Bleistein v. Donaldson Lithographing Company (1903)*

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**„A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.“**

*Towne vs. Eisner (1918)*

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**„In these sibylline leaves are gathered the scattered prophecies of the past upon the cases in which the axe will fall.“**

*The Path of the Law (1897)*


DELPHICA

„... Nadaljnje stopnjevanje duševne razživljenosti so preroki in sibile, postavljene po prestolih pod konzolami. Dotlej so upodabljali preroke kot modrijane starega zakona, kot učitelje heroje. Michelangelo se je mnogo pečal s sv. pismom … in odtod njegova zmožnost, da se uživi v usodo teh duševnih velikanov, v nasprotju z ono abstraktno eksistenco, ki so jo imeli v starejši umetnosti kot sicer neoporečne, a individualno neopredeljene avtoritete. Vrhu tega so strastnega in mračnega mojstra gotovo mikali ti značaji, razžarjeni od božjega razsvetljenja in po notranjem glasu gnani k heroičnim dejanjem, mnogokrat sprti s svojim narodom in časom, mnogokrat napovedovalci strašnih kazni, največkrat samotni in žrtve iz svojega izjemnega poklica, kateremu so se bili popolnoma posvetili; vse to je Michelangelo doživljal na sebi. In tako vidimo, da se ono telesno poživljanje … pri teh figurah stopnjuje do gibanja razburkanih duš. Vsi preroki so upodobljeni s kretnjami v dveh nasprotujočih si smereh, v kontrapostu, in vse sibile … tudi, kakor da so, prevzeti od duha božjega, polni notranjega nemira ali globoko potrti in potopljeni v bolečino … Med sibilami je najživahneje zasukana mladostna Lybica (sl. 49), ki še drži v rokah knjigo, v katero je bila zatopljena, ko jo je poklical skrivnostni glas, da se je obrnila proti levi. …“

*Izidor Cankar: Zgodovina likovne umetnosti v Zahodni Evropi, III. del, Ljubljana 1936, s. 116.*

*Sibylla Slovenica?*

*www.sodnapraksa.si!*

SP SODNA PRAKSA

išči

<< enostavno iskanje

- [x] SOVS - VRHOVNO SODIŠČE
- [ ] IESP - VIŠJA SODIŠČA
- [ ] VDSS - VIŠJE DEL. IN SOC. SOD.
- [ ] UPRS - UPRAVNO SODIŠČE
- [ ] SEU - SODIŠČE EVROPSKE UNIJE
- [ ] NEGM - ODMERA NEPREM. ŠKODE
- [ ] SOSC - STROKOVNI ČLANKI
- [ ] SOPM - PRAVNA MNENJA IN STALIŠČA

Evidenčna številka:

Opravilna številka:

Opravilna številka II stopnje:

ECLI:

Sodišče: [ ] Vrhovno sodišče

Oddelek: [ ] Civilni oddelek [ ] Delovno-socialni oddelek [ ] Gospodarski oddelek [ ] Kazenski oddelek [ ] Upravni oddelek

Datum seje od: Do:

Senat, sodnik posameznik:

Področje: "pravo omejevanja konkurence"

Institut:

Jedro:

Izrek:

Obrazložitev:

Zveza:

Objave v zbirki VSRS:

išči počisti vsa polja

Število zadetkov: 48 1 2 3 od 3 naslednja > zadnja >>

prikazov na stran 20

Poizvedba: podrocje:"pravo omejevanja konkurence"

