

JUDGMENT OF THE COURT (Sixth Chamber)

5 October 1995 *

In Case C-96/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between

Centro Servizi Spediporto Srl

and

Spedizioni Marittima del Golfo Srl,

on the interpretation of Articles 3(g), 5, 30, 85, 86 and 90 of the EC Treaty, of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), and of Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ 1992 L 368, p. 38),

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler (Rapporteur), President of the Chamber,
G. F. Mancini, J. L. Murray, G. Hirsch and H. Ragnemalm, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Centro Servizi Spediporto Srl, by P. Schiaffino, of the Genoa Bar,

- Spedizioni Marittima del Golfo Srl, by A. Dani, G. Conte and G. Giacomini,
of the Genoa Bar,

- the Italian Government, by U. Leanza, Head of the Legal Affairs Department
in the Ministry of Foreign Affairs, acting as Agent, assisted by P. G. Ferri,
Avvocato dello Stato,

- the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's
Department, acting as Agent, assisted by N. Green, Barrister,

- the Commission of the European Communities, by G. Marengo, Legal Adviser,
and V. Di Bucci, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Centro Servizi Spediporto Srl, Spedizioni Marittima del Golfo Srl, the Italian Government, represented by D. Del Gaizo, Avvocato dello Stato, and the Commission at the hearing on 4 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 6 July 1995,

gives the following

Judgment

- 1 By order of 7 March 1994, which was received at the Court on 21 March 1994, the Tribunale di Genova (District Court, Genoa) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Articles 3(g), 5, 30, 85, 86 and 90 of the EC Treaty, of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), and of Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ 1992 L 368, p. 38), in order to enable it to rule on the compatibility with those provisions of Italian legislation on the fixing of tariffs for the transport of goods by road.

- 2 Those questions arose in proceedings between the transport company Centro Servizi Spediporto Srl (hereafter 'Centro Servizi') and Spedizioni Marittima del Golfo Srl (hereafter 'Marittima del Golfo') in which the former seeks payment of the price of road transport services rendered to the latter.

- 3 In Italy, the road-haulage sector is governed by Law No 298 of 6 June 1974 establishing the national register of road-haulage operators operating for hire or reward, laying down rules on the carriage of goods by road and introducing a system of bracket tariffs for the carriage of goods by road (GURI No 200 of 31 July 1974, hereafter 'the Italian Law').
- 4 That register is kept by a central committee composed, in accordance with Article 3, of
- '(a) a member of the State Council, acting as chairman;
 - (b) four representatives of the Ministry of Transport and Civil Aviation, one representative each of the Ministries of Industry, Commerce and Crafts, State Holdings, Foreign Trade, Agriculture and Forestry, the Interior, Public Works, Finance and the Treasury;
 - (c) four representatives of the regions ...;
 - (d) 12 representatives of the national associations most representative of road hauliers operating for hire or reward and of national associations representing, assisting and safeguarding the cooperative movement, as legally recognized by the Ministry of Labour and Social Welfare

Members of the committee shall be appointed by order of the Minister of Transport and Civil Aviation. They shall be nominated by:

- the President of the State Council in the case of the member referred to in (a) above;

— the relevant ministers in the case of the members referred to in (b) above;

— the relevant national associations in the case of the members referred to in (d) above’.

5 Under Articles 1(3), 26 and 41 of the Italian Law, the exercise of road-haulage activities for hire or reward is subject to entry on the register and to the grant of a permit by the authorities.

6 Article 50 et seq. of the Italian Law lays down a system of compulsory bracket tariffs subject to maximum and minimum limits.

7 Article 52 provides that:

‘Each tariff shall be calculated using a basic price at the mid-point of the bracket. The basic price shall be determined having regard to the average cost of the relevant transport services, including commercial expenses, calculated for well-managed undertakings operating under normal conditions as regards utilization of their transport capacity, and to the market situation in such a manner as to enable transport undertakings to obtain a fair return.’

8 Article 53 of the Italian Law provides that the transportation tariffs and any special conditions governing their application, as well as any subsequent changes to them, are to be proposed by the central committee to the Minister of Transport and Civil Aviation. After consulting the regions and the representative national trade federations of the economic sectors directly concerned, the Minister approves the tariffs, the conditions governing them and any changes made to them, on the basis of guidelines produced by the Interministerial Committee on Prices, and brings them into force by decree.

- 9 If the Minister does not approve the proposals, he refers them back to the central committee with a request for new proposals or counter-proposals. If the Minister does not consider those new proposals or counter-proposals to be satisfactory, he may amend the proposals originally submitted and bring them into force by decree.

