1. Council Directive No 72/166/EEC of 24 April 1972, Commission Recommendation No 73/185/EEC of 15 May 1973 and Commission Decision No 74/166/EEC of 6 February 1974 which seek to abolish checks on the green card at frontiers between Member States cannot be regarded as authorizing the existence of national provisions or agreements between national insurance bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services.
2. A national provision or an agreement between national bureaux established in the context of the green card system which declares that the national bureau bears sole responsibility for the settlement of claims for damage caused in the territory of that Member State by vehicles insured by foreign insurance companies but which still allows the national bureau or its members to rely on undertakings whose business consists solely in the settlement of accident claims on behalf of insurers in the sense of the handling and investigation of claims, is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86.
3. A decision or a course of conduct of a national bureau or concerted practices of its members which have the object or effect of excluding undertakings whose business consists solely in the settlement, in the restricted sense referred to above, of accident claims on behalf of insurers, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86. It is for the national court to determine whether the conditions for the application of those prohibitions are fulfilled.
4. For discrimination to fall under the prohibitions contained in Articles 52 and 59 it suffices that such discrimination results from rules of whatever kind which seek to govern collectively the carrying on of the business in question. In that case it is not relevant whether the discrimination originated in measures of a public authority, or on the other hand, in measures attributable to individuals.
5. Rules or conduct having the effect of reserving to the national bureau of a Member State or to its members or to insurance companies with an establishment there the final decision as to the payment of damages to victims of accidents caused in the territory of that State by vehicles normally based in another Member State are not discriminatory within the meaning of Articles 52 and 59 of the Treaty if the exclusion of other categories of undertakings is not based on the criterion of nationality.

In Case 90/76

Reference to the Court under Article 177 of the Treaty by the Tribunale Civile e Penale di Milano, for a preliminary ruling in the action pending before that court between

S.R.L. UFFICIO HENRY VAN AMEYDE

and

S.R.L. UFFICIO CENTRALE ITALIANO DI ASSISTENZA ASSICURATIVA AUTOMOBILISTI IN CIRCOLAZIONE INTERNAZIONALE (UCI)

for an interpretation of Articles 7, 52, 59, 85, 86 and 90 of the EEC Treaty, Council Directive No 72/166/EEC (OJ English Special Edition, 1972 (II), p. 360), Commission Recommendation No 73/185/EEC (OJ L 194 of 16. 7. 1973, p. 13) and Commission Decision No 74/166/EEC (OJ L 87 of 30. 3. 1974, p. 13) relating to the certificate of insurance known as the 'green card',

THE COURT

composed of: H. Kutscher, President, A. M. Donner, President of Chamber, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe and G. Bosco, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. In the main action an Italian company, a subsidiary of a Netherlands company carrying on business as a loss-adjuster is suing the Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale (Italian Clearing Office for International Motor Vehicle Insurance) hereinafter referred to as 'the UCI'. The loss-adjuster complains that, either by a decision of the UCI or by a decision of its members or by a concerted practice of the latter, it has been excluded from the market, in which it specializes, for the settlement of claims in respect of accidents caused by foreign vehicles in Italy.

2. The business of loss-adjuster which originated in the United Kingdom is a comparatively new one in the other

Member States. In the United Kingdom insurers have long been accustomed, at least in connexion with certain categories of risks, to call in independent experts to investigate claims and also in certain cases to check the risks which it is proposed should be insured. This kind of business increased when Lloyds of London became interested in non-marine insurance: in fact the syndicates of insurers of which Lloyds is comprised do not generally have their own 'claims' departments. The loss-adjuster receives his instructions from the insurer and is the latter's agent.

3. The loss-adjuster is not necessarily a technical expert. He may himself have recourse to a technical expert. He protects the interests of his principal. Outside the British market the loss-adjuster works as a correspondent, especially for British insurers and in particular Lloyds. Loss-adjusters consider that they are members of a profession. They are paid fees the amount whereof varies according to the complexity of the matter.

4. Loss-adjusters must during the investigation of claims which insurers instruct them to carry out, supply their principals with as detailed, accurate and exhaustive particulars as possible of all the factors which make it possible to decide whether the accident gives rise to reimbursement of any loss or injury and what the amount of any such reimbursement will have to be. Nevertheless the final decision as to the amount to be paid rests with the insurer. When this work is described as the 'settlement of accident claims' it must be understood in the light of the facts set out above. A distinction must be drawn between the investigation of the loss which may be carried out by the loss-adjuster and the final decision as to payment of damages which is only taken by the insurer. The injured party cannot apparently bring an action against the loss-adjuster.

5. Before the introduction of the green card system and the setting up of central national bureaux, that is to say before the fifties, loss-adjusters had an important part to play when accidents occurred abroad. Indeed if a national and a foreign motor vehicle were involved in an accident in a State a loss-adjuster in that State often found that he was authorized by the foreign insurer to investigate the loss and negotiate a settlement with the injured party. This explains why this kind of business has grown as a result of the increase of tourism.

6. The Van Ameyde company carried on business in Italy for many years before the entry into force of the national law introducing compulsory insurance in respect of motor vehicles against civil liability. During this period it carried on business relating to losses caused by foreign motor vehicles as the agent of insurance undertakings in countries outside Italy authorized to handle and settle claims for loss or injury caused in Italy by foreign vehicles which these undertakings had insured.

7. Since the entry into force in Italy of the law on compulsory insurance in respect of motor vehicles against civil liability the UCI has availed itself of this law to lay down that foreign insurance undertakings may not henceforth nominate a loss-adjuster to handle and investigate losses caused in Italy by vehicles insured by them.

The green card system and the central bureaux

8. Before the green card system was introduced and central bureaux were set up the foreign tourist involved in an accident often ran the risk of having his car impounded as security for settlement of the loss. In Member States in which insurance against civil liability in respect of motor vehicles was compulsory the foreign tourist often had to take out insurance (called frontier insurance) in the country which he visited with an insurer established in that country.

9. This situation was an obvious impediment to freedom of movement and to tourism.

10. The first attempt to remedy this situation was made in 1934. The International Institute for the Unification of Private Law drew up a draft international convention at the League of Nations. Owing to the world war the draft came to nothing and at the end of the war it foundered on the fundamental differences between the laws relating to civil liability of the various States.

11. During the meeting in Geneva on 25 January 1949 the Road Transport Subcommittee of the UN Economic Commission for Europe issued Recommendation No 5 for submission to countries in which insurance against civil liability in respect of motor vehicles was compulsory inviting all the governments to call upon their domestic insurers specializing in this field to enter into agreements in accordance with the general principles laid down beforehand in order to enable drivers going to other countries to satisfy the specific requirements of the laws applying to insurance in those countries.

12. The guiding principles underlying these agreements were the following:

(a) The setting up in each country of an appropriate central body, recognized by the respective Governments and called the National Insurance Office or Central Bureau, comprising all or most of the undertakings concerned with compulsory insurance against civil liability in respect of motor vehicles carrying on business in each country.

(b) The issue by the bureau to insurers who are members of uniform national insurance documents, which guarantee compensation for damage caused in foreign countries and the issue of these documents to the various insured.

13. The aforementioned recommendation also provided that countries such as Italy which did not have a system of compulsory insurance might set up a national insurance bureau.

14. As a result of a British initiative a group of European insurers met in London to look more closely at the whole question of implementing Recommendation No 5 and in 1952, formulated the Uniform Agreement between Bureaux or the London Convention which was uniformly adopted by each of the national insurers' bureaux. The wording of this uniform agreement and the form of the uniform international certificate of insurance were approved by the Organization for European Economic Cooperation and the system, which is known as the green card system after the colour of the certificate, came into force in 1953.

15. Shortly afterwards the Italian insurers acceded to the 'London Convention' even though the system of compulsory motor vehicle insurance was not in force in Italy, with the result that the international certificate of insurance during this initial period merely certified that the user of the motor vehicle registered abroad was covered by the insurer's guarantee. The Italian bureau, namely the UCI, for its part confined its activity to investigations and expert reports with a view to a possible settlement subject to the approval of the foreign insurer concerned with the accident. At that time the UCI was not responsible for the settlement of accident claims. It merely acted as the authorized agent of foreign insurers for the purpose of investigating accident claims. As before the foreign insurer remained liable. Thus the foreign insurer could appoint a loss-adjuster as his agent instead of making use of the services of the UCI.

16. During this period (from 1953 to 1970) the UCI did not object and could not have objected to a foreign insurer appointing a loss-adjuster as his agent instead of using the services of a member

of the UCI. Since a direct link was created between the foreign insurer and the Italian who had suffered loss or injury, and since the foreign insurer was entirely responsible for settling accident claims, the latter was completely free to entrust the settlement in whole or in part to whatever body he wished.

17. The aim of the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles signed by fifteen countries including Italy at Strasbourg on 20 April 1959 was to ensure that compensation is paid for loss or injury suffered as a result of the use of vehicles registered abroad.

18. Article 2 (2) of Annex I to the abovementioned Convention adopts unreservedly the green card system and provides that foreign vehicles may be driven on the territory of the host country on condition that a bureau, recognized for this purpose by the government of that country, assumes direct responsibility for compensating, in accordance with municipal law, injured parties for damage caused by such vehicles.

19. By Law No 990 of 24 December 1969 Italy fulfilled its international obligation which it entered into when it signed the Strasbourg Convention and adopted the system of compulsory insurance against civil liability in respect of motor vehicles. Article 6 of this Law governs the insurance of motor vehicles registered abroad by expressly providing that

'motor vehicles and waterborne craft ... registered or listed in foreign States, which at the material time are being driven in the territory or in the territorial waters of the Republic, shall, for the period of stay in Italy, be covered by an insurance policy within the meaning of the present law and in accordance with the procedure laid down by the implementing regulation. The obligation to be insured shall, nevertheless, be deemed to have been discharged if the driver is in possession of an international certificate of insurance by the appropriate body constituted abroad which testifies to the existence of an insurance for civil liablility for damage caused by the motor vehicle or craft, provided that the certificate is recognized by a corresponding body constituted in Italy which the insured uses as his address for service and which, under the terms and conditions laid down by the present Law, assumes responsibility for settling claims in respect of damage caused in the territory or the territorial waters of the Republic, guarantees payment thereof to those entitled, and is recognized for this purpose by the Ministry for Industry, Trade and Craft Trades.'

