



TC03984

Appeal number: TC/2012/09672

*VAT – Refund Directive –refund not available if supplies made in the UK-
provision of creative services and a party for Nokia World 2010 in London –
place of supply - Art 53 or advertising services*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TOUCH WORLDWIDE OY

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE CHARLES HELLIER
MS HELEN MYERSCOUGH**

Sitting in public at 45 Bedford Square WC1 on 7 May 2014

**Mike Moloney and Alfredo Espada of Meridian VAT Consulting for the
Appellant**

**Genevieve Parke, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. The Refund Directive 2008/9/EC entitles a trader established in a Member State
5 A but not in Member State B to claim a refund from Member State B of the VAT
suffered in State B on supplies made to the trader in State B, so long as the trader
makes no supplies in State B in a period which encompasses the receipt of those
supplies.

2. Touch Worldwide OY (“Touch”) is an advertising or creative agency
10 established in Finland. Nokia Corporation is also established in Finland. In 2010
Nokia held its Nokia World 2010 event in London. Touch provided services to Nokia
in connection with that event; in doing so it bore UK VAT on goods and services
supplied to it (whose cost it recharged to Nokia).

3. Touch made a claim for the refund of that VAT; it had treated its supplies to
15 Nokia as made in Finland and had paid Finish VAT. HMRC refused the claim on the
basis that Touch's supply to Nokia was made in the UK.

4. This appeal raises two issues. The first is whether Touch made one composite
supply or several distinct supplies to Nokia. The second is the place of supply of that
composite or any of those distinct supplies.

20 5. HMRC argued that Touch's supply or supplies fell within Article 53 of the
Principal VAT Directive and accordingly fell to be treated as made in the UK. Article
53 encompasses:

25 “The supply of services and ancillary services relating to cultural, artistic,
sporting, scientific, educational, entertainment or similar activities, such as fairs
or exhibitions, including the supply of services of the organisers of such
activities”,

and provides that the place of supply of such services “shall be the place where those
activities are physically carried out.”

30 6. Touch argues that it supplied advertising services rather than services within
Article 53, and that such services are, under the general rule in Article 44, to be
treated as applied where Touch's customer, Nokia, was established, namely Finland.

The evidence and our findings of fact.

7. In an appeal of this nature, where the appellant knows what happened and is in
35 the best position to find and adduce documentary and witness evidence relevant to the
issues, the onus is on the appellant to produce evidence to prove its case.

8. The evidence put before us was limited.

9. The appellant provided no witness statements but we heard from Richard
Bamford, a director of the appellant, who told us something of the background to the

event, of Touch's relationship with Nokia and of Nokia's aims in relation to Nokia World 2010. He explained that 2010 was a period of rapid change in Nokia's market. It had to respond to the challenge posed by Apple. It needed to show that it was becoming consumer led, and to broadcast its change of strategy. It wanted to portray a warmer image. Touch had worked with Nokia for over 15 years and was chosen to help in conveying this message.

10. Mr Bamford told us that the events were attended by people Nokia did business with and the developer community. They were open to the public but predominantly attended by Nokia's stakeholder audience.

11. We had a bundle of copy documents which included correspondence between the parties, a copy of a Framework agreement between Touch and Nokia, a document entitled "Nokia World 2010 Scope of Work for Lead Creative Agency Touch Worldwide Revised Scope V4", purchase orders from, and invoices to, Nokia, invoices from suppliers to Touch, and a copy of the brochure for "Nokia World 2010 & Nokia Development Summit".

12. From this evidence we find as follows.

13. In 2010 Nokia organised for 14 and 15 September an event which comprised three elements: Nokia World 2010, Nokia Development Summit ("NDS") and a party on the evening of 14 September. Nokia World 2010 and NDS took place at the ExCel Centre, and the party at Debut London.

14. Nokia spent some €5 Million on the two days' activity. Of this the charges made by Touch accounted for some €1.16 million.