relevantnost datum ↑ datum spremembe opravilna številka vrstični prikaz RSS

| | Dokument | Sodišče | Oddelek | Datum | Institut | Jedro |
|---|---|---|---|---|---|---|
| [ ] | Sklep I Up 532/2008 | Vrhovno sodišče | Upravni oddelek | 11.12.2008 | preprečevanje omejevanja konkurence - sklep o preiskavi – poseg v ustavne pravice – dopustnost upravnega spora – akt, ki se lahko izpodbija v upravnem sporu – drugo sodno varstvo – zavrženje tožbe | Zakon o preprečevanju omejevanja konkurence (ZPOmK-1) dopušča sodno varstvo zoper sklep o preiskavi v postopku sodnega varstva zoper odločbo. Prvotožeči stranki – pravni osebi, na katero se izpodbijani sklepi glasijo, je torej drugo sodno varstvo zagotovljeno v okviru sodnega varstva zoper odločbo tožene stranke o glavni stvari. Ostalim tožečim strankam – fizičnim osebam je varstvo osebnih podatkov oz. komunikacijske zasebnosti zagotovljeno z izdano odločbo informacijskega pooblaščenca, zoper katero imajo sodno varstvo v upravnem sporu. |
| [ ] | Sodba X Ips 749/2007 | Vrhovno sodišče | Upravni oddelek | 16.12.2008 | upravni spor – omejevalna ravnanja – prepoved zlorabe prevladujočega položaja – pojem zlorabe – zloraba na „sosednjem" trgu, kjer ni prevlade – določanje posebnih pogojev | Določbe 10. člena ZPOmK ne izključujejo možnosti, da bi se zloraba prevladujočega položaja pokazala na drugem trgu, kot je ta, na katerem obstaja prevlada, in sicer ne glede na to, ali tudi na drugem trgu obstaja prevlada. Pogoj je, da sta oba trga dovolj povezana, tako da izvajanje na prvem lahko povzroči protikonkurenčne učinke na drugem („sosednjem") trgu |

„Mati vseh sodb”

sodba X Ips 749/2007 z dne 16. 12. 2008

*Telekom Slovenije proti RS*

„Vsi sodniki naj bodo vrhovni“ /„Zasebnost pravnih oseb”

odločba U-I-40/12 z dne 11. 4. 2013

*

sodba G 3/2009 z dne 30. 6. 2009

*Engrotuš proti RS*

# „Dva paradoksa“

# sodba X Ips 70/2010 z dne 15. 6. 2010

# *NKBM proti RS*

„To boldly go where no one has gone before!“ ali „Še o poslovnih tajnostih ...“

sodba I Cpg 708/2013 z dne 21. 11. 2013

*T-2 proti Telekom Slovenije, tč. 58 in nasl.*

*

„... in o tajnih podatkih“

odločba U-I-134/10 z dne 24. 10. 2013

„Par“

Sodba X Ips 45/2010 z dne 26. 10. 2010

*Kolosej proti RS ob sodelovanju Blitz film*

*

sklep I Cpg 870/2012 z dne 29. 11. 2013

*Blitz film proti Koloseju*

Kako temu strežejo Angleži?

*www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Ch/2011/987.html*

In Finci?

*www2.kkv.fi/File/75dceb51-fdd7-4dd7-a14f-1c1287d81d63/Media-release-28-11-2013.pdf*

Neutral Citation Number: [2011] EWHC 987 (Ch)

Case No: HC10C02364

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/04/2011

**Before** :

**MR JUSTICE MANN**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **(1) Purple Parking Limited** | **Claimants** |
| **(2) Meteor Parking Limited** | |
| **- and -** | |
| **Heathrow Airport Limited** | **Defendant** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Mr Alan Maclean QC** and **Mr Richard Blakeley** (instructed by **stevensdrake Solicitors**) for the **Claimants**
**Mr Mark Brealey QC** and **Ms Sara Ford** (instructed by **Herbert Smith LLP**) for the **Defendant**

Hearing dates: 8th, 9th, 10th, 13th, 14th, 15th & 16th December 2010
12th, 13th, 14th, 18th, 19th, 20th January 2011

- - - - - - - - - - - - - - - - - - - - -

Judgment

…

## Introduction

1. This is a claim in which the claimants allege abuse of dominant position by the defendant in preventing the claimants from accessing the forecourts at Heathrow Airport Terminals 1, 3 and 5 ("T1", "T3" and "T5" respectively) for the purpose of conducting part of their business of picking up and redelivering cars to customers who want to use one of their parking services. The proceedings were started on 19th June 2010 and this action, which is actually the trial of the question of abuse on an assumption as to dominant position, has come on as an expedited matter pursuant to an order of Mr Justice Roth dated 12th August 2010. Mr Alan Maclean QC led for the claimants ("Purple" and "Meteor"); Mr Mark Brealey QC led for the defendant ("HAL").

...

73. This trial takes place on the footing (as specified in the order of Roth J providing for an expedited trial, and for the purposes of the trial only) that HAL is dominant in the "Facilities Market", namely the provision of access to Heathrow's facilities, including its roads and forecourts. So the case starts from that common ground.

74. Thereafter the parties diverge on practically all major issues. …

...