20. Pursuant to Article 6 of Law No 990 of 1969 the Minister for Industry promulgated the Decree of 26 May 1971 which recognizes l'Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale S.r.l. having its registered office in Milan as the 'body constituted in Italy'.

21. In each country in which the green card system is in force a motorist can obtain from his insurer this card which is issued by the national bureau (the Paying Bureau) and which certifies that he is covered by compulsory insurance. With this card a motorist can travel to another Member State where the system is in force without having to take out another insurance policy and without its being necessary for the company with which he is insured to have a branch office in that State. If the motorist has an accident in the State which he is visiting his vehicle will not be impounded and he will not be detained for the purpose of guaranteeing payment of any damages since the person suffering loss or injury as a result of the accident will be able, according to domestic law, to take direct action against the national bureau which is called the 'Handling Bureau'.

22. Under the bilateral agreement between the Handling and the Paying Bureau the latter undertakes to repay the Handling Bureau the sums which it has paid out and the expenses which it has incurred and in addition pays it a commission equal to 15 % of the sums paid out.

23. The system is based both on this network of bilateral agreements and also on the domestic law of the country where the accident occurred, which acknowledges that its national bureau has undertaken to pay for the damage caused by foreign drivers in possession of a green card.

24. Thus the part played by the UCI changed after compulsory insurance had been introduced. Instead of merely being the agent of the insurers of foreign motor vehicles the UCI had, pursuant to its domestic law, to assume direct liability for every accident in Italy caused by a foreign motor vehicle, the driver of which was in possession of a green card.

25. According to the Uniform Agreement between Bureaux, the UCI as a Handling Bureau simply has the option of incorporating in its bilateral agreements Clause 4 which has been drafted as follows:

'(a) .....

(b) A Member of the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims to a nominated correspondent, who may be one of the following:

(i) a Member of the Handling Bureau;

(ii) an organization established in the country of the Handling Bureau for the purpose of transacting insurance, whether motor insurance or some other class of insurance;

(iii) an organization established in the country of the Handling Bureau and specializing in the handling of claims on behalf of Insurers.

If the Handling Bureau approves the request, it thereby gives authority to the nominated correspondent to handle and settle claims. The request for this authority is made to the Handling Bureau by the Paying Bureau, which then becomes responsible for the fulfilment of the following undertakings.

In requesting the approval of a nominated correspondent, the Member of the Paying Bureau undertakes:

— to entrust the handling of all claims to the said correspondent;

— to forward to the said correspondent all notifications relating to such claims and to leave to the said correspondent the handling and settlement of such claims.

The Handling Bureau for its part undertakes to forward to the correspondent all notifications which they receive from the Insured as well as all claims received from third parties and to inform the third parties of the authority given to the correspondent.

The nominated correspondent becomes responsible to the Handling Bureau, as the duly authorized agent of the said Bureau, for the handling of such claims. In so doing, the correspondent will take into account any directions, whether general or specific received from the Handling Bureau.

Exceptionally, if so requested, the Handling Bureau may give the same authority as described above to a nominated correspondent to handle a specific claim, notwithstanding that such correspondent has received no general authority.

At any time, and without being required to give a reason, the Handling Bureau may take over the handling of a particular claim from the nominated correspondent or may revoke the correspondent's general authority.

(c) If in the country of the Handling Bureau, the transaction of insurance

is solely through a State Insurance Organization, the Handling Bureau will, if requested by a Paying Bureau or a Member of a Paying Bureau either in respect of a particular claim or in respect of claims in general, leave the handling and settlement of such claim or claims to an independent claims handling organization established by the Handling Bureau for the purpose or, if there be no such organization, to a duly qualified person in the country of the Handling Bureau nominated by the Member of the Paying Bureau for the purpose.

(d) In all these cases the Member will, by taking over the settlement of claims, undertake to the Handling Bureau to settle such claims in full compliance with the requirements of the insurance law of that country, and the Paying Bureau will be responsible for the fulfilment of this undertaking.'

26. Only four of the bureaux set up in the Member States have agreed to incorporate the whole of this clause in their bilateral agreements.

27. If the UCI had adopted this clause and, on the request of foreign insurers, entrusted the applicant with the settlement of accident claims, the Italian bureau would under domestic law always have been held liable to the injured person. The loss-adjuster would have been the authorized agent of the UCI which could at any time have determined the agency. But the UCI only incorporated paragraph (b) (i) of the clause in question in its agreements.

28. The plaintiff in the main action claims that from that time it was no longer able to carry on its business in Italy. In fact the settlement of accident claims has always been carried out by the members of the Italian bureau (who were themselves free to have recourse to a loss-adjuster).

29. For the purpose of further facilitating the use of motor vehicles in the Community Council Directive No 72/166/EEC of 24 April 1972 (OJ English Special Edition, 1972 (II), p. 360) required frontier checks on insurance in respect of vehicles normally based in one Member State and entering the territory of another Member State to be discontinued.

30. For this purpose the directive advocates an agreement between the national insurers' bureaux guaranteeing reimbursement for any loss or injury caused by a motor vehicle normally based in the territory of another Member State even if such a vehicle is not insured. And, since frontier insurance checks obviously cannot be discontinued if there are one or more Member States in which insurance against civil liability in respect of motor vehicles is not compulsory, it provides for the general application of this insurance.

31. The agreement contemplated was entered into on 12 December 1973 (OJ L 87 of 30. 3. 1974, p. 15). It is supplemental to the Uniform Agreement between Bureaux and is called 'Supplementary Agreement between National Bureaux'. The main provision of that agreement is that if a vehicle normally based in a Member State is being driven in another Member State, the user of that vehicle shall be deemed to be insured within the meaning of the agreement even if in fact he is not. It follows from this that the UCI is responsible for settling any claim for loss or injury in Italy caused by a motor vehicle of another Member State even if the driver is not insured.

32. The Commission in its Recommendation No 73/185 of 15 May 1973 (OJ L 194 of 16. 8. 1973, p. 13) recited that the six national insurers' bureaux of the original Member States concluded an agreement on 16 October 1972 in accordance with the principles of the Council Directive and asked each original Member State to refrain with

effect from 1 July 1973 from making checks at the frontier on insurance against civil liability in respect of the use of vehicles which are normally based in the European territory of another Member State. Subsequently the Commission in its Decision No 74/166 of 6 February 1974 (OJ L 87 of 30. 3. 1974, p. 13) recited that the national insurers' bureaux of all the Member States had concluded the agreement of 12 December 1973 which has already been mentioned and fixed 15 May 1974 as the date from which the checks in question were to be eliminated.

33. There exist two other Community measures which concern the green card system but which are not relevant to the present case: Commission Decision No 74/167/EEC (OJ L 87 of 30. 3. 1974, p. 14) and the Commission Recommendation No 74/165/EEC of 10 February 1974 (OJ L 87 of 30. 3. 1974, p. 12).

34. On 22 July 1975 the 'Motor Insurers Bureau' acting on its own behalf and on behalf of all the bureaux of the Community informed the Commission on the form known as A/B of the content of the Uniform Agreement between Bureaux and the Supplementary Agreement in order to request a negative clearance or exemption.

35. On 15 January 1975 the plaintiff in the main action lodged, pursuant to Article 3 (2) (b) of Regulation No 17/62 of the Council, a complaint with the Commission against the conduct of the UCI seeking the finding of an infringement of Articles 85 and 86 of the EEC Treaty consisting essentially in the fact that:

- the UCI hat not accepted optional clause 4 (b) (iii) of the Uniform Agreement between Bureaux and had excluded loss-adjusters from settling accident claims under the green card system;
- the UCI reserved the right to refuse or to revoke at any time without the need to justify its decision the appointment of the plaintiff sought by foreign insurers for the settlement of accident claims in the category referred to above.

36. In dealing with this application the Commission formally opened an investigation which has not yet been concluded.

37. At the same time as it lodged the complaint before the Commission the plaintiff in the main action asked the Tribunale Civile e Penale di Milano to declare that the claim made by the UCI to the effect that it could entrust the investigation and settlement of accident claims exclusively to those insurance companies which are the members of the defendant institute is illegal and consequently to declare illegal any action by the UCI in respect of third parties which tends to restrict the plaintiff's freedom of action and to deprive it of business.

38. By order of 29 April 1976 the Tribunale of Milan referred the following questions to the Court of Justice for a preliminary ruling:

'1. Are Council Directive No 72/166/EEC (OJ English Special Edition, 1972 (II), p. 360), Commission Recommendation No 73/185/EEC (OJ L 194, p. 13) and Commission Decision No 74/166/EEC (OJ L 87, p. 13) to be interpreted as authorizing provisions of national law, agreements, decisions and practices agreed between the national insurers' bureaux, or action by an individual national bureau or of the undertakings affiliated thereto which have as their object or effect the restriction or elimination of competition from undertakings whose business is confined to the settlement of claims in respect of accidents caused by vehicles from another country, such business being wholly reserved to insurance undertakings which are members of the said national bureau?

2. Whatever the answer to Question 1, do Articles 85, 86 and 90 of the EEC

Treaty prohibit any provision of national law, any agreement between bureaux or any decision, concerted practice or action which tends to reserve exclusively to the insurance undertakings which belong to the national bureau the settlement of claims in respect of damage arising out of the use of foreign vehicles, to the exclusion of undertakings engaged solely in the business of settlement and which are not members of the bureau, even though they may have been nominated by the insurers of the vehicle causing damage who are based in its country of origin?

3. Whatever the answer to Question 1, do the principle of non-discrimination (Article 7 of the Treaty), the provisions concerning the right of establishment (Article 52 *et seq.* of the Treaty) and the freedom to provide services (Article 59 of the Treaty) prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a Member State the effective exercise and the carrying on of the business of the settlement of claims by an undertaking established in the territory of the said Member State, even if the provision or the action is the work of a national insurers' bureau within the meaning of the definition given in Directive No 72/166/EEC?
4. If the answer to Question 1 is in the affirmative, are the Community measures therein mentioned to be regarded as lawful when considered from the standpoint of conformity with Articles 7, 52, 59, 85, 86 and 90 of the EEC Treaty and of any other consideration which might vitiate them, including want of a statement of reasons and of observance of essential procedural requirements?'

Procedure

The order for reference was received at the Court of Justice on 27 September 1976. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on behalf of the Ufficio Henry Van Ameyde S.r.l., on behalf of the S.r.l. UCI, on behalf of the Italian Government, on behalf of the Belgian Government and on behalf of the Commission of the European Communities.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the parties to the main action and the Commission were asked to supply further particulars.

