

## Case C-245/91

### Criminal proceedings against Ohra Schadeverzekeringen NV

(Reference for a preliminary ruling  
from the Arrondissementsrechtbank Arnhem)

(Insurance intermediaries — State rules prohibiting the grant of discounts —  
Interpretation of Article 3(f), the second paragraph of Article 5  
and Article 85(1) of the Treaty)

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Opinion of Advocate General Tesauo delivered on 14 July 1993 .....	I - 5871
Judgment of the Court, 17 November 1993 .....	I - 5872

### Summary of the Judgment

1. *Competition — Community rules — Obligations of the Member States — Rules intended to reinforce existing agreements, decisions or concerted practices — Definition (EEC Treaty, Arts 5 and 85)*
2. *Competition — Community rules — Obligations of the Member States — Rules preventing insurance companies and brokers from granting financial advantages to policyholders or beneficiaries of policies — Compatibility (EEC Treaty, Art. 3(f), second para. of Art. 5 and Art. 85)*

1. Although Article 85 of the Treaty, in itself, relates only to the conduct of undertakings and does not cover legislative measures or regulations adopted by Member States, the fact nevertheless remains that that article, read in conjunction with Article 5 of the Treaty, requires the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings. Such would be the case where a Member State required or favoured the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforced their effects or deprived its own legislation of its official character by delegating to private traders responsibility for taking economic decisions affecting the economic sphere.
2. Article 3(f), the second paragraph of Article 5 and Article 85 of the Treaty do not, in the absence of any conduct of the kind referred to in Article 85(1) of the Treaty on the part of undertakings, preclude State rules which prohibit insurance companies, whether or not they operate through brokers, and brokers themselves from granting financial advantages to policyholders or the beneficiaries of policies.

## REPORT FOR THE HEARING in Case C-245/91 \*

### I — Facts and procedure

#### A — *Summary of the facts*

Ohra Schadeverzekeringen NV (hereinafter 'Ohra') is an insurance undertaking in the form of a public limited company incorporated under Netherlands law, whose registered office is in Arnhem, the Netherlands; it has branches in Germany, England, Belgium and the Netherlands.

The company's business, which was originally confined to sickness insurance (a sector in which it continues to be one of the largest Dutch insurance companies), now extends to indemnity insurance, pensions insurance and life assurance. For the marketing of its services, Ohra deals directly with its clients (essentially, private individuals and small and medium-sized undertakings), unlike most other insurance companies, which use intermediaries. Ohra intends in the near future to offer its clients financial services as well (payment facilities, investment advice, and so

\* Language of the case: Dutch.