**Market definition questions**

109. In competition law it is likely to be necessary to identify the markets involved. Pursuant to Roth J's order for a speedy trial, for the present trial it is to be presumed that the upstream market is the "Facilities Market", and that

HAL is dominant in it. That Facilities Market is the provision of access to Heathrow's facilities, including its roads and forecourts. However, there is an issue as to the downstream market by reference to which it has to be assessed whether competition is hampered or eliminated. I have already identified the three candidates above – the Meet and Greet market (the provision of meet and greet services at Heathrow); the Premium Services market (on-airport short-term and business parking and meet and greet); and the Parking Market (parking services at Heathrow, including off-airport park and ride parking). Purple and Meteor rely on all of them so far as may be necessary, but they make primary, secondary and tertiary cases in relation to them in the order in which I have set them out. HAL says the relevant market is the third of those – the Parking Market.

# Claimants' Witnesses

I heard evidence from the following witnesses for the claimants.

**Mr Mark Hinge**. He is the managing director of Purple and gave evidence of his company's meet and greet business, the markets, the history of the dispute and the effect of what he described as discrimination on his company's business. He gave clear and convincing evidence and was a reliable witness.

**Ms Sarah Anglim**. She is a director of Meteor and gave evidence of the same sort of things as Mr Hinge did, but in relation to Meteor's business. She was a good and careful witness who expressed herself moderately.

**Mr Hugh Edwards**. He is the Managing Director of Hedway Consulting, a travel management consultancy who recommends travel solutions. He has himself used Meteor's services and gave evidence of what would happen if Meteor was no longer able to use the forecourt. His witness statement said that Hedway would cease to use Meteor and would switch to HVP, and would recommend the latter to their clients. However, when it was suggested that the extra time which use of car parks did (and did not) require he said he would want to look at the timings in more detail before he himself switched. This, to some extent, undermined his earlier evidence. Nonetheless, he was a careful and honest witness.

**Mr Brian Merry.** He is the Director of Ancillary Products at Hogg Robinson (Travel) Limited. His company contracts for meet and greet services with Purple at Heathrow on behalf of a large number of customers and he gave evidence as to likely effect of their not being able to use the forecourt. He was a straightforward and impressive witness.

**Mr Neville Gow.** He is the operations director at Purple and gave evidence of the effect of his company's being confined to car parks for their meet and greet operations, why their use is distinguishable from that of taxis and mini-cabs, and the claimed need to enforce the parking restrictions. His evidence was convincing.

**Mr Michael Butcher**. He is the regional travel manager for Alácatel Lucent. Alcatel is a large provider of corporate telecommunications and a significant user of Heathrow. It uses Meteor's meet and greet services at Heathrow and currently averages 15 bookings per week. He gave evidence of the effect of a switch from the forecourt to the car park. Again, he was a good and clear witness.

**Mr Scott Witchalls** gave expert traffic management evidence for the claimants. He was a careful and impressive witness.

**Mr James Rothman** gave expert evidence on surveys, as a result of a late introduction of similar expert evidence by HAL. His evidence was considered and careful.

In addition to those witnesses Purple and Meteor put in two witness statements under the Civil Evidence Act. This was not opposed, but obviously the absence of cross-examination goes to weight. Mr Aubrey King is a director of Supplier Management for Carlson Wagonlit UK Ltd, a leading travel management company. He gave evidence of his view as to the relative desirability of the car parks and forecourts for meet and greet operations and the likelihood of a change of supplier if Purple (who is its preferred supplier) were to be confined to the car parks. Mr David Molloy is employed by Virgin Atlantic Airways Ltd. His company flies out of T3 and Purple has been its preferred supplier, fulfilling 175 meet and greet bookings per week and 150 park and ride bookings per week. His witness statement comments on the usability of the T3 short stay car park for pickup and drop-off and he says that if the relocation were to happen and to be permanent then Virgin would have to consider switching to "the provider operating on the forecourt".

# Defendant's witnesses

The following witnesses gave evidence for HAL.