Summary of the written observations

Observations of Van Ameyde

With regard to the facts Van Ameyde states that the fixed intention of the UCI, to exclude loss-adjusters from the entire business of handling and settling claims in respect of accidents caused by foreign vehicles, has been formally asserted in official actions and decisions. The UCI will also not accept the intervention of such undertakings in the formal capacity of agents of insurance undertakings which are members of the UCI.

The practical consequences for Van Ameyde are the complete closure of the Italian market on which it is no longer able to carry out the business for which it exists.

Van Ameyde emphasizes that the liability assumed by the national bureau in law is not borne by it economically; the legal personality of the national insurance bureau is purely in the nature of an instrument and merely serves as a cover for the member undertakings; the business of settlement of claims can be distinguished from that of insurance.

The object of the green card system is to facilitate the compensation of accident

victims by means of a system in which all liability falls on one body.

However the liability of the national central bureau is purely instrumental in nature and is merely notional. Whenever the liability is incurred the consequent economic risk is in fact passed on to another body by means of a system of automatic recourse elsewhere. The national insurers' bureau of the State in which the accident occurred is obliged to compensate the victim who may apply direct to that bureau. However the latter bureau has a right against the foreign insurer or, if the foreign insurer does not make the payment, against the national insurance bureau of the country where the vehicle which caused the damage is normally based, that bureau having issued the green card.

Thus whether or not there exists a valid green card liability always falls in the final analysis on the foreign insurer of the person who caused the damage with a subsidiary guarantee given by the national bureau of that insurer if the foreign insurer does not make payment save in the residual case in which there is no insurance at all; there, however, liability is borne by yet another body, the national bureau of the State where the vehicle which caused the damage is normally based.

Therefore there exists absolutely no risk that the Handling Bureau may suffer loss by reason of compensation granted to victims. It is therefore clear that the party which is genuinely concerned with regard to the means and the amount of the compensation paid to the victims is not the Handling Bureau but another body, namely the foreign insurer or possibly its national insurers' bureau.

From an economic standpoint the UCI is not a distinct economic entity in addition to or in substitution for undertakings which are possibly capable of carrying out the business of handling and settling accident claims but it is merely the instrument whereby each of those untertakings (that is to say the insurance undertakings) keep such business for themselves and unjustifiably exclude everyone else.

The UCI is also the instrument used to share out between the national insurance undertakings (and more specifically between the largest of them) the domestic Italian market in the provision of the services of handling and settling claims in respect of accidents caused by foreign vehicles. As it is only the largest Italian insurance undertakings which have their own bureaux which specialize in the handling and settling of accident claims it is to them and to them alone that the handling and settlement of the accident claims in question are finally reserved under the cover of the UCI.

The market in the settlement of accident claims under the green card system is a market which is distinct from and separable from insurance business in the strict sense of the term.

With regard to the sector of accident claims which are purely national, only the largest of the Italian insurance undertakings dealing in insurance against civil liability in respect of motor vehicles have their own department for handling and settling accident claims. Smaller undertakings on the other hand normally do not have such a department and consequently have to rely on the collaboration of private settlement agencies for the neccessary investigation of cases.

Van Ameyde emphasizes the illogicality of a situation whereby the independent business of settling and handling accident claims is perfectly permissible when it relates to purely domestic claims but is prohibited when it concerns accident claims caused in Italy by foreign vehicles.

The first question

The Uniform Agreement between Bureaux is in no way the object of an

express reference or of an assessment in the Community measures referred to in this question and consequently the link existing between the Supplementary Agreements and the Uniform Agreement solely allows of the deduction that the common guiding principles of this system of agreements are recognized in a general way and not that specific approval of the various clauses of the different agreements was given. The fact that the Community measures do no more than state that the agreements are in conformity with the principles expressed in the directive is moreover confirmed by the actual text of the recommendation and by that of the decision.

The following factors must be taken into consideration: the achievement of the objectives set out in the directive requires as the sole decisive condition the guarantee by the national bureau of certain accident claims and a simple guarantee is not by nature inseparable from the business of handling and settling accident claims; further the legal obligation to give a guarantee assumed by the national insurers' bureau does not entail an economic risk for that bureau which would justify its being allowed to exclude at its discretion a whole category of undertakings prepared to carry out settlements; further the business of handling and settling accident claims can be distinguished from the business of insurance in that it is not necessary in fact to be an insurer to carry out the handling and settlement of claims. Taking all those factors into account the statement contained in the recommendation and in the decision confirming the existence of agreements provided for by the directive does not allow of the conclusion that the establishment of a single national guarantor necessarily implies a restriction of the business of settling claims in respect of accidents caused by foreign vehicles to the exclusion of companies and bureaux which only carry out such settlements to the benefit of insurance undertakings which are members of the national guarantor.

The Community measures in question cannot be interpreted as giving official recognition to the agreements, decisions and conduct of the national insurers' bureaux which restrict competition in the sector dealing with the settlement of accident claims. It is not possible to maintain that the said Community measures authorize or require the adoption of national legislative provisions which have the object or effect of restricting or eliminating competition in the sector dealing with the settlement of accident claims.

The second question

Article 85 of the EEC Treaty prohibits restrictive agreements and similar measures not only in the sphere of industrial and commercial activities in the strict sense of the term but also in the sphere of the provision of services in general and in particular in the sphere of insurance and allied business.

One of the essential elements of freedom of competition is the freedom for each undertaking to choose its associates freely; in principle it is consequently, essential for the freedom of competition within the Common Market that an undertaking established in any one Member State may in choosing an assistant in other Member States exercise this choice without let or hindrance. Agreements between two or more national associations or organizations of undertakings whereby the members of one contracting national association or organization renounce their right to appoint their associates in another Member State of the EEC and at the same time assign this right to the corresponding association or organization in that State with the result that only the latter body possesses the exclusive right to act on their behalf in a quite discretionary manner either directly or by appointing one of its own members

consequently constitutes an agreement between undertakings which restricts competition in violation of the prohibition laid down by Article 85 (1) of the EEC Treaty.

In this regard van Ameyde cites Commission Decision of 16 December 1971 concerning the *Vereniging van Cementhandelaren* (JO L 13 of 17. 1. 1972) and Commission Decision of 23 December 1971 concerning the *Nederlandse Cement-Handelmaatschappij* (JO L 22 of 26. 1. 1972).

Such an agreement has the object and effect of restricting competition between foreign insurers of vehicles involved in accidents in Italy since the greater or lesser efficacy of the service obtained following the choice of one rather than another of the possible associates contributes to the formation of the public image and consequently exerts an influence on the competitive ability of the undertakings which are members of the said organization.

There also exists a restriction of competition by reason of the agreement at the level of associates operation on the national market and who could have been appointed by foreign undertakings which were parties to the agreement through their national organization.

Such an agreement alters the homogeneous structure of the common market by isolating each national market in the particular sector of services offered by an associate undertaking. For associate undertakings the effect of the agreement constitutes a virtual boycott of a whole category of bodies which however are perfectly capable of carrying out the services which might be entrusted to them.

Van Ameyde concludes that the provisions of the Uniform Agreement between Bureaux, in particular Articles 4 (b) (the optional clause), 6 and 7 constitute an agreement or in any event clauses of an agreement which restrict competition within the Common Market and which are consequently prohibited by Article 85 (1) of the EEC Treaty.

(a) in that the agreement declares to be purely optional the clause which permits a foreign insurer to nominate the correspondent of his choice and in whom he has confidence for the settlement of claims for damage arising in the country where the accident occurred;

(b) in that even where that optional clause was accepted it has the effect of leaving to the absolute arbitrary discretion of each national insurers' bureau, acting as the Handling Bureau, the decision whether or not to accept the nomination of correspondents to be made by an insurer who was a member of another national bureau;

(c) in that even when the optional clause was accepted and where the Handling Bureau accepted the requested nomination from the foreign insurer concerned nevertheless it leaves to the absolute arbitrary discretion of the Handling Bureau the possibility of revoking at any time the nomination of a correspondent by the foreign insurer concerned;

(d) in that the Handling Bureau is completely free to determine the manner in which the handling and settlement of accident claims shall be carried out on behalf of the foreign insurer concerned including the possibility of requiring the nomination of one of its members as correspondent in spite of any contrary indication from the foreign insurer;

(e) in that in any event the agreement creates discrimination between undertakings which may be nominated by the foreign insurer, that is to say between the dependent organizations of foreign insurance undertakings which are capable of providing motor insurance in the country of the Handling Bureau and the undertakings which only carry

out settlements. If the foreign insurer nominates a dependent organization such appointment binds the Handling Bureau whereas if a loss-adjuster is nominated the Handling Bureau has a discretionary power to accept or reject the nomination.

The belated notification of these agreements to the Commission in application of Regulation No 17/62 confirms that the Agreement between Bureaux infringes the prohibition laid down by Article 85 (1).

As there can be no doubt that the national insurers' bureau within the meaning of the directive and the agreements between bureaux is an association of insurance undertakings Van Ameyde considers that the following decisions are decisions prohibited by Article 85 (1) of the EEC Treaty:

(1) The decision of the Italian national bureau not to adopt the optional clause in Article 4 (b) of the Uniform Agreement between Bureaux;
(2) The decision of the Council of Administration of the UCI in no way to comply with the nomination by foreign insurers as agent for settlement of their accident claims of an undertaking which solely carries out settlements;
(3) The decision of the Council of Administration of the UCI in no way to permit loss-adjusters to do the business of handling and settlement of accident claims even acting as delegated agents for Italian insurance undertakings formally nominated to handle and settle accident claims.

The illegality of such decisions has been affirmed on a number of occasions by the Commission and by the Court of Justice.

On a correct interpretation of Article 85 (1) of the EEC Treaty national legislative provisions which give the status of mandatory internal provisions to agreements or decisions which are unlawful by virtue of Community law are not permitted. In any event the system established by the EEC Treaty requires the national authorities of the Member States to interpret and apply their national rules in such a way that they should be compatible with Community measures rather than in a manner which would make them conflict with such measures.

Article 86 of the EEC Treaty

From a geographical point of view it is clear that Italy where the conduct of the UCI takes effect does constitute a 'substantial part' of the common market.