(a) Nokia World 2010

15. From the brochure we concluded that Nokia World 2010 started in the morning of 14 September with Keynote talks by Nokia executives. The focus then seems to have been the Experience Lounge where: products were displayed and made available to attendees and there were demonstrations "of the latest innovations from Nokia [its] partners and developers" and competitions. This was followed in the afternoon, in each of the four corners of the Experience Lounge, by a series of talks or roundtable discussions on subjects such as:

- (1) Building the ecosystem that drives the future of social networking
- (2) Connecting business customers through Nokia devices.
- (3) Mobile advertising - how will this model evolve. Search vs in-app advertising proprietary platforms?
- (4) Orange & Nokia: going one step further
- (5) The future of TV
- (6) Mobile music Xchange - monetizing piracy
- (7) How to reach the next billion mobile users with your application.

16. The speakers included Nokia staff and others drawn from a range of companies associated with mobile technology who, we were told by Mr Bamford, used Nokia products.

5 17. On 15 September demonstrations, the availability of products, competition and other meetings continued in the Experience Lounge, but there appeared to have been no further talks.

(b) NDS

10 18. This took place at Excel alongside Nokia World 2010 but in different rooms. It appeared to us to have been a more technical affair. It did not appear to involve the display of Nokia products or systems or those of its partners or of developers. The brochure indicated that there were three "streams" which continued broadly across the 14th and 15th of September:

(1) Qt developer training. This was described as learning about "the latest Qt features and technologies from Nokia".

15 (2) Scaling up with the web, Java & Ovi store reach. "Minimise time to market while creating rich interaction with the web. Mobilise services. Integrate with the Ovi APL", and on 15 September "designing for success".

20 (3) Working with Nokia "From developing content with web technologies with Qt to specifying distribution and pricing options, providing market resources and promoting your content, Nokia partners you all the way", and on 15 September "how you can reach out to hundreds of millions of Nokia users worldwide and what to consider when going for the next billion".

25 19. For each of these streams there was a timetable of talks (such as one intriguingly called "Qt on Haemo & Heego: demonstrating the Nokia Qt SDK. Mobility APIs & on-device debugging on Haemo", and another "Why you need to work with Nokia"), given mainly by Nokia personnel, and roundtable discussions.

20. But we were not provided with evidence which allowed us fully to understand the nature of these sessions, the terms used, and whether they all related specifically to Nokia technologies.

30 21. It was not wholly clear whether the sessions were directed to promoting Nokia products by enabling existing users of such products to use them more efficiently in their businesses, or whether they also involved Nokia learning from users what was good or bad about its products and what further enhancements or developments it should pursue.

35 22. We were uncertain how great a role the presentation of innovations from Nokia's partners and from developers played in the demonstrations.

23. It was clear from the stream titles that two out of the three 'streams' related to Nokia technologies, and it seemed likely that a fair proportion of each stream was the

promotion of Nokia and the showing off of its products and their capabilities to attendees. But the sessions entitled :

- (1) building mobile ecosystem collaboration for innovative solutions (led by a speaker from Intel);
- 5 (2) Qt cross-platform development (led by a speaker from Futureice);
- (3) panel discussion on the "benefits of distributing apps locally";
- (4) panel discussion on investing in growth markets - the potential; and
- (5) Profiling, debugging and optimising web app performance (led by Nokia speakers),

10 did not seem to us to be aimed directly at the promotion of Nokia products.

24. We accept that by providing a Nokia based and branded forum for the acquisition of new ideas, and the opportunity, as the brochure said, to “meet potential business partners”, Nokia could have been promoting its image among those who might buy its products. We also accept that it is unlikely that Nokia would spend a
15 considerable amount of money on this Summit if it did not hope for a commercial reward in the form of increased sales or profits. But we could not dismiss the possibility that one of the benefits which Nokia might have hoped to derive from the sessions were ideas for the future development of its products (with subsequent sales) rather than the sales of particular products: in other words that the sessions provided
20 Nokia with a form of market research.

(c) The Party.

