

accepted in so far as those rules, being applicable to domestic products and imported products without distinction, are justifiable as being necessary in order to satisfy mandatory requirements relating, *inter alia*, to consumer protection and fair trading.

3. Articles 30 and 34 of the EEC Treaty do not preclude the application by a Member State to products from, or

intended for, another Member State of national legislation which prohibits the offering or giving, for sales promotion purposes, of free gifts in the form of books to purchasers of an encyclopaedia and requires, for the application of an exception to that prohibition, the existence of a relationship between the consumption or use of the free gift and the product constituting the basis for the offering of the gift.

In Case 286/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Economische Kamer [Commercial Chamber] of the Gerechtshof [Regional Court of Appeal], Amsterdam, for a preliminary ruling in the criminal proceedings pending before that court against

OOSTHOEK'S UITGEVERSMATSCHAPPIJ BV

on the interpretation of Articles 30, 34 and 36 of the EEC Treaty, in relation to the Netherlands legislation restricting the offering of gifts for sales promotion purposes,

THE COURT

composed of J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, T. Koopmans, O. Due and K. Bahlmann, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the 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. Article 2 of the Netherlands *Wet Beperking Cadeaustelsel* [Law on the restriction of free gift schemes] 1977 — *Staatsblad* [State Gazette] 1977, No 659 — contains a clause prohibiting the offering of products as gifts within the framework of a commercial activity. There are certain exceptions to that prohibition, including *inter alia* that provided for in Article 4 (3) of the Law, which refers to the offering as a gift of products whose consumption or use is linked with the product sold and which bear an advertising mark which is clearly visible and indelible; the value of such products must not, however, exceed 4% of the sale price of the product or products which they accompany.

2. Oosthoek's *Uitgeversmaatschappij* (hereinafter referred to as "Oosthoek") markets encyclopaedias in the Dutch language throughout the Dutch-speaking territory comprising the Netherlands, the Dutch-speaking part of Belgium and a small part of the North-West of France. Among those encyclopaedias, "De Grote Oosthoek" and "De Grote Summa" are typeset and manufactured in the Netherlands and "De Grote Nederlandse Larousse" is typeset and produced by a company affiliated to Oosthoek in Belgium.

Since 1974, in order to promote sales, Oosthoek has, in its newspaper and magazine advertisements and advertising brochures, offered as a free gift to subscribers to an encyclopaedia a dictionary, a universal atlas or a small encyclopaedia, depending on the value of the purchase.

3. Considering that that system of sales promotion, as practised by Oosthoek, constituted an infringement of the provisions of the *Wet Beperking Cadeaustelsel* 1977, the Public Prosecutor's Office instituted proceedings against Oosthoek.

By judgment of 13 November 1980, the *Economische Politie rechter* [magistrate dealing with commercial offences] of the *Arrondissementsrechtbank* [District Court], Utrecht, held that the facts of the alleged offence had been established and that penalties were applicable. He imposed three fines on Oosthoek, of HFL 85 each.

On appeal from that decision, the Commercial Chamber of the *Gerechts-hof*, Amsterdam, by judgment of 9 October 1981 rejected the arguments based on national law which Oosthoek had put forward. Since Oosthoek had also claimed that the *Wet Beperking Cadeaustelsel* 1977 was incompatible with the provisions of Articles 30, 34 and 36 of the EEC Treaty, the Netherlands court considered that the Court of Justice should be requested to give a preliminary ruling on the following question:

"Is it compatible with Community law (especially with the principle of the free movement of goods) for a publisher who, by offering free gifts in the form of books, seeks to promote sales of various reference works, which are intended for the entire Dutch-speaking area and originate partly in the Netherlands and partly in Belgium, to have to discontinue in the Netherlands that method of promoting sales, which is allowed in Belgium, owing to the Netherlands Wet Beperking Cadeaustelsel solely because that Law requires a relationship to exist between the consumption or use of the free gift and the product which constitutes the basis for the offering of the free gift?"

4. The order making the reference was received at the Court Registry on 3 November 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Oosthoek, represented by Ch. Gielen of the Amsterdam Bar; the Government of the Kingdom of the Netherlands, represented by the Secretaris-Generaal, Ministry for Foreign Affairs, F. Italianer; the Government of the Federal Republic of Germany, represented by its Agent Martin Seidel; the Government of the Kingdom of Belgium, represented by the Director of Administration, Ministry for Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, W. Collins; the Government of the Kingdom of Denmark, represented by Laurids Mikaelson of the Directorate of External Economic Relations, Ministry for Foreign Affairs, and the Commission of the European Communities, represented by Richard Wainwright, a member of its Legal Department, acting

as Agent, assisted by Thomas van Rijn, also a member of its Legal Department.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, Oosthoek was invited to answer in writing, before the sitting, a question concerning the volume of imports of the encyclopaedia "De Grote Nederlandse Larousse" into the Netherlands.