The UCI and the insurance undertakings affiliated to it occupy a dominant position. The fact that the dominant position is derived from or at least was recognized by national legislative provisions is of no relevance (cf. *General Motors Continental* v *Commission* [1975] ECR 1367).

Acting through their national bureau the Italian insurance undertakings were abusing their dominant position on the market. Having acquired a dominant position on the particular market of the settlement of accident claims under the green card system with a systematic boycott of loss-adjusters they are exploiting that dominant position to exclude possible competitors in order to share that market amongst, themselves. (cf. *ICI and CSC* v *Commission* [1974] ECR 224).

Loss-adjusters are quite capable of carrying out the service of handling and settling international accident claims and it appears that the conduct of the UCI, which is discriminatory and favours those insurance undertakings affiliated to it, is of an abusive nature analogous to that which was criticized in the *GEMA* case (JO L 134 of 20. 6. 1971).

Van Ameyde also takes the view that the UCI abuses its dominant position by

'imposing directly or indirectly unfair business conditions'. The concept of unfair conditions is also appropriate to cover the system whereby the UCI may impose on a foreign insurer the collaboration as correspondent of one of its members who was not nominated by the foreign insurer and without the foreign insurer's being able to refuse the services of that correspondent.

Article 90 of the EEC Treaty

An exemption from compliance with the rules of the EEC Treaty on competition can only exist in so far as the provisions of Article 90 (2) are held to be applicable to the facts in the present instance.

The allotment to the UCI of the function of guarantor for the compensation for damage caused by foreign vehicles does not make the UCI an undertaking entrusted with a service of general economic interest because the mere function of guarantor does not in itself entail engaging in important activities which can be regarded as business activities.

If that function were to be considered as a service covered by the concept contained in Article 90 (2) the restriction of the applicability of the rules relating to competition laid down by the Treaty could only relate to the provision of the service of guaranteeing compensation for damages without however extending to the provision of other related but distinct services such as the service of the handling and settlement of accident claims. The exemption from compliance with the rules on competition only applies in cases where 'the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks' assigned to the undertaking. The completion of the appointed tasks of the UCI does not require restriction of competition by the elimination of a whole category of possible competitors from the undertakings which are able to provide the auxiliary services of handling and settlement of accident claims.

The third question

Article 7 of the EEC Treaty

If account is taken of the inter-relationship between Article 7 on the one hand and Articles 52 and 59 on the other it is clear that an infringement of the latter provisions constitutes at the same time an infringement of Article 7.

Article 52 of the EEC Treaty

Articles 52 and 59 contribute to the achievement of a fundamental objective of the Common Market namely the removal of obstacles to the existence of a single Community market in the sphere of the freedom of movement of persons and the freedom to provide services. If in the present instance Articles 52 and 59 were interpreted as authorizing national provisions, agreements, decisions or conduct such as those on which the UCI bases its measures the result would be an isolation of the national Italian market in the particular sector of the auxiliary services in question.

The restrictions prohibited by Article 52 relate not only to the right of establishment from the point of view of the theoretical possibility of access but also to other indirect restrictions which create discrimination between nationals and foreigners who benefit from the right of establishment by depriving the latter of the exercise of that right although that right has been formally guaranteed for foreigners.

Nevertheless Italian loss-adjusters can indeed stay in the market carrying on their normal business in the sector of national accident claims but for foreign loss-adjusters or subsidiaries of foreign groups the possibility is purely theoretical with regard to exclusively national accident claims and is excluded with regard to claims in respect of accidents caused by foreign vehicles.

No purpose would be served by granting in the abstract the right to foreign loss-adjusters to establish subsidiaries in Italy if their normal business were subsequently in practice obstructed or reduced to nothing.

Article 59 of the EEC Treaty

The alleged restrictions also infringe the provisions of Article 59 in that they introduce discrimination between Italian loss-adjusters and foreign loss-adjusters by reason of the fact that the former may freely carry on their normal business in Italy on appointment by Italian insurance undertakings while for foreign loss-adjusters or for their Italian subsidiaries the possibility of carrying on their normal business on appointment by foreign insurance undertakings is excluded.

The restrictions introduce discrimination between the persons receiving the services of the loss-adjuster by reason of the fact that Italian insurance undertakings have freedom of choice of their correspondents while that freedom does not exist to the same extent for foreign insurance undertakings which are obliged to have recourse to auxiliary services of insurance undertakings which are members of the UCI.

Having regard to the freedom to provide services the present case also raises a problem concerning the compatibility of the conduct of the UCI with Article 62 of the EEC Treaty. In effect there exist new restrictions on the freedom to provide services which had in fact been attained at the date of the entry into force of the EEC Treaty.

The rules in the Treaty relating to the freedom to provide services and in particular the prohibition contained in Article 62 limit the exception contained in Article 90 (2). The extent to which a Member State may impose new restrictions in comparison with the degree of the freedom to provide services which had previously been achieved must be deduced from Article 55 of the Treaty which is of application here by virtue of the reference set out in Article 66 and which concerns activities which, in that State, are connected, even occasionally, with the exercise of official authority. Consequently the right given to each State to establish, by virtue of Article 90 (2), new monopolies or privileged situations which restrict or remove an earlier system giving freedom to provide services can only be operated within the limits in which it may be accepted that the monopolized services have a sufficiently close link with the exercise of official authority.

The fourth question

If the Court answers the first question relating to interpretation in the affirmative van Ameyde argues that the Community measures in question are not valid.

It believes that this is so as regards Council Directive No 72/166/EEC of 14 April 1972 for the following reasons:

- the complete absence of reasons with regard to the business of the mere handling and settling of accident claims which activities are simply accessory to and unconnected with the object of the directive itself;
- misuse of power with regard to the declared aim which consists in the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and in the enforcement of the obligation to insure against such liability;
- infringement of Articles 7, 52 *et seq.*, 85, 86 and 90 of the EEC Treaty;
- infringement of essential procedural requirements in that the directive itself refers only to Article 100 of the EEC Treaty as its legal basis.

The same applies to the Commission Decision No 74/166/EEC of 6 February 1974 and Commission Recommendation

No 73/183/EEC of 15 May 1973 if the legality of the latter recommendation may form the subject of an examination in the context of the present proceedings.

Van Ameyde proposes the following answers to the questions referred for preliminary ruling:

(1) Council Directive No 72/166/EEC, Commission Recommendation No 73/185/EEC and Commission Decision No 74/166/EEC do not authorize provisions of national law, agreements, decisions and practices agreed between the national insurers' bureaux or action by an individual national bureau or of the undertakings affiliated thereto which have as their object and effect the restriction or elimination of competition from undertakings whose business is confined to the settlement of claims in respect of accidents caused by vehicles from another country, such business being wholly reserved to insurance undertakings which are members of the said national bureau;

(2) Articles 85, 86 and 90 of the EEC Treaty prohibit any provision of national law, any agreement between bureaux or any decision, concerted practice or action which tends to reserve exclusively to the insurance undertakings which belong to the national bureau the work of settling claims in respect of damage arising out of the use of foreign vehicles, to the exclusion of undertakings engaged solely in the business of settlement and which are not members of the bureau, even though they may have been nominated by the insurers of the vehicle causing the damage who are based in its country of origin;

(3) The principle of non-discrimination (Article 7 of the Treaty), the provisions concerning the right of establishment (Article 52 *et seq.* of the Treaty) and the freedom to provide services (Article 59 of the Treaty) prohibit any provision of national law or any action the effect of which is directly of indirectly to obstruct in a Member State the effective exercise and carrying on of the business of the settlement of claims by an undertaking established in the territory of the said Member State, even if the provision or the action is the work of a national insurers' bureau within the meaning of the definition given in Directive No 72/166/EEC.

If the answer to Question 1 is in the affirmative:

(4) The Community measures therein mentioned are to be regarded as unlawful for infringement of Articles 7, 52, *et seq.*, 59, 85, 86 and 90 of the EEC Treaty and for the want of a statement of reasons, misuse of power and failure to observe essential procedural requirements.

Observations of the Ufficio Centrale Italiano

With regard to the facts of the case the UCI emphasizes two aspects of the green card system:

(a) The request to have a case entrusted to one of the bodies referred to in the optional clause must be made by the Paying Bureau and must be approved by the Handling Bureau because the bureaux remain solely liable to injured persons for the complete satisfaction of the liabilities on the foreign insurer of the motorist concerned and the organization entrusted with the case in the country where the accident occurred respectively.

(b) The optional clause envisages all the hypotheses of the choice of bodies which carry out not only the investigation of accidents but also the payment of damages in anticipation of the necessary funds. These two activities really constitute the handling and settlement of claims. Indeed Article 4 (b) of the Agreement

makes reference to 'leave the handling and settlement of claims to a nominated correspondent . . .'.

The agreement is intended to guarantee the good faith of the bodies to which the functions of the Handling Bureau are entrusted but for which the Handling Bureau remains responsible. That explains why the Handling Bureau must always signify its consent to the nomination of the correspondent designated by the Paying Bureau which nomination it may also reject.

The normal business of a loss-adjuster covers solely the investigation of cases. This business is unrestricted both in Italy and the other countries which do not accept the optional clause in its entirety but which only accept the first two points. Undertakings which issue insurance against civil liability for motor vehicles in Italy normally rely for statements, expert opinions and investigations of accident claims on loss-adjusters both for national accident claims involving more than Lit 5 000 000 and for the approximately 30 000 accident claims under the green card system, around 10 000 of which are notified to the UCI.

The business of settling and paying damages, that is to say the essential business of settlement of claims is however not the true function of loss-adjusters. The option provided by Article 4 of admitting loss-adjusters as agents for the completion of such tasks in addition to investigation while the bureau retains responsibility, is to be explained by the differences which may exist with regard to the position of loss-adjusters in various States whether from the point of view of the legal form of such an underaking or from the point of view of the State controls guaranteeing its solvency or from the point of view of financial provisions.

Furthermore by virtue of the optional clause the bureau could also refuse to accept the nomination of one of the insurance undertakings affiliated to it with the result that it is difficult to see where there is distortion of competition as, on the contrary, there is complete equality between insurers and private bureaux. Moreover in the same way as all the other bureaux the UCI is quite entitled to settle the damages itself. If it does not do so it has the right to choose freely its agents for whom it remains responsible.