25. It was Nokia’s custom to hold a party in the course of each year’s event. On the evening of 14 September there was a party. The page in the brochure advertising party promised a Night of the Senses at Debut London with live performances by Ellie
25 Goulding and featuring, among others, the DJ, Yoda Beardyman. We were told that these were well-known performers.

26. The brochure indicated that attendees should "bring your wristband for entry into the party". Miss Parke suggested that the attendees may have paid to attend, but that seemed unlikely to us: it was more likely that attendees at the event were given
30 the wristbands free on arrival. We had no direct evidence as to whether attendees paid to attend the main events, but given Mr Bamford’s evidence that the marketing object was to display a warm consumer led image, we think it unlikely that any charge was made.

27. 1600 people attended the party. We were told, and accept, that they were guests
35 of Nokia, but there was no evidence of the reasons for which they were selected by Nokia. We think it likely that Nokia employees attended, and that most of the other guests were business partners of Nokia and customers or potential consumers of Nokia's products.

28. The cost of the party was €25,000. It seems to us likely that Nokia would have expended such a sum without some expectation of commercial advantage in the form of increased profit derived from future sales, content employees or cooperation with suppliers and business partners. We saw no evidence that it promoted particular Nokia products but accept that it would have promoted the Nokia brand to those invited.

Touch's role and its supplies to Nokia.

29. In its representations to HMRC Touch described its supply or supplies to Nokia as having three elements:

- (1) it was the lead creative agency for Nokia World 2010;
- 10 (2) it was the lead creative agency for the Nokia Development Summit.
- (3) it designed, built and produced a party; and

(a) Documentation

(i) the Framework Agreement and the Scope of Work

30. The Framework Agreement (formally entitled Consulting, Creative & Event Management Services Frame Agreement) dated 4 January 2010 between Touch and Nokia provided the terms and conditions upon which, from time to time, Touch would perform the services and provide the materials specified in a "Scope of Work". A Scope of Work was defined as a document signed by the parties containing a description of a project.

31. The only Scope of Work document before us appeared to be for Nokia World 2010. Mr Bamford said that no formal Scope of Work had been produced for the Party, or the Nokia Development Summit. The Scope of Work was not in traditional legal language, but, as the following extract shows, the work described involved the creation and display of messages which attendees at the event would hopefully absorb:

30 "Develop a strong creative direction throughout all areas and activities. This will include the overall creative theme, event identity, WOW elements etc. The scope of this should inform and "wrap around" every aspect of the event deliverables including marketing, entire venue environment, online environment, collateral design, presentation design etc. Specifically:

- Fully develop creative proposal in conjunction with Nokia team
- Liase with ...to ensure brand fit and internal alignment
- Bring Nokia-ness alive
- Create an "experience map" and executive summary
- 35 Create graphic look and feel in design principles..."

32. This document records a fee of €189,190 to be paid by Nokia for the work of Touch personnel, and provides that third-party costs would be invoiced separately

pursuant to a separate purchase order. The agreed fee excluded work associated with the production and installation of graphics and signage in the Experience Lounge, the General Areas, and info Screens.

5 33. We concluded that this was the document by which Touch had been contracted to provide creative graphic ideas for Nokia World 2010: as we note below the invoices before us from Touch which appear to relate to Nokia World 2010 total about €189,190 which is the amount specified in the Scope of Work. We conclude that either there were other lost or unearthed Scope of Work documents for the Party and the Nokia Development Summit, or that the work for these elements had been
10 agreed informally.

(ii) Purchase Orders and Invoices from Touch.

34. The Purchase Orders from Nokia contained limited descriptions of the supplies ordered. They distinguished between Purchase Orders for Nokia World 2010, Nokia Development Summit, and the Party.

15 35. For Nokia World 2010 and for the Nokia Development Summit they specified "Creative from Touch", Meeting Room and Deco and Lights by Touch, Touch Creative, Creative Concept, Creative additions; and those relating to the Party specified: Agency Management Fee and Final Payment.