**Mr Fraser Brown**. He is the Head of Travel Services for HAL and by and large has been responsible for bringing about and implementing the attempted move of the off-airport meet and greet operators to the car parks. He described the motivation for that and the alleged operational needs. He was not, I regret to say, always a reliable witness. He was at times defensive beyond the natural instincts of a cross-examined witness, evasive and his witness statement sought to put glosses on things which it is hard to accept he really believed to be accurate (for example, paragraph 39 of his third witness statement which plainly sought to attribute the removal of congestion from T5 in 2008 to the removal of the meet and greet operators and not the removal of buses, when it was the latter that was the major contributor). Above all, he was overly-reluctant to accept explicitly that which I find he believed, which is that meet and greet operators operating from the car parks would be operating from a disadvantageous location when compared with the forecourt. I think that some of his evidence was given with a view to the case he wanted to make about this and not with a view to giving accurate evidence.

**Mr Nicholas Webb**. He is the head of Yield Management for the BAA group and gave evidence related to the question of the relevant market, considering how customers choose products and how various products seemed to him to inter-relate in terms of customer price and competition between themselves. Like Mr Brown, he was guarded and cagey beyond what one expects of a careful witness.

**Mr John Griffin** is chairman of Addison Lee plc, a well-known minicab and chauffeuring company. He gave evidence of how his company uses the car park for pickups and as to its suitability. He was straightforward, and most of his evidence was uncontentious.

**Mr Lee Parsons.** Until shortly before the trial, Mr Parsons had been operations manager for Easyparking Heathrow Ltd. His company offered a park and ride and meet and greet service. He gave evidence of his views as to whether use of the car parks, as opposed to the forecourts, affected his company's meet and greet operations. He sought to say that car parks had the benefit of a certain drop-off and pick-up point and that customers found that beneficial. While I considered him to be an honest witness, his evidence struck me as somewhat superficial. He was also not a man of wide experience in the industry. His background had been elsewhere, and his company is only a small player (there was a suggestion that it was no longer trading but that was not formally proved in the proceedings). I did not find his evidence on the above points convincing.

**Mr Neil Messenger** is the coaching executive with the Confederation of Passenger Transport UK, whose job was to represent the coaching industry. He gave evidence of congestion on the airport forecourts (particularly at T1 and T3) and his suggestions for improving it – improved enforcement of the restrictions. He was careful and reliable, but his contribution added little to the debate.

**Inspector James Bardwell** is a Metropolitan police officer stationed at Heathrow and gave evidence of police concerns as to the use of the forecourt – congestion and unattended vehicles (a possible terrorist threat). His evidence was not significantly challenged.

**Herman Maier** was called by HAL to comment on the survey evidence introduced by the claimants. It turned out that he was not an expert on devising and conducting surveys, but had considerable experience in using and analysing their fruits. It was put to him that he had stepped outside his area of expertise, and to a limited extent that was true. However, his evidence still, in my judgment had value, and the points that he made had a high degree of plausibility. I certainly do not disregard his evidence.

**Mr Martin Heffer** is a traffic planning expert of 22 years post-graduate experience. He gave evidence as to the justification of regulating the use of forecourts and on the competitive effects of enforcement on meet and greet operators. As part of the latter he carried out timings of comparative journey times of those using the car parks and those using the forecourts. He was as careful and conscientious a witness as Mr Witchalls.

**Conclusion**

I therefore find that HAL has been guilty of conduct which contravenes section 18 and I will grant such relief as is appropriate after hearing argument (assuming there is a dispute as to that).

Mr Brealey submitted that one of the obstacles that the claimants faced in this case was an alleged difficulty in the sort of injunctive relief they sought (namely injunctive relief requiring their re-admission to the forecourts). He sought to paint a picture in which "the implementation of the Court's ruling can be the subject of some unspecified negotiation between the parties", and "it would be unfortunate for the Court to make an order in such vague, unspecified and unenforceable terms". The negotiations he envisages include deals (which he says will be difficult) as to how long the operators can dwell on the forecourts, how they are to be identified to the enforecement agencies, and what the terms of a licence might be.

This objection is misplaced. I do not propose to make any order which is faintly like that. I shall make an order which forbids the anti-competitive conduct, namely the exclusion from the forecourt. What happens thereafter is up to the parties, and particularly HAL. They may negotiate a solution; HAL may impose a solution which does not contravene competition law. There may be other outcomes. They will not feature in my order.

„Vendarle ena moja zadeva!“

odločba U-I-94/13 z dne ???

*Mercator proti RS*

# DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

„Multilayered legal system” (W. Van Gerven, 1935) / „Justificatory ascent“ (R. Dworkin, 1931–14. 2. 2013)