- 10 Failure to comply with the tariffs laid down renders economic operators liable to administrative penalties and, where the offence is repeated, disciplinary measures.

- 11 The criteria for calculating the bracket tariffs were specified, in particular, in Decree No 56 of the President of the Italian Republic of 9 January 1978 (GURI No 77 of 18 March 1978).

- 12 The Ministerial Decree of 18 November 1982 (Supplement to GURI No 342 of 14 December 1982), which brings into effect the initial determination of the bracket tariffs, authorizes certain derogations from the compulsory tariff. Article 13 of that decree provides that

'special contracts may be concluded on different terms ... solely pursuant to collective economic agreements entered into between the most representative carriers' associations on the central registration committee and users ...'.

- 13 Article 3 of Decree-Law No 82 of 29 March 1993 concerning urgent measures in respect of the sector of road haulage for hire or reward (GURI No 73 of 29 March 1993), as transposed, following amendment, by Law No 162 of 27 May 1993 (GURI No 123 of 28 May 1993), provides, as a matter of due construction, that a contractual term derogating from the tariffs laid down by the Law and/or the collective agreements provided for by the Ministerial Decree of 18 November 1982 is not permissible.

- 14 In 1993 Marittima del Golfo commissioned Centro Servizi to carry goods by road within Italy. Some of the goods came from China and Indonesia by sea and some from Spain by road.

- 15 Centro Servizi invoiced its client for such transportation at the tariffs fixed by ministerial decree. Marittima del Golfo refused to pay, maintaining that the prices charged were excessive.

- 16 Centro Servizi applied to the Tribunale di Genova for an order requiring Marittima del Golfo to pay the transport costs.

- 17 The Tribunale di Genova stayed the proceedings and referred to the Court the following questions for a preliminary ruling:

‘1. Is national legislation compatible with Articles 3(f), 5, 30, 85, 86 (and possibly 90) of the Treaty where it:

- (a) leaves the fixing of tariffs for the carriage of goods by road on account of third parties to a committee which includes representatives of associations of road-haulage contractors (as representing the interests of their particular trade) and/or to private agreements, and makes those tariffs mandatory for all traders once they have been approved by the public authorities in accordance with the rules laid down in Law No 162/93, Law No 298/74 and in the Ministerial Decree of 18 November 1982;

(b) permits:

- obstacles to rates being fixed freely;

- the imposition of contractual conditions stemming from the application of mandatory tariffs not calculated on the basis of the actual cost of the service;

- the extension of mandatory tariffs to all other contracts for transport services, thereby withdrawing them from the system in which rates are fixed freely;

- discrimination against users of road transport services depending on the tariff adopted;

- the application of unlike conditions to equivalent services, since road carriers may conclude contracts with derogating terms;

- changes in the contractual relationship between carrier and customer rendering the latter liable to legal proceedings brought by the road carrier for payment of the amount owed;

- a restriction of any reorganization of the supply of road transport designed to meet the needs of customers?

2. Does the statutory monopoly of the carriage of goods by road for the account of third parties come within the ambit of Article 90 of the EEC Treaty?

If so, are the rights conferred on authorized contractors capable of constituting abuse of a collective dominant position within the meaning of Article 86 of the EEC Treaty?

Alternatively, is such a monopoly, as regulated by national legislation in the manner described in Question 1, and in so far as it may affect the cost of imported products, capable of constituting a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the Treaty?

3. Is the definition of “combined transport of goods between Member States” within the meaning of Article 1 of Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States, to be interpreted as not detracting from the “effectiveness” of the principle of freedom to provide services applied to maritime transport between Member States and between Member States and third countries, referred to in Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986; in other words, has the carriage of goods been liberalized even where the maritime journey, on a vessel flying a Community flag, between a port of a third country and a port of a Member State forms part of a combined transport between that country and the Member State?

The first question

- 18 By its first question, the Tribunale di Genova is asking, essentially, whether Articles 3(g), 5, 85, 86 or 90 of the Treaty, or Article 30 of the Treaty, preclude the legislation of a Member State from providing for road-haulage tariffs to be approved and brought into force by the State on the basis of proposals submitted by a committee, on conditions such as those laid down by the Italian Law.