If the bureaux of the nine Member States were really to be obliged to renounce against their will the guarantees given by them to their respective governments the inevitable consequence for the Member States of the EEC would be that they would have to re-establish frontier controls on insurance for the users of motor vehicles registered in the other Member States. The free movement of motor vehicles within the territory of the Community would be irrevocably destroyed.

The contention of Van Ameyde would have the effect of re-establishing the system which was applicable before the introduction of compulsory insurance, that is to say the system which was abandoned because of the substantial disadvantage it entailed for victims of accidents and because it was not satisfactory for the Member States. In order to protect the rights of victims the national Handling Bureau was considered as being itself the insurer of the foreign motor vehicle user.

Another negative factor recorded when the system currently sought by Van Ameyde in operation was that the bureau settling damages was dependent on the instructions and on the interests of foreign insurers. If the foreign insurer did not give consent to payment the victim obtained no compensation. As such cases were numerous the system of bureaux was intended to free the victims of accidents from that dependence by giving them the opportunity to rely on a

solvent body subject to governmental control in their own country.

From the entry into force in Italy of the law on compulsory insurance the UCI turned for the completion of the tasks assigned to it by the law to agents whose organization, solvency, control by the State and approved financing gave the UCI reason to think that the social purpose of the law would be best realized by them, that is to say by Italian or foreign insurance undertakings having an establishment in the country, authorized by the competent Italian ministry to provide insurance against civil liability in respect of motor vehicles in Italy.

This position leaves loss-adjusters complete freedom to carry out their activities by means of nominated undertakings in Italy.

The contention of Van Ameyde is that it should be subsituted for the Handling Bureau while the latter bureau would nevertheless always remain legally responsible for Van Ameyde's actions. Van Ameyde would in fact deal with victims as the direct agent of the foreign insurer charged not with the investigation of the case but with settling the claim thus depriving the victims of the guarantee of having a bureau bearing responsibility in their own country a guarantee which is given to them on the other hand by the system of Directive No 72/166/EEC in conjunction with the Italian law and the Agreements between Bureaux.

The opposition of the UCI to that contention is primarily for reasons concerning the interests of the victims because once the investigation has been completed the victim should be paid promptly that is to say the necessary funds must be on hand. If on the other hand not merely investigations but also the settlement and payment of damages are left to the loss-adjusters, quite apart from the other inconveniences which have been referred to above, the victim would have to await the transmission of foreign funds.

The first question

It is quite clear that secondary Community legislative measures cannot give authorization for conduct which has been prohibited.

Equally legislative provisions adopted at a national level pursuant to such secondary Community measures can also not run contrary to the Treaty. The same applies in respect of the Agreement between Bureaux.

It should however be pointed out that none of these measures contains a prohibition or a restriction on a loss-adjuster in the exercise wherever it wishes, on the responsibility of the Handling Bureau or the insurance undertaking nominated to carry out the operations of settlement and payment, of its function as correspondent for expert appraisals and establishment of the facts, activities carried out by Van Ameyde itself in Italy in the sphere of foreign accident claims.

As formulated the question shows a failure to distinguish between the activities of investigation and delegation with regard to payment as the question refers to undertakings 'whose business is confined to the settlement of claims in respect of accidents caused by vehicles from another country' whilst a loss-adjuster is not a person qualified to guarantee payment of compensation.

This explanation also applies with regard to the second question as neither the Community rules, the national rules nor the agreement provides a reservation in favour of exclusively national undertakings.

It would also be appropriate for the Court to clarify in particular the validity of a clause such as Clause 4 (b), that is to say, to declare that its optional character

is reasonable in relation to the authorization to apply checks, the financial provisions, the form of the entity, its organization and adequacy of its assets to indemnify the victims.

An essential principle for the application of the green card system is that the choice of the agent should in the last instance be made by the Handling Bureau, which bears exclusive responsibility while Van Ameyde seeks to undermine this principle by arguing that the agreement is void in that it does not allow a foreign company to choose Van Ameyde nor to insist on the nomination of any undertaking which, by virtue of its position in the country of the Handling Bureau does not have the confidence of that bureau. Consequently when in exercise of the right under the agreement not to subscribe to all the options laid down in Article 4 (b) of the agreement the Italian Ministerial Decree of 26 May 1971 provides that the appointment for carrying out a settlement is to be conferred on an insurer who is a member of the bureau, it is merely adapting to the position of the national legal order that aims of the directive, of the Italian law and of the Agreement between Bureaux which are intended to give practical security to victims of road accidents.

The bureau is financially liable to the victim whilst the undertaking which deals with and handles accident claims is not so liable. It should follow from this premise that the party on whom liability falls has the freedom of choice with regard to the handling of the case which gave rise to its liability. Even if it is felt that the bureaux have conferred upon themselves a monopoly it is self-evident that the application of the first paragraph of Article 86 would prevent the performance of the specific task assigned to them (Article 90 (2)).

Whatever the form of their constitution the bureaux are non-profitmaking. With regard to Article 85 it cannot be said that there is a dominant undertaking. If certain activities of the bureau may be described as monopolistic they are largely compensated for by the guarantee which the bureau is legally required to give in respect of victims while no such guarantee is supplied by or required from private offices of loss-adjusters.

This situation does not allow the bureau and loss-adjusters to be placed on the same footing.

It is therefore not possible to refer to the abuse of a dominant position by reason of the necessary nature of certain conduct. Moreover the alleged dominant position is not capable of affecting trade between Member States since it exists on the plane of the national bureaux in all the States in the interest of injured persons in each State. In this respect the UCI emphasizes that international accident claims only represent 0·56 % of all accident claims in Italy.

Consequently, in the same way as other private bodies which all do business very different from the mere settlement of foreign damages which is the particular business of the bureaux, Van Ameyde has a more extensive sphere of operation. Seen in this light it is even open to doubt whether the bureaux can be regarded as competitors with loss-adjusters.

The third question

The Community legislative measures concerning the adoption of the green card are quite compatible with the provisions of the EEC Treaty and in particular:

— with Article 7 as they introduce no discrimination based on nationality;
— with Article 52 as the establishments in Italy of foreign loss-adjusters have the same rights of access to that restricted profession as Italian loss-adjusters;
— with Article 59 as the service in question is the settlement (in the

sense of settlement and payment as there is no question of the part relating to investigation) of the loss and as the right to provide services for injured persons of Italian nationality is claimed by an Italian subject with the result that it in no way concerns the rules relating to the freedom to provide services.

The fourth question

In view of the reply to the first question this question has lost its object.

Observations of the Republic of Italy

As regards the facts the Republic of Italy observes that the handling of claims in respect of accidents caused by foreign vehicles does not constitute a profit-making business for the national bureaux which they sought to restrict to themselves for that reason but in fact is the burden of an obligation which each national bureau accepted along with the risk and liability entailed as the counterpart of the advantages thereby guaranteed to the insured persons of its own country who go abroad.

The insurance undertakings which are entrusted by the national bureaux with the investigation and settlement of claims in respect of accidents caused by foreign vehicles are always able to rely in their turn on loss-adjusters for the settlement of accident claims subject to the sole condition that the loss-adjusters investigate and settle the accident claims in the name of and on behalf of the insurance undertaking which placed them in their hands and that the documents relating in particular to the statement of compensation payable should bear the heading of the insurance undertaking affiliated to the national Handling Bureau. It is only in this way that the victim is guaranteed the actual payment of the appropriate compensation.

The whole system is based on the functions of public interest fulfilled by the national insurers' bureaux and of the guarantee ensured through them to persons who have been injured by foreign vehicles whilst the bureaux alone bear the burden of the consequent risk, responsibility and obligation to pay compensation.

That exclusive responsibility would be compromised if any undertaking whatsoever could state that it was competent to investigate and settle claims relating to accidents caused by foreign motor vehicles. The Member States would then be obliged to re-establish checks at frontiers on insurance against civil liability for foreign vehicles.

The Italian Government explains that from time to time the victim of an accident applies directly to the foreign insurer, who entrusts a private office with the investigation and settlement of the accident claim.

If the victim is effectively and promptly compensated the national Handling Bureau has no knowledge of the incident although it would have no reason to complain precisely because the handling of accidents caused by foreign vehicles is a burden on it. However from time to time it happens that after having given his assent to the compensation payable to him and after having signed the receipt which in practice is issued before any actual payment has been made a victim in fact waits for a long time without receiving any compensation. In such a case the victim turns to the central bureau. That bureau is clearly obliged to compensate the victim.

In claiming for all loss-adjusters the right to carry out the investigation and settlement of claims in respect of accidents caused by foreign vehicles without assuming any liability towards the victim the plaintiff in the main action contests quite clearly the compatibility with Community law of a system which allowed checks at frontiers

on insurance certificates to be abolished. The plaintiff was led to this radical challenge by the clear impossibility of binding national bureaux in the choice of their own agents.

With regard to the questions referred for preliminary ruling the Italian Government observes that as they are formulated they contain ambiguity as to the very nature of the business of a loss-adjuster. By reason of the subsidiary nature of the business of settlement in comparison with that of insurance such business is in essence appropriate to insurance undertakings and as such cannot properly be carried out by other organizations save in so far as they have been entrusted with such tasks by insurance undertakings.

The business of the mere settlement of accident claims can be carried out quite freely not only as regards claims in respect of accidents caused by national vehicles but also claims in respect of accidents caused by foreign vehicles subject to the sole condition that the work of making the payment to the victim should be carried out in the name of, on behalf of and with a receipt from an insurance undertaking for whose acts the national insurers' bureau must and can in fact be responsible.

The Italian Government considers that the reference to Article 7 of the EEC Treaty is without relevance. The system established or endorsed by Council Directive No 72/166/EEC cannot be judged to be incompatible with Articles 52 and 59 of the EEC Treaty on the grounds that it contains no restriction to the disadvantage of undertakings which, at the request of insurance companies, undertake investigation, settlement and payment of accident claims in respect of motor vehicles. Indeed such undertakings are free to establish themselves in the territory of another Member State and to provide their services there in conditions which are identical to those applicable to similar national undertakings as regards also the business of the settlement of claims in respect of accidents caused by foreign verhicles.

Furthermore the Italian Government emphasizes that the plaintiff in the main action is an Italian undertaking doing business in Italy and is not an undertaking from another Member State in respect of which there could be said to exist restrictions on the freedom of establishment or the freedom to provide services.

Article 85 of the Treaty

In the opinion of the Italian Government trade between Member States is in no way affected by the fact that the handling of claims for accidents caused by foreign vehicles is done by the national insurers' bureaux in the territorial area of each of the Member States.