36. The Invoices from Touch in relation to:

- 20 (1) Nokia World 2010, spoke of "Creative Production by Touch", "Meeting Area by Touch", and "Creative additions",
(2) the Nokia Development Summit, said simply: "Marketing Services", and
(3) the Party said: creative work, marketing services.

25 37. We had some difficulty reconciling the Purchase Orders in the bundle with the copy invoices from Touch. So far as possible the following table sets out what appears to be the relevant correspondence (no correspondence being intended between particular purchase orders and invoices):

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Purchase order description	Nokia Purchase Order number	Amount €	Touch Invoice	Amount €
Nokia World 2010 398	72930	100,148	369	110,839

ditto	725011	189,190	398	11,127
Meeting room deco and lighting	732820	31,131	441	24
			373	31,852
			397	6,439
			372	29,276
	<i>subtotal</i>	<u>€20,469</u>	<i>Subtotal: Touch invoices relating to NW 2010</i>	<u>€189,557</u>
Nokia development summit	706529	190,930	345	234,843
ditto	706530	186,142	347	140,906
ditto	730488	23,802	359	8,048
	<i>subtotal</i>	<u>€300,874</u>	<i>Subtotal Touch invoices relating to NDS</i>	<u>€383,797</u>
Party	704246	529,989	361	232,704
			343	197,580
			349	195,566
			348	130,377
			251	128,362
	<i>subtotal</i>	<u>€529,989</u>	<i>Subtotal: Touch invoices relating to party</i>	<u>€884,589</u>

38. The copies before us of the invoices from suppliers to Touch showed that:

(1) in relation to Nokia World 2010, Touch had been supplied with artwork, graphics, signage, 36 inch balloons, welcome boards, pedestals, branding of balustrades and glasswork; and

5 (2) in relation to the party, Touch had been supplied with the venue at Debut London, equipment, furniture, staging, technicians, other labour, sound systems, China, flowers, food and drink, lighting and security.

39. We concluded that Touch's recorded invoices in relation to Nokia World 2010, whose total approximately matches the figure in the Scope of work and one of the purchase orders represent the delivery of the creative concept for the event to Nokia.
10 On the basis that a similar amount was charged for the creative element of NDS, the recharges for the delivery of signage, graphics and other items would account for about €190,000. Thus the cost of the physical element of Touch's supply was material but not overwhelming. The party was clearly a very substantial exercise.

Discussion.

15 (1) *One Supply or Several?*

40. Miss Parke says that: the only Scope of Work before us related to the work on Nokia World 2010 and identified that as a single supply; the purchase orders from Nokia show that Nokia viewed the party as a separate work stream from the design work for the events; and it could not be said that the provision of the party was
20 ancillary to the creative work or that the creative work was ancillary to the party. From Nokia's perspective these were separate supplies.

41. Mr Moloney said that Touch were supplying Nokia with a package of services for the event. The lack of a formal Scope of Work for the elements other than Nokia World 2010 had to be understood in the light of a long relationship between Nokia
25 and Touch, and suggested that the work on the Nokia Development Summit and the provision of the party grew out of, and were part of, a single package; the party was incidental to the advertising service.

42. In *HMRC v The Honourable Society of Middle Temple* [2013] UKUT 0250 (TCC) the Upper Tribunal provided a summary of the principles to be applied in
30 determining whether there was one supply or several:

“Principles derived from CJEU cases

60. The key principles for determining whether a particular transaction should be regarded as a single composite supply or as several independent supplies may
35 be summarised as follows:

(1) Every supply must normally be regarded as distinct and independent, although a supply which comprises a single transaction from an economic point of view should not be artificially split.

40 (2) The essential features or characteristic elements of the transaction must be examined in order to determine whether, from the point of view

of a typical consumer, the supplies constitute several distinct principal supplies or a single economic supply.

5 (3) There is no absolute rule and all the circumstances must be considered in every transaction.

(4) Formally distinct services, which could be supplied separately, must be considered to be a single transaction if they are not independent.

10 (5) There is a single supply where two or more elements are so closely linked that they form a single, indivisible economic supply which it would be artificial to split.