Articles 85, 86 and 90 of the Treaty

- 19 The rules on competition laid down in the Treaty apply to the transport sector (judgments in Case C-185/91 *Reiff* [1993] ECR I-5801, paragraph 12, and in Case C-153/93 *Delta Schiffahrts-und Speditionsgesellschaft* [1994] ECR I-2517, paragraph 12).
- 20 Articles 85 and 86 of the Treaty are, in themselves, concerned solely with the conduct of undertakings and not with laws or regulations adopted by Member States. However, it is settled law that Articles 85 and 86, read in conjunction with Article 5 of the Treaty, require 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 (as to Article 85 of the Treaty, see the judgments in Case 267/86 *Van Eycke* [1988] ECR 4769, paragraph 16; in *Reiff*, paragraph 14, and in *Delta Schiffahrts-und Speditionsgesellschaft*, paragraph 14; as to Article 86 of the Treaty, see the judgment in Case 13/77 *GB-Inno-BM* [1977] ECR 2115, paragraph 31).

- 21 The Court has held that Articles 5 and 85 are infringed where a Member State requires or favours the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforces their effects, or where it deprives its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere (see the judgments in *Van Eycke*, paragraph 16, in *Reiff*, paragraph 14, and in *Delta Schiffahrts- und Speditionsgesellschaft*, paragraph 14).
- 22 In its judgments in *Reiff* (paragraph 15) and in *Delta Schiffahrts- und Speditionsgesellschaft* (paragraph 15), the Court, considering similar questions regarding the determination of tariff rates for the long-distance carriage of goods by road and for commercial inland waterways transport in Germany, held that, in order to give a helpful answer to the national court, the first matter which had to be considered was whether the existence of an agreement, decision or concerted practice within the meaning of Article 85 of the Treaty could be inferred from rules such as those in question in the main proceedings.
- 23 As regards national rules such as those laid down by the Italian Law, it should be noted, first, that the central committee is composed of 17 representatives of the public authorities and of a minority of 12 representatives of associations of economic agents.
- 24 Moreover, upon the adoption of its proposals, the central committee is obliged to observe various criteria defined in the Law and specified in Decree No 56 of the President of the Italian Republic, cited above.
- 25 It follows from the foregoing considerations that, in a system for fixing road-haulage tariffs such as that established by the Italian Law, proposals discussed by the committee cannot be regarded as agreements, decisions or concerted practices between economic agents which the public authorities have imposed or favoured or the effects of which they have reinforced.

- 26 The next matter to be considered, as the Court stated in its judgments in *Reiff* (paragraph 20) and in *Delta Schiffahrts- und Speditionsgesellschaft* (paragraph 19), is whether the public authorities have delegated their powers, concerning the fixing of tariffs, to private economic agents.
- 27 It is to be noted here that the Italian Law provides that the central committee is to propose to the competent minister the transportation tariffs and any special conditions governing their application and it confers on the minister the power to approve them, to reject them or to amend them before bringing them into force.
- 28 Furthermore, before approving the tariffs and bringing them into force, the minister must consult the regions and the representatives of the economic sectors concerned and must have regard to the guidelines issued by the Interministerial Committee on Prices.
- 29 The fact that collective agreements may be concluded pursuant to Article 13 of the aforesaid Ministerial Decree of 18 November 1982 does not have the effect of restricting competition but allows certain derogations from the mandatory tariffs, and therefore increases the possibility of competition.
- 30 It follows from the foregoing considerations that, in a system for fixing road-haulage tariffs such as that established by the Italian Law, the public authorities have not delegated their powers to private economic agents.
- 31 Articles 3(g), 5 and 86 of the Treaty could only apply to legislation of the kind contained in the Italian Law if it were proved that the legislation concerned placed an undertaking in a position of economic strength enabling it to prevent effective

competition from being maintained on the relevant market by placing it in a position to behave to an appreciable extent independently of its competitors, of its customers and ultimately of the consumers (judgment in Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, paragraph 38).

- 32 The Court has held that Article 86 of the Treaty prohibits abusive practices resulting from the exploitation by one or more undertakings of a dominant position on the common market or in a substantial part of it in so far as those practices may affect trade between Member States (judgment in Case C-393/92 *Almelo and Others* [1994] ECR I-1477, paragraph 40).
- 33 However, in order for it to be held that such a collective dominant position exists, the undertakings in the group must be linked in such a way that they adopt the same conduct on the market (judgment in *Almelo and Others*, cited above, paragraph 42).
- 34 National legislation which provides for the fixing of road-haulage tariffs by the public authorities cannot be regarded as placing economic agents in a collective dominant position characterized by the absence of competition between them.
- 35 It follows from the foregoing considerations that legislation such as the Italian Law is not contrary to Article 86, read in conjunction with Articles 3(g) and 5 of the Treaty.