By reason of its very nature the business of loss-adjusters is subject to their appointment by insurance undertakings. Such undertakings are free to reach agreement on the detailed rules to be complied with in the regulation and definition of their contractual relationship with their insured.

For a problem relating to competition to arise in the present instance it would be necessary that the national insurers' bureaux and the loss-adjusters were operating on the market on the same conditions and that they were in a similar situation with regard to the victims of accidents.

According to the decided cases of the Court of Justice, for an agreement to be found to be prohibited by Article 85 of the EEC Treaty it must 'having regard to what can reasonably be foreseen' constitute an obstacle to competition in a major part of the market that is to say that it must have a 'deleterious' effect on competition, it must affect it 'to an appreciable extent', substantially and not

negligibly. In 1974 for example out of more than 5 million reported accidents only 9 540, 6 817 of which concerned vehicles registered in other Member States, were reported to the Italian national insurers' bureau and for those 6 817 accident claims the investigation and settlement in respect of the accident victims was indeed carried out by private bodies dealing in settlements.

In addition according to the decided cases of the Court of Justice the conditions for the application of the prohibition set out in Article 85 must be examined with reference to the actual context in which the agreement is situated, that is to say by reference to the economic and legislative context within which the agreements are intended to take effect. It follows that there are also important considerations in this respect relating to the auxiliary character, by virtue of its very nature, of the business carried on by loss-adjusters, to the requirements imposed by provisions relating to compulsory insurance against civil liability in respect of motor vehicles and to the objectives of the national and Community rules on the matter.

Such considerations rule out the idea of a prohibited agreement within the meaning of Article 85 of the EEC Treaty. However, even if a different conclusion were reached, the present case, in any event, in the opinion of the Italian Government falls within one of the exceptions provided for by Article 85 (3) of the EEC Treaty in paricular because such an exemption which is necessary *ex hypothesi* is implicity contained in the rules laid down in this respect by the Council and the Commission and because the system has been incorporated in the Community legal order.

The series of contractual rules both at a national and at a Community level which have been adopted in this connexion in fact constitute the necessary and indispendable means of permitting the abolition of checks at the frontier and consequently the achievement of one of the primary objectives of the EEC Treaty.

Similar considerations lead to the exclusion of the idea of the incompatibility of the series of provisions in question with the rights conferred on individuals by Article 86 of the EEC Treaty. In the first case the conduct referred to by Article 86 is only prohibited 'in so far as it may affect trade between Member States'. The decision of the Court in the case of *ICI* v *Commercial Solvents Corporation* ([1974] ECR 223) should be understood in the sense that the application of the prohibition in question requires in each case that commercial relations be affected to a certain extent.

The agreements and rules here at issue are intended especially to give more efficacious protection of consumers and they are intended in paricular to avoid the inconvenience which resulted for consumers from the previous system.

An analytical examination of the decisions of the Court of Justice enables the Italian Government to observe that the rules on competition laid down by the Treaty have always been applied in the context of possible detrimental effects on commercial relations and in any case in connexion with objectives which are not compromised in the present case.

For a dominant position to exist it must once again be possible to show an actual influence 'within the common market or in a substantial part of it' and once again to take account in this respect of the 'economic and legislative context' within which the agreements concluded by the national insurers' bureaux and the provisions governing their activities are intended to take effect.

Even if it were sought to find in the present case an agreement or abuse of a dominant position infringing Articles 85

and 86 of the EEC Treaty it would still be possible to justify the system of national contractual rules and legislation in question by reference to Article 90 (2) of the Treaty. Whatever the legal form given to them the central bureaux can be described as undertakings entrusted with the performance of services of general economic interest particularly in view of the fact that the services provided by them are required by specific national and Community provisions and because the aim of the limited exception laid down by Article 90 (2) which complements the strict prohibition laid down in Article 90 (1) is to safeguard certain fundamental requirements of an economic nature which could be endangered by too severe an application of the rules of the Treaty.

Finally the Italian Government observes that there can also exist no doubt either as to the validity of the secondary Community rules which is being contested in the main action or as to the compatibility with the rules of the EEC Treaty of the agreements which were concluded by the national insurers' bureaux.

Consequently the Italian Government suggests that the Court of Justice should rule that the system established by the Agreements concluded between the national insurers' bureaux and by Council Directive No 72/166/EEC is not contrary to Articles 85 and 86 of the EEC Treaty.

Observations of the Belgian Government

The first question

None of the Community measures in question authorizes the national legislature, the national bureaux and insurers to restrict or suppress competition in the sphere of the settlement of claims for accidents caused by foreign vehicles. The aim of the Community measures is to ensure compensation for damage caused by such vehicles even where no insurer is involved and thus to permit the abolition of checks on insurance at frontiers. None of the Community rules restricts certain insurance activities or activities related to insurance to specific insurers, namely those affiliated to the national bureaux, or to the bureaux themselves.

The second question

The Belgian Government recalls that the Uniform Agreement between Bureaux and the Supplementary Agreements have as their object the simplification and acceleration of the settlement of accident claims through the intervention of the Handling Bureau which 'will handle and settle such claims as if the policy of insurance had been issued by them'.

Furthermore the Uniform Agreement contains provisions which are intended to enable the various national bureaux to fulfil efficaciously their function of general interest entrusted to them in their respective countries.

Foreign insurance companies may indicate to each bureau the correspondents which they wish to have in its country; the bureau is free to accept such a correspondent and to give him authority to handle claims in respect of accidents caused by persons insured with the foreign company but clearly it may refuse to give authority and may handle the accident claim itself or choose another agent. Whilst it is true that there exists no legal provision to prevent the UCI from entrusting the settlement of accident claims to whomsoever it wishes it may be deduced that in refusing to rely on S.r.l. Ufficio Henry van Ameyde and to give it authority the UCI is not acting by virtue of any monopoly which it holds in the sphere of the handling and settlement of certain accident claims but in the normal application of the rules of contractual freedom which are but confirmed by the 'optional' clause of the Uniform Agreement. The conduct of the UCI is

also in conformity with the general principles governing an agency whereby each person is free to choose or not to choose an agent to represent him taking account of the fact that the agent may make his principal liable and that if an agency has been given it is at all times subject to revocation.

The Belgian Government therefore believes that the Uniform Agreement between Bureaux cannot be regarded as void under Community law.

Observations of the Commission

The first question

The Commission argues that the first question referred by the national court should be answered in the negative. It may be stated that the Community measures in question are certainly not to be interpreted either as being intended or as being of such a nature as to authorize parts of the green card system or still less parts of the constitution or conduct of the UCI which are incompatible with the Community rules.

The sole object of the directive was to eliminate the checks on the green card at frontiers between Member States and, to allow the achievement of that objective, it provides on the one hand for an agreement between national insurers' bureaux guaranteeing compensation in respect of any loss or injury caused by the motor vehicles of another Member State whether or not insured and on the other it seeks the generalization of compulsory insurance against civil liability in respect of the use of motor vehicles. If the green card system on which the Community measures are superimposed does contain any elements which are incompatible with Community provisions relating to competition or the freedom of establishment and the freedom to provide services the directive certainly does not confirm or aggravate these factors which are no part of its object and are not necessary for the realization of that object.

The directive merely constitutes a liberalizing factor in the movement of motor vehicles and consequently of persons, goods and services.

The Commission believes that the following answer should be given to the first question referred by the Tribunale di Milano:

Any national provisions or any agreements, decisions or concerted practices between national insurers' bureaux or any conduct by individual national bureaux or undertakings affiliated thereto which have as their object or effect the restriction or elimination of competition excluding in particular from their normal business undertakings whose function it is to carry out on behalf of insurers, who retain the final decision, business consisting solely in the settlement of claims in respect of accidents caused by verhicles which are not normally based in the national territory are not authorized by Council Directive No 72/166/EEC nor Commission Recommendation No 73/185/EEC nor Commission Decision No 74/166/EEC.

The second question

The Italian law requires that the settlement of claims in respect of accidents caused by foreign motor vehicles in its territory shall be carried out on the responsibility of the UCI. It expressly provides for the UCI to authorize insurance companies operating in Italy to undertake the settlement where they are the correspondents of the foreign insurers with whom the insurance against civil liability in respect of motor vehicles was effected.

Thus for a foreign insurer to be able to carry out himself in Italy the operations relating to that particular and contingent part of his service of the settlement of accident claims he must be established in Italy and even if that is the case the UCI remains responsible for settlement to the

persons injured. In an appreciation of the Italian law when it reserves to the national bureau the settlement of claims in respect of accidents caused by motor vehicles insured by foreign insurers the fact must not be overlooked that in the settlement of accident claims it is necessary to protect the interest of the persons injured as well as the interest of the insurer.

By making the UCI alone responsible for settlement to the persons injured and by providing that responsibility remains even if the foreign insurer does have an establishment in Italy the Italian law does not, in the opinion of the Commission, restrict in an unjustifiable way the freedom of, the foreign insurer to operate in Italy for that part of his business which consists in the settlement of the accident claim.

The Commission points out that the Italian law does not oblige the UCI to undertake the settlement on its own and directly or to entrust settlement exclusively to insurers. It merely requires that whosoever carries it out in fact, the settlement must be implemented in such a way that the UCI remains responsible to the persons injured.

The Commission therefore concludes that the Italian law does not affect in an unjustifiable way the freedom of a foreign insurer to nominate a loss-adjuster to carry out the work of settlement which is one of the functions of such an undertaking. Nevertheless it does follow from the Italian law that a loss-adjuster can only operate on the responsibility of the UCI, the association of insurance companies acting through its members.

That system seems to be in conformity with the auxiliary and not indispensable role of the profession of loss-adjuster in comparison with that of insurer.

The Commission believes that both when Clause 4 (b) (iii) of the Uniform Agreement has been included in the agreements between national bureaux and when it has not been so included the agreements in practice leave unaffected the foreign insurer's ability to request the use of a loss-adjuster and the Handling Bureau's ability to rely or not to rely on the services of undertakings of that nature or to allow or not to allow its members to do so. It is for that reason that the Commission believes that neither the Uniform Agreement nor consequently the agreements which reproduce it appear to restrict competition in view of the fact that they do not place any constraint on the freedom of choice of the national bureaux as to the possible nomination of a loss-adjuster in the course of the settlement of the accident claim.