15 (6) In order for different elements to form a single economic supply which it would be artificial to split, they must, from the point of view of a typical consumer, be equally inseparable and indispensable.

(7) The fact that, in other circumstances, the different elements can be or are supplied separately by a third party is irrelevant.

20 (8) There is also a single supply where one or more elements are to be regarded as constituting the principal services, while one or more elements are to be regarded as ancillary services which share the tax treatment of the principal element.

(9) A service must be regarded as ancillary if it does not constitute for the customer an aim in itself, but is a means of better enjoying the principal service supplied.

25 (10) The ability of the customer to choose whether or not to be supplied with an element is an important factor in determining whether there is a single supply or several independent supplies, although it is not decisive, and there must be a genuine freedom to choose which reflects the economic reality of the arrangements between the parties.

30 (11) Separate invoicing and pricing, if it reflects the interests of the parties, support the view that the elements are independent supplies, without being decisive.

35 (12) A single supply consisting of several elements is not automatically similar to the supply of those elements separately and so different tax treatment does not necessarily offend the principle of fiscal neutrality.”

43. It seemed to us that there was a difference between the nature of the services Touch had applied for Nokia World 2010 and the Nokia Development Summit on the one hand, and the Party on the other.

40 44. In relation to Nokia World 2010 and the Nokia Development Summit, Touch supplied the ideas and visual concepts to brand the events and, so far as we could tell,

at least some of the signs and decorations which realised those ideas and concepts. Whereas, in relation to the party it organised and produced the party as a whole.

5 45. It seems to us that the provision of the party was a separate supply from the creative work undertaken by Touch in relation to the Nokia World 2010 and the Nokia Development Summit or at least that the evidence did not show that the two were inseparable and materially dependent. That is because:

10 (1) the party was not ancillary to the creative services since although it provided another way of enjoying the creative input, it did not provide a *better* way of enjoying those services; nor were the creative services in relation to the events at Excel a better way for Nokia to enjoy the provision of the party;

15 (2) in the Statement of Work, Nokia contracted with Touch for the provision of its creative services in relation to Nokia World 2010 and no more. It had a choice thereafter as to whether to use Touch to provide the party. It chose to use Touch. It was not shown that Nokia had no commercial freedom to choose a different supplier for the provision of the party;

(3) the provision of the party was connected to the creative design of the event as a whole, but was not so closely linked to it that it could be said to be inseparable from it;

20 (4) Touch's supply in relation to Nokia World 2010 appears to have been contracted for, ordered and invoiced separately; its supplies in relation to NDS and the party were separately ordered and invoiced.

25 (5) whilst the creative concepts were no doubt used at the party venue it could not be said that the party was of no economic use without the creative concepts or that the creative concepts were of no use to Nokia without the party (see *Levob Verzekeringen BV v Staatssecretaris van Financien* C-41/04 at para [24]).

30 46. We also concluded that although Nokia had provided several purchase orders in relation to the party, and Touch had sent several invoices to Nokia for it, its provision by Touch was a single supply. Touch accepted that it had produced the party as a whole. Economically the various elements comprised a single supply.

(2) The nature of the various supplies

35 47. Article 44 of the Principal VAT Directive now provides a general rule that the place of supply services to a taxable person, such as Nokia, is the place of that person's relevant fixed establishment. Thus, under this general rule, the place of Touch's supply to Nokia would be in Finland.

48. But Articles 46 to 49 provide specific rules which override this general rule. Among these Article 53 provided in 2010 that place the supply of:

“services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs or exhibitions”

should be the place where those activities were physically carried out. We shall call these “Article 53 event services”, and the list of specific activities “the specified activities”.

5 49. Article 59 provides that the supply of "advertising services" to a non-taxable person established outside the EU shall be the place where that person is established or resides.