- 36 The national court also inquires as to the compatibility of the Italian Law with Article 90 of the Treaty.
- 37 Article 90(1) refers to public undertakings and undertakings to which Member States grant special or exclusive rights, and Article 90(2) concerns undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly.
- 38 However, national rules such as those laid down by the Italian Law merely determine the conditions governing access to the market and certain aspects of the conduct of undertakings, particularly as regards prices, without turning them into public undertakings, granting them special or exclusive rights or entrusting them with the operation of services of general economic interest.
- 39 It follows that legislation of the kind contained in the Italian Law is not contrary to Article 90.

Article 30 of the Treaty

- 40 The national court also inquires whether the Italian Law is compatible with Article 30 of the Treaty, in so far as it has the effect of making transportation more expensive and thus of constituting an obstacle to the importation of goods from other Member States.

41 On this point, it is sufficient to observe that legislation of the kind enacted in the Italian Law makes no distinction according to the origin of the goods transported, its purpose is not to regulate trade in goods with other Member States and the restrictive effects which it might have on the free movement of goods are too uncertain and indirect in order for the obligation which it lays down to be regarded as being such as to hinder trade between Member States (judgment in Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 24, and the case-law cited therein).

42 The answer to be given to the first question must therefore be that neither Articles 3(g), 5, 85, 86 or 90 of the Treaty, nor Article 30 of the Treaty, preclude the legislation of a Member State from providing for road-haulage tariffs to be approved and brought into force by the State on the basis of proposals submitted by a committee, where that committee is composed of a majority of representatives of the public authorities and a minority of representatives of the economic agents concerned and in its proposals must observe certain public interest criteria, and where, moreover, the public authorities do not relinquish their rights and powers by taking into consideration, before the proposals are approved, the observations of other public and private bodies, or even by fixing tariffs *ex officio*.

The second question

43 By its second question, the national court inquires whether national legislation establishing a statutory monopoly in relation to the carriage of goods by road by means of a system for the grant of transport permits based on quotas is compatible with Articles 30, 86 and 90 of the Treaty.

- 44 In its order making the reference, the national court states, however, that the quota system to which the transport permits are subject is irrelevant for the purposes of deciding the proceedings, which concern payment of the price of the transport services rendered.
- 45 The Court has consistently held that it has no jurisdiction to rule on questions submitted by a national court if they bear no relation to the facts or the subject-matter of the main action and are therefore not strictly needed in order to decide the case (judgment in Case C-18/93 *Corsica Ferries* [1994] ECR I-1783, paragraph 14, and the case-law cited therein).
- 46 Consequently, the second question need not be answered.

The third question

- 47 By its third question, the national court wishes to know whether Regulation No 4055/86 and Directive 92/106 apply to transport operations of the type at issue in the main proceedings so that it can determine the compatibility of the Italian Law with those provisions.
- 48 It must be noted here that, according to the second paragraph of Article 1 of Directive 92/106, that directive applies to combined transport of goods between Member States, and not to combined transport by sea and road of goods coming from third countries, such as the transport operations concerned in the main proceedings.

49 According to Article 1(1) of Regulation No 4055/86, that regulation concerns maritime transport services between Member States and between Member States and third countries.

50 The term 'maritime transport services', as defined in Article 1(4), covers the carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State or of a third country.

51 It follows from that definition that maritime transport services, within the meaning of that regulation, cease upon the goods' arrival at the port or off-shore installation and do not therefore extend to the transportation by road of goods unloaded from the vessel.

52 The answer to be given to the third question must therefore be that Directive 92/106 does not apply to combined transport of goods between third countries and Member States and that Regulation No 4055/86 does not apply to the transportation by road of goods unloaded from the vessel.

Costs

53 The costs incurred by the Italian Government, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Sixth Chamber),

in answer to the questions referred to it by the Tribunale di Genova by order of 7 March 1994, hereby rules:

- 1) Neither Articles 3(g), 5, 85, 86 or 90 of the EC Treaty, nor Article 30 of that Treaty, preclude the legislation of a Member State from providing for road-haulage tariffs to be approved and brought into force by the State on the basis of proposals submitted by a committee, where that committee is composed of a majority of representatives of the public authorities and a minority of representatives of the economic agents concerned and in its proposals must observe certain public interest criteria, and where, moreover, the public authorities do not relinquish their rights and powers by taking into consideration, before the proposals are approved, the observations of other public and private bodies, or even by fixing tariffs *ex officio*.
- 2) Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States does not apply to combined transport of goods between third countries and Member States and Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries does not apply to the transportation by road of goods unloaded from the vessel.

Schockweiler

Mancini

Murray

Hirsch

Ragnemalm

Delivered in open court in Luxembourg on 5 October 1995.

R. Grass

Registrar

F. A. Schockweiler

President of the Sixth Chamber