The plaintiff in the main action alleges that in Italy the UCI excludes completely loss-adjusters from the settlement of accident claims under the green card system. It is necessary therefore to determine whether such conduct may infringe the provisions of the Treaty relating to competition.

Article 85

The UCI is not merely an undertaking but also an association of undertakings. Consequently decisions taken by it are decisions by an association of undertakings.

Any conduct by the UCI which seeks to exclude loss-adjusters from the market in accident claims under the green card system which in Italy is by far the greatest part of the business of loss-adjusters in respect of accident claims for motor vehicles is conduct restricting competition.

In practice such conduct has the effect of eliminating any competition which may be created by loss-adjusters for other insurers by the provision of their normal services which they carry out on behalf of the insurers who have nominated

them thereby altering the balance of the market in favour of insurers. From another point of view it deprives those insurers who so wish of the possibility of relying on loss-adjusters in order to carry out the particular operations relating to the insurance services which they can carry out thus reducing the means whereby such insurers can complete with other insurance companies. In addition it also eliminates from the market that degree of progress constituted by competition between loss-adjusters aiming to give the best service.

The conduct in question also affects trade between Member States. The fact of preventing undertakings of one Member State from providing services to undertakings of other Member States and of preventing the latter undertakings from using the services of the former in practice alters the conditions relating to the freedom to provide services contrary to the purpose of the Common Market.

As many insurance companies choose of their own free will and independently to undertake the settlement of accident claims themselves the exclusion of loss-adjusters which may result is not incompatible with Article 85 but if such a result is sought or achieved by a concerted practice on the part of such undertakings it would fall under the prohibition laid down in Article 85 (1).

The conduct in question could mean the systematic and unjustified exclusion of loss-adjusters by the UCI or else its prohibiting its members from having recourse to the services of loss-adjusters.

If the foreign insurer who issued the policy of insurance against civil liability in respect of motor vehicles requested to be allowed to rely on the services of a loss-adjuster nominated by him to effect a settlement there could exist restrictive conduct if, without stating valid reasons, the UCI did not comply with such a request. Naturally even if the central bureau acceded to the request it would remain exclusively liable to accident victims. Nevertheless it is not conceivable that in such a case in its dealings with the foreign bureau and the foreign insurer the UCI should be held responsible for not having carried out correctly the operation of settlement in that, at the request of the foreign insurer himself, it had relied on a loss-adjuster nominated by the foreign insurer.

Article 86

In the view of the Commission the UCI occupies a dominant position. In fact it has the exclusive right to settle directly or indirectly accident claims arising in Italy concerning motor vehicles insured in other countries. With regard to loss-adjusters the importance of the position of the UCI is also determined by the fact that to all appearances accident claims in respect of motor vehicles dealt with by loss-adjusters are in fact in most cases accident claims concerning vehicles insured abroad.

The same conduct of the UCI which would appear to be incompatible with Article 85 when considered as decisions by associations of undertakings would constitute abuses of a dominant position pursuant to Article 86 if the UCI is recognized as holding such a position.

Article 90

In view of the fact that the said provisions of the Italian law do not restrict competition they also do not constitute State measures which may fall under the prohibition set out in Article 90 (1). The Commission does not regard the UCI as an undertaking entrusted with the operation of services of general economic interest since its activities do not benefit the whole of the national economy. If however this view is not correct the conduct which has been held incompatible with Article 85 or Article 86 could of course also constitute infringement of Article 90 (2).

Consequently the Commission suggests that the second question should be answered as follows:

(a) A national provision attributing to a body constituted in Italy the exclusive liability in relation to the victims, for the settlement of claims in respect of accidents caused by motor vehicles insured by foreign companies but allowing that body, without prejudice to its liability, to have recourse to other qualified undertakings including private organizations solely carrying out settlements is not incompatible with Article 90 (1) of the EEC Treaty in conjunction with Articles 85 and 86.

(b) Agreements concluded between national insurers' bureaux which make applicable the provision referred to under (a) authorize the national bureau of a Member State to undertake, on its own responsibility and on behalf of the foreign insurer the settlement of accident claims arising in that Member State involving motor vehicles insured by foreign insurers whilst obliging the national bureau to entrust the settlement in question to an organization established by the insurer in the national territory if such an organization exists and if the insurer so requests do not fall under the prohibition set out in Article 85 (1) of the EEC Treaty.

(c) Conduct intended to exclude or such as to exclude undertakings whose role consists solely in the settlement of accident claims from their normal business or at least to create substantial barriers to the carrying on of such business in the territory of a Member State does considerably restrict competition and affect inter-Community trade. Consequently if such conduct is the object or the consequence of an agreement or concerted practice between insurance companies or of decisions of associations of such companies it falls under the prohibition laid down by Article 85 (1) of the EEC Treaty without prejudice to Article 85 (3); if it is the conduct of an undertaking occupying a dominant position it constitutes an abuse of a dominant position within the meaning of Article 86 of the Treaty; if it is the conduct of undertakings entrusted with the operation of services of general economic interest it may constitute an infringement of Article 90 (2) in conjunction with Article 85 and 86.

Conduct of this kind is constituted by the failure to comply, without valid reasons, with a request to entrust the settlement of a claim in respect of a motor accident to an undertaking whose role consists solely in settlement within the limits of the sphere of activity of an undertaking of this kind where the request is made by the insurer who insured the motor vehicle causing the accident against civil liability in respect of traffic accidents and where the insurer is not entitled to undertake the settlement directly himself.

The third question

In the opinion of the Commission the answer to be given by the Court to the third question should in substance correspond with the answer set out below:

(a) Article 7 of the EEC Treaty is a general provision the application of which is ensured by Article 52 and 59 in the particular sectors of the right of establishment and of the freedom to provide services. Consequently the compatibility with Article 7 of a national provision relating to those sectors depends on its compatibility with Articles 52 und 59.

(b) Articles 52 and 59 of the EEC Treaty prohibit with direct effect as from the end of the transitional period any discrimination based on nationality resulting from rules of whatever kind

which are intended to regulate in a collective manner the exercise of a specific activity.

(c) Nevertheless the fact of reserving the settlement of a claim in respect of an accident caused by a motor vehicle normally based in another Member State to insurance companies or to an insurance bureau answering to the definition given in Directive No 72/166/EEC established in the territory of the Member State where the accident was caused does not constitute discrimination within the meaning of the first of those articles if the exclusion applying to undertakings in a different category such as for example undertakings whose activity consists solely in settlements relates both to undertakings of other Member States and those of the Member States in question.

(d) For those categories of undertakings the exclusion of which is compatible with Article 52 it is not necessary to consider the hypothesis of activities carried out in the form of provisions of services within the meaning of Article 59.

The fourth question

In the opinion of the Commission the reply to be given to the fourth question is evident from the answers given to the preceding questions.

II — Oral procedure

In the course of the oral procedure on 16 March 1977 the plaintiff in the main action, represented by Fernand Charles Jeantet of the Paris Bar, the defendant in the main action, represented by Gianguido Scalfi, Advocate of Milan, the Italian government represented by Arturo Marzano, Avvocato dello Stato and the Commission of the European Communities represented by A. Marchini-Camia, Legal Adviser, developed the arguments put forward in the course of the written procedure.

The Advocate-General delivered his opinion at the hearing on 11 May 1977.

Law

1 By order of 29 April 1976 which was received at the Court Registry on 27 September 1976 the Tribunale Civile e Penale of Milan referred to the Court, pursuant to Article 177 of the EEC Treaty, four questions relating to the interpretation of Council Directive No 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360), of Commission Recommendation No 73/185/EEC of 15 May 1973 (OJ L 194 of 16. 7. 1973, p. 13), of First Commission Decision No 74/166/EEC of 6 February 1974 (OJ L 87 of 30. 3. 1974, p. 14) and of Articles 7, 52, 59, 85, 86 and 90 of the Treaty.

2 These questions were raised in the course of proceedings between a loss-adjusters' undertaking, the plaintiff in the main action, and the Ufficio

Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale, hereinafter referred to as 'the UCI', the defendant in the main action, wherein the plaintiff requested the national court to declare illegal the claim made by the UCI that it could entrust the investigation and settlement of claims in respect of accidents caused by motor vehicles insured abroad solely to those insurance companies which are affiliated to the defendant and, consequently, to declare illegal any action taken by the UCI in relation to third persons in order to restrict the free activities of the plaintiff and to send its customers elsewhere.

3 The UCI is the national bureau, recognized by national legislation, to which are affiliated all or most of the insurers against civil liability in respect of motor vehicles who operate in Italy and it is responsible under the so-called 'green card' system for compensation in respect of accidents caused by motor vehicles insured by foreign insurance companies in the terms of the agreements between the national bureaux of countries adopting that system or, following Supplementary Agreements, caused by foreign vehicles which are not insured.

General observations

4 Two observations of a general nature may be made in respect of the questions referred, the first relating to the meaning of the word 'settle' used in the questions and the other concerning the development of the green card system in the Community context.

5 (a) In the text of the questions with regard to loss-adjusters the Italian court refers to their business as being the 'settling' of accident claims caused by foreign vehicles.

However it is evident from the file that the profession of loss-adjuster consists in particular in supplying an insurance company with extensive, accurate and complete information to enable it to decide whether or not the accident should give rise to payment of damages and the amount of such damages while the final decision as to payment is always to be taken by the insurer.

In comparison to an insurer a loss-adjuster plays an auxiliary and not indispensable role in view of the fact that an insurer can carry out the same tasks through his own organization.

In the reply to be given to the questions referred the word 'settle' with regard to the profession of loss-adjuster must be understood in this limited sense.

6 (b) It also appears from the file that pursuant to an international agreement to which all Member States both new and old are parties, which was signed at Strasbourg on 20 April 1959, the system of compulsory insurance for civil liability in respect of motor vehicles was adopted by Italy and that the UCI has to assume direct responsibility, both by virtue of the national legislation and by virtue of a system of bilateral agreements, for settling the amount of the damages in respect of any accident caused in Italy by a foreign vehicle whose driver possesses a green card.

7 Under Article 6 of Italian Law No 990 of 24 December 1969 vehicles registered or listed in foreign States which are being driven temporarily in the territory of Italy must be covered by an insurance policy within the meaning of the said law.