10 50. Article 59 is not directly relevant to this appeal since Nokia is not a non-taxable person and is established in the EU. But before 2010 the relevant Directive provided for a different general rule, namely that the place of supply was the place of establishment of the supplier, and specific overriding rules for specific services. One of these specific rules was that place of supply of Article 53 event services was the place of the activity where the activity was carried out; another was that place of supply Article 59 advertising services was the place of establishment of a taxable recipient. The history is explained in greater detail in *Finmeccanica v HMRC*
15 TC/2010/8647.

20 51. The previous rules had given rise to a number of decisions of the CJEU in which the nature of Article 59 advertising services, and the nature of Article 53 event services were considered. Among these were the two cases *Inter-Mark Group sp.z.o.o. sp Komandytowa v Ministre Finansow C-530/09* and *Minister de l'economie v Gillan Beach Ltd C-114/05*, in both of which the services related to exhibitions and in which the possibility of classification under the predecessors of Article 53 or Article 59 were considered.

52. In *Finmeccanica* the tribunal considered these and other cases and reached the following conclusions, which we accept:

25 (1) the specific rules in article 46 - 59 were not to be construed strictly as exceptions from a general principle. One had instead to start by determining, in the light of its purpose, whether any of Article 46 to 49 applied. ([59]);

30 (2) although the question in that appeal, as it is in this appeal, is whether the services were Article 53 event services, it was necessary to consider the scope of "advertising services" since the decisions of the CJEU indicated that advertising services and article 53 event services were mutually exclusive ([62]);

35 (3) advertising services included services designed and used for the purpose of the dissemination of messages intended to inform customers of the existence or qualities of a product or service with a view to increasing sales [71] [104];

(4) that the words "fairs or exhibitions" in Article 53 did not mean that anything which could be regarded as a fair or exhibition fell within the provision; it would do so only if the fair or exhibition related to the "specified activities" or similar activities [75,76];

40 (5) there were the following indicia of activities which fell within "similar activities" in Article 53 events:

- (a) the services concerned were complex or various services [50]
- (b) the activity had a theme which was similar to the specified activities [83 to 85]
- (c) the activity took place at a specific location and a specific time [80]
- 5 (d) there was provision to a number of recipients [86 to 87]
- (e) those numerous people were typically final consumers [88 to 103].

53. HMRC have been given permission to appeal to the Upper Tribunal against the decision in *Finmeccanica*. Miss Parke said before us that HMRC sought to distinguish that decision rather than to persuade this tribunal that it was wrong, although they
10 reserved the right to argue on an appeal that *Finmeccanica* was wrongly decided.

54. In *Inter Mark* the CJEU said this about the nature of advertising services:

“18. In this respect, it should be noted that the Court has held that it is sufficient that a promotional activity involves the dissemination of a message intended to
15 inform the public of the existence or the qualities of the product or service with a view to increasing the sales of that product or service for that activity to be characterised as an advertising service...”

19. The same applies to any activity which forms an inseparable part of an advertising campaign and which thereby contributes to conveying the advertising message. This is the case with regard to the production of aids used
20 for a particular advertisement.”

55. Miss Parke says that pretty much anything a commercial enterprise does is directed to selling. The kind of advertising the CJEU had in mind must have been more specific than simply creating a warm image for example by inviting people to a party. That she says is borne out in paragraph 18 where the CJEU speaks of a message
25 about the qualities of the product and disseminating a message with a view to "increasing sales of *that* product".

56. We note the seeming emphasis placed by the ECJ at [18] on the promotion of specific products. But we also observe that at [18] the Court sets out a sufficient condition for a supply to be an advertising service, not a comprehensive definition.
30 That is emphasised by [19] in which another activity is held also to fall within advertising services. It seems to us that the promotion of the image of a manufacturer may properly be called an advertising service where the object of the activity is to instil a view of the provider of a product which is considered attractive so as to increase sales, and that a specific product or service does not have to be the focus of
35 the message.

Application to the supplies made by Touch.