Nevertheless the obligation to be insured is to be deemed to have been discharged if the driver is in possession of an international certificate of insurance issued by the appropriate body constituted abroad known as the 'Paying Bureau' which testifies to the existence of an insurance policy for civil liability for damages caused by the vehicle provided that the certificate is recognized by the UCI authorized for this purpose by Decree of the Minister for Industry of 26 May 1971.

8 The Agreements between Bureaux which constitute an integral part of the green card system provide that where an accident results in a claim being made against an insured the bureau in the country where the accident took place, known as the 'Handling Bureau', will handle and settle such claim as if the Policy of Insurance had been issued by them'.

If the Paying Bureau, having supplied a certificate to a member which itself issued it to an insured, has an organization situated in the country of the Handling Bureau and established there for the purpose of transacting motor insurance, the Handling Bureau will, if so requested, leave the handling and settlement of claims to the member.

9 On the other hand it is only by virtue of an optional clause (optional clause 4 (b) of the Uniform Agreement between Bureaux) that the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims

to a nominated correspondent, who, in the terms of that clause, may be one of the following:

(i) a member of the Handling Bureau;

(ii) an organization established in the country of the Handling Bureau for the purpose of transacting insurance, whether motor insurance or some other class of insurance;

(iii) an organization established in the country of the Handling Bureau and specializing in the handling of claims on behalf of insurers.

Even when the Handling Bureau has accepted the optional clause the nominated correspondent remains responsible to the Handling Bureau for the handling of claims as the duly appointed agent of the said bureau and must comply with both the general and particular instructions received from the Handling Bureau.

10 On the Community plane Council Directive No 72/166/EEC of 24 April 1972 concerns the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability and has the object of facilitating the free movement of goods and of persons by abolishing checks at the frontier on green cards for vehicles normally based in a Member State entering the territory of another Member State.

In the terms of the seventh recital in the preamble to that directive that objective can be effected by means of an agreement between the six national insurers' bureaux, whereby each national bureau would guarantee compensation in accordance with the provisions of national law in respect of any loss or injury giving entitlement to compensation caused in its territory by one of those vehicles, whether or not insured.

11 By Recommendation No 73/185/EEC of 15 May 1973 the Commission, reciting that the original Member States had taken or were about to take the measures necessary to comply with the directive of 24 April 1972 provided in Article 1 that:

'From 1 July 1973 each original Member State shall refrain from making checks on insurance against civil liability in respect of the use of vehicles which are normally based in the European territory of another original

Member State and have not been the subject of notification under Article 4 (b) of the Council Directive of 24 April 1972.'

12 By Decision No 74/166/EEC of 6 February 1974 the Commission, reciting that on 12 December 1973 the national insurers' bureaux of the Member States had concluded an agreement in conformity with the said directive provided that:

'From 15 May 1974 each Member State shall refrain from making checks on insurance against civil liability in respect of vehicles which are normally based in the European territory of another Member State and which are the subject of the Agreement of national insurers' bureaux of 12 December 1973.'

13 Thus the objective of the aforementioned directive, namely to facilitate the free movement of goods and of persons, has been achieved by means of the said agreements and the said decision.

The first question

14 This question seeks to ascertain whether the said directive, recommendation and decision must be interpreted as authorizing provisions of national law, agreements, decisions and practices agreed between national insurers' bureaux or action by any individual national bureau or of the undertakings affiliated thereto which have as their object or effect the restriction of the business of loss-adjusters in the sphere of the settlement of claims in respect of accidents caused by foreign vehicles.

15 The said directive, recommendation and decision seeking, as set out above, to abolish checks on the green card at frontiers between Member States cannot be regarded as authorizing the existence of national provisions or agreements between national insurers' bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services.

A fortiori they may not authorize any agreements or practices agreed between national insurers' bureaux or any conduct by them which is incompatible with the said provisions of the Treaty.

The second question

16 The second question seeks to ascertain whether the provisions of Articles 85, 86 and 90 of the Treaty relating to competition prohibit any provision of national law, any agreement between bureaux and any decision or concerted practice which tends to exclude loss-adjusters from the settlement of claims in respect of damage caused by foreign vehicles even though they may have been nominated by the insurers of the vehicle causing the damage who are based in its country of origin.

17 It is necessary to deal separately with the national provisions and the agreements between bureaux on the one hand and the decisions and concerted practices on the other.

National provisions and agreements between bureaux

18 The green card system, recognized and perfected by Community provisions, is intended to facilitate the free movement of persons and goods while safeguarding the interests of persons who have suffered loss or injury by the creation in each Member Country of a national bureau composed of insurance companies each one of which is subject to particular checks and to the obligation to supply the guarantees required by national law.

Thus a national provision which reserves exclusively to insurance companies the settlement of claims in respect of accidents caused by foreign vehicles in the sense of the final decision concerning the compensation of the accident victims does comply with one of the objectives of the green card system.

In giving to the national bureau whose members are insurance companies the exclusive right to settle itself accident claims within the meaning referred to above, or to entrust settlement to one of its members, the Member State does not lay down any measure contrary to the rules of the Treaty in particular Article 90 in conjunction with Articles 85 and 86 so long as such exclusivity does not conflict with the freedom of the insurer to whom the settlement is entrusted to rely, for the purposes of the investigation of the accident claim, on another undertaking specialized in such matters which is not a member of the bureau.

19 In the view of the plaintiff in the main action the refusal of the Italian bureau to incorporate in its agreements the optional clause so that members of the

foreign bureau are denied the opportunity of choosing as their correspondent in Italy for the handling and settlement of claims, an organization of the kind réferred to under (b) (iii) of that clause, constitutes a decision, by an association of insurance undertakings, prohibited by Article 85 (1) of the Treaty.

20 Where the national legislation restricts the business of insurance, including the decision concerning the compensation of accident victims exclusively to insurers, the adoption of that optional clause would enable the foreign insurer to evade the said legislation by means of a loss-adjuster.

Furthermore where the national legislation specifies that liability to persons injured is always borne by the Handling Bureau the abandonment of the handling and settlement of a claim to an organization which is not a member of the bureau and which does not do the business of an insurer would run contrary to the national legislation.

On the other hand there is nothing in the Agreement between Bureaux to exclude the collaboration of loss-adjusters in their normal auxiliary business of the settlement of claims in respect of accidents caused by foreign vehicles.

21 Consequently in this respect the agreement does not infringe either Article 85 or Article 86 of the Treaty.

22 A national provision or an agreement between national bureaux established in the context of the green card system which declares that the national bureau bears sole responsibility for the settlement of claims for damage caused in the territory of that Member State by vehicles insured by foreign insurance companies but which still allows the national bureau or its members to rely on undertakings whose business consists solely in the settlement of accident claims on behalf of insurers in the sense of the handling and investigation of claims, is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86.

Decisions and concerted practices

23 As such national legislation is not incompatible with the provisions of the Treaty relating to competition the refusal of the Handling Bureau, in implementation of such legislation, to accept the optional clause in its

entirety but in particular subclause (b) (iii) of that clause cannot constitute an infringement of Articles 85 and 86 of the Treaty.

Furthermore neither such legislation nor the fact that the optional clause was not accepted prevents the Handling Bureau or its members from having recourse, if they deem it necessary, to a loss-adjuster for his normal, auxiliary business, that is to say the handling and investigation of accident claims.

24 A decision or a course of conduct of a national bureau or concerted practices of its members which have the object or effect of excluding undertakings whose business consists solely in the settlement, in the restricted sense referred to above, of accident claims on behalf of insurers, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86.

25 It is for the national court to determine whether the conditions for the application of those prohibitions are fulfilled.

The third question

26 The third question asks whether Articles 7, 52 and 59 of the Treaty prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a Member State the effective carrying on of the business of a loss-adjuster established in that Member State, even if the provision concerns a national insurers' bureau within the meaning of the definition given in Directive No 72/166/EEC or when the conduct is attributable to that bureau.

27 Article 7 of the Treaty prohibits in general terms all discrimination based on nationality.

In the respective spheres of the right of establishment and the freedom to provide services Articles 52 and 59 guarantee the application of the principle laid down by Article 7.

It follows therefore that if rules are compatible with Articles 52 and 59 they are also compatible with Article 7.

28 Articles 52 and 59 prohibit directly any discrimination based on nationality.

For discrimination to fall under the prohibitions contained in those articles it suffices that such discrimination results from rules of whatever kind which seek to govern collectively the carrying on of the business in question.

In that case it is not relevant whether the discrimination originated in measures of a public authority or, on the contrary, in measures attributable to the national insurers' bureaux, that is to say the bureaux answering to the definition set out in Directive No 72/166/EEC.

29 Nevertheless the fact of reserving to insurance companies or to such a national bureau established in the territory where the accident was caused by a vehicle normally based in another Member State the decision concerning the compensation of the victim does not constitute discrimination within the meaning of Articles 52 and 59 if the exclusion of other categories of undertakings is not based on the criterion of nationality.

30 Rules or conduct having the effect of reserving to the national bureau of a Member State or to its members or to insurance companies with an establishment there the final decision as to the payment of damages to victims of accidents caused in the territory of that State by vehicles normally based in another Member State are not discriminatory within the meaning of Articles 52 and 59 of the Treaty.

The fourth question

31 As the answer to the first question was in the negative the fourth question has lost its purpose.

Costs

32 The costs incurred by the Italian Government and the Commission of the European Communities which submitted observations to the Court are not recoverable and as these proceedings are, so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunale Civile e Penale di Milano by order of 29 April 1976, hereby rules:

1. **Council Directive No 72/166/EEC of 24 April 1972, Commission Recommendation No 73/185/EEC of 15 May 1973 and Commission Decision No 74/166/EEC of 6 February 1974 which seek to abolish checks on the green card at frontiers between Member States cannot be regarded as authorizing the existence of national provisions or agreements between national insurance bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services.**

2. **(a) A national provision or an agreement between national bureaux established in the context of the green card system which declares that the national bureau bears sole responsibility for the settlement of claims for damage caused in the territory of that Member State by vehicles insured by foreign insurance companies but which still allows the national bureau or its members to rely on undertakings whose business consists solely in the settlement of accident claims on behalf of insurers in the sense of the handling and investigation of claims, is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86.**

   (b) A decision or a course of conduct of a national bureau or concerted practices of its members which have the object or effect of excluding undertakings whose business consists solely in the settlement, in the restricted sense referred to above, of accident claims on behalf of insurers, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86.

3. **Rules or conduct having the effect of reserving to the national bureau of a Member State or to its members or insurance**