57. (1) Nokia World 2010 and the Nokia Development Summit

58. Miss Parke argues that the NW 2010 and NDS events were informative for they offered to participants opportunities for learning and discussion. They were thus

events with a theme similar to that of education or science. The events she said were not merely about pushing Nokia product. The events took place at specific times and places, involved the delivery of complex services to the people attending, and those people attended in different capacities: as members of the press, the public, commercial partners and developers

59. We were persuaded that the nature of Nokia World 2010 was to promote Nokia products and services. Nokia products were laid out for attendees to inspect and try out, and the themes of the talks looked to us as if they mainly focussed on Nokia products and services. Although the products of other suppliers appeared to have been on show and there were elements of something similar to education or science within what was provided, the essence of that event appears to have been the promotion of Nokia and therefore its sales.

60. Touch's services in relation to this event did not consist of the provision of the event but were concerned with Nokia's image. Although there was the provision of some signage and graphics, that appeared to us to have been ancillary to its provision of a creative theme. The provision of that image was a message about Nokia, intended to increase sales of its products and was an inseparable part of the campaign constituted by the events.

61. We therefore concluded that Touch's services in relation to Nokia World 2010 were advertising services. As a result we concluded that they could not be Article 53 event services. But even if Articles 53 and 59 were not mutually exclusive, we concluded that Touch's supplies were not ancillary services relating to activities of a cultural, scientific, educational, entertainment or similar nature. That was because the overall nature of the event was marketing and not a nature similar to the specified activities even though there were elements which had some similarity.

62. In relation to the Nokia Development Summit, we noted that the activities of the event appeared to be limited to the talks and discussions and did not involve the display of Nokia products. We had no detail of the nature of those talks and discussion other than their titles, and whilst many of those mentioned Nokia, some appeared to be targeted on the business needs of developers.

63. We have explained that we did not have evidence which enabled us fully to understand the subjects under discussion at the sessions. It was possible for example that Qt and Ovi were technologies provided only by Nokia but we could not be certain that they were. On the other hand two of the streams referred specifically to working with Nokia and using Nokia technologies.

64. Given the apparent informative content of some of the NDS sessions we could not, on the evidence before us, conclude that the nature of the event had no more than a minimal informative theme similar to education. However in order for Touch's services to fall within Article 53 events they must have been related or been ancillary to something similar to an educational activity.

65. In *Dudda v Finanzamt Bergisch Gladbach*, the CJEU said at [27] that a service which was “a prerequisite” for the performance of an artistic or entertainment activity must be regarded as ancillary to that activity. “Ancillary” to our minds means serving or subordinate to and not simply “incidental to”. The provision of a creative theme did not serve any of the informative activities and was not a prerequisite for them, but was an addition to the event which did not relate to the nature of the activity. For these reasons we find that the services Touch provided in relation to NDS did not fall within Article 53 events.

66. In relation to NDS, Touch's services related to the image of Nokia conveyed by the event: they included the provision of visual material, but did not include the provision of speakers, the facilities for the event or the demonstrations. We incline to the view Touch's supplies in connection with NDS were advertising services. But we do not need to go that far, because our conclusion that the service did not fall within Article 53 means that the default rule in Article 44 applies and the services are to be treated as supplied in Finland.

(2) The Party

67. Mr Moloney drew our attention to para [20] of the Court’s judgement in *Inter Mark*. There the CJEU said, in relation to the supply of the design and temporary provision of a stand at an exhibition, that that would be the supply of an advertising service where the stand was used for the dissemination of a message intended to inform the public of the existence or qualities of a product or service, or where it was an inseparable part of an advertising campaign and contributed to the advertising message; and then continues to say that that would be the case:

“in particular where the stand constituted an aid for the dissemination [of the message] or is used for the organisation of promotional events”

He says that the services provided by Touch for the party were used for the organisation of a promotional event, namely the party itself, and thus were advertising services. The party was part of the promotion of a warm hospitable image for Nokia to help it sell its products. He also drew our attention to the part of the judgment of the CJEU in *France* in which the Court said that the provision of a cocktail party or banquet involving the dissemination of a message about a product or service would be an advertising service.

68. Miss Parke says that the party included performances by well-known artists: it was an entertainment event.

69. We accept that the object of the party could have been to promote the Nokia brand, and thus its products. However there were other possible reasons for the party. These included motivating staff, nurturing links with providers of equipment and services to Nokia, and thanking those from other organisations who had participated in Nokia World 2010 and the Nokia Development Summit.

70. It seems to us that Nokia could have found commercial justification for the expense of the party in any, or in a combination, of these objects.

71. The Scope of Work, the invoices and purchase orders shed no light on the objects of the party.

72. In the correspondence with HMRC Touch say that Nokia invited 1600 guests to the party. However neither the number of guests nor the undoubted need for a commercial organisation to justify the cost of the party, assist us in eliminating any of the possible reasons for it.

73. The brochure included a page advertising the party. We accept that a purpose of the Nokia World and Nokia Development Summit events was to enhance Nokia's brand and image, and thus among other things to assist in the sale of its products. It is therefore likely that at least some of the visitors to the events who then came to the party were potential or actual customers have Nokia. But that does not eliminate the possibility that there were guests at the party who were not potential customers and whose invitation was for another purpose.

74. As a result we are unable to conclude from the evidence before us that the only function of the party was to "disseminate a message intended to inform the public of the existence or qualities" of Nokia's products with a view to increasing sales or that the activity was an inseparable part of Nokia's advertising campaign.

75. In *France* the CJEU, having explained the concept of advertising, said at [18]:

"it is therefore sufficient that a promotional activity such as ... the organisation of a cocktail party or banquet involves the dissemination [of a product message with a view to increasing sales] for the activity to be classified as an advertising service within Article [59] ..."

We do not however regard the CJEU as saying in this passage that *any* element of promotional message delivery is sufficient to make an activity an advertising service. Instead it is describing the essential features which make an activity such a service.

76. Had it been shown that the substantial majority of invitees to the party were potential customers, that Nokia staff were generally invited only to act as hosts, and that the set up for the venue advertised Nokia's products or services, we would have been able to conclude that the provision of the party was in the nature of the banquet or cocktail party referred to by the ECJ in *France*, as something which promoted Nokia goods and services with a view to increasing sales. But it was not so shown: business partners may well have been invited and employees may have been invited to enjoy themselves rather than as hosts; and we had no evidence of the promotion of Nokia sales at the party as opposed to the promotion of Nokia as a business partner or employer.

77. We are thus unable to conclude that the principal function of the party was to promote Nokia products. As a result we cannot find that the provision of the party by Touch was an advertising service. As a result it is open to us to conclude that the provision of the party fell within Article 53 events.

78. The party:

(1) involved the provision of venue, music, décor, food and drink. That in our view was the provision of complex services;

(2) involved such provision at a single place on and a single occasion;

5 (3) was an event whose theme appeared to us to be the entertainment of guests. It may also have included the promulgation of Nokia products but the evidence did not show that this was the main theme;

(4) the event was provided to numerous guests;

(5) those guests were the consumers of the food drink and entertainment of the party.

10 79. Those guests were not final consumers of the services in the sense that they received and paid for the services otherwise than in the course of an economic activity and so bore the VAT on their provision. But taking the various factors together it seems to us that the activities provided to Nokia by Touch were of the nature of entertainment activities despite the absence of the indicator that the individual
15 consumers were final consumers; or at the very least that it was not shown that they were not such activities.

80. We conclude that Touch's supply of the party was of an entertainment activity; it fell within Article 53: and it was therefore made in the UK.

Conclusion

20 81. Thus we conclude that the place of the supply of

(1) Touch's services in relation to Nokia World 2010 was in Finland;

(2) Touch's services in relation to the Nokia Development Summit was in Finland; but

(3) Touch's provision of the party was in the UK.

25 82. As a result Touch made a supply in the UK in the relevant period and is not entitled under the Refund Directive to the refund of the VAT on supplies to it in the period.

83. We therefore dismiss the appeal.

Rights of Appeal

30 84. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
35 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**CHARLES HELLIER
TRIBUNAL JUDGE**

RELEASE DATE: 3 September 2014