II — Summary of the written observations submitted to the Court

1. *Observations of Oosthoek*

Oosthoek emphasizes in the first place that apart from the flow of trade resulting from the fact that its encyclopaedias are partly manufactured in the Netherlands and partly in Belgium, there is not insignificant frontier trade as a result of purchases made direct in the Netherlands by Belgian residents.

Oosthoek and its competitors offer books as free gifts because a publisher can produce such gifts cheaply itself and purchasers are pleased to receive a book as a gift. Practical experience acquired over many years shows that books are an excellent means of promoting encyclopaedias.

The Wet Beperking Cadeaustelsel 1977 made the conditions relating to the system of free gifts in the Netherlands stricter. Oosthoek's promotion scheme was held in the course of the main proceedings to be in breach of those

stricter conditions on the grounds that the gifts in question were not "of the same type" as the encyclopaedias and their use moreover was "not related to them". In that respect, it was considered necessary that in the great majority of cases where the general encyclopaedia was consulted the gift should be consulted at the same time, and satisfaction of that requirement had not been established.

Oosthoek had been unable to adapt its sales promotion system to the stricter conditions now in force regarding free gifts because of the rules on the marketing of books in the Netherlands adopted by the Vereniging ter Bevordering van de Belangen des Boekhandels [Association for the Promotion of the Interests of Booksellers], pursuant to which a publisher is obliged to fix a single mandatory price for each book at the time of its sale to the consumer. The rigorous conditions laid down by the Wet Beperking Cadeaustelsel, and in particular in Article 3 thereof, imply that customers must be given an opportunity to receive a sum of money in lieu of the free gift, which would be tantamount to a price reduction infringing the above-mentioned rules.

Moreover, if Oosthoek had to comply with the strict conditions in force in the Netherlands, it would also have to apply them in Belgium because to prepare differing sets of advertising material would be onerous. Moreover, if the advertising material contained all the information required by the Netherlands law, it would be less attractive from the commercial point of view.

Although Belgian legislation also contains restrictions on the free gifts system, the means of promotion used by Oosthoek falls within an exception provided for by that legislation. The

difference between the Netherlands legislation and the Belgian legislation entails the consequence, as far as Oosthoek is concerned, that it is impossible to offer a book as a free gift when an encyclopaedia is purchased even though that means of promotion is authorized in Belgium.

It is contrary to the principle of the free movement of goods for a producer to be obliged, within a territory for which his product is specifically intended, to have recourse to different systems of sales promotion. Exports are achieved more effectively and more economically if sales may be promoted by means of a uniform advertising campaign. The preparation and printing of two types of advertising material call for a more complicated and costly organization. Such a situation must therefore be regarded as a prohibited measure having an effect equivalent to quantitative restrictions.

The requirement of a direct relationship between the product and the gift from the point of view of consumption or use, as laid down in the Wet Beperking Cadeaustelsel, is not justified by Article 36 of the EEC Treaty, since the Netherlands legislation and in particular that requirement constitute rules of a socio-economic nature, which are not covered by that provision. The requirement in question does not serve the interests of the consumer in the true sense of the term and is not necessary to avoid distortion of competitive relationships.

In conclusion, Oosthoek is of the opinion that the obstacle to trade deriving from the fact that it cannot avail itself, for the sale of encyclopaedias, of the exceptions provided for by the Netherlands legislation merely because the gifts concerned do not exhibit any direct relationship with the encyclopaedias from the point of view of their

use constitutes a breach of the fundamental principle of the free movement of goods and is not justified by the reasonable requirements of consumer protection or the free operation of competition.

value, and also the exception at issue in these proceedings. The latter exception caters to a reasonable extent for a need and the conditions to which it is subject provide an adequate guarantee that no distortion of competition or concealment of prices takes place.

2. *Observations of the Netherlands Government*

The Netherlands Government states that the *Wet Beperking Cadeaustelsel 1977* pursues two objectives, namely to preclude the distortion of normal competitive relationships caused by undertakings which offer products free of charge or at a very low price with a view to promoting the sale of their own range of goods, and also to ensure greater transparency of the market. Pursuant to Article 3 of the *Wet Beperking Cadeaustelsel 1977*, the prohibition of the offering of products as free gifts would be inoperative if the undertaking in question had offered the consumer products similar to the gift for a period of at least three months immediately preceding the gift offer, if it continued to offer those products for sale during the period of the gift offer, if it clearly offered the purchaser the possibility of receiving instead of the product a sum of money representing not less than half the price at which the gift was offered for sale or if it indicated in all publications relating to the gift campaign the sale price of that product, the manner in which it could be obtained in the context of the sale and also the sum of money referred to above and the way in which it could be obtained. Article 4 of the Law provides for certain exceptions to the prohibition, including the offering of gifts to retailers, the offering of gifts at certain times in accordance with general or local usage and the offering as gifts of articles of low

The *Wet Beperking Cadeaustelsel* contributes to the ordered functioning of trade and falls within the category of laws which, with a view to protecting the consumer, are intended to ensure fair competition. Other Member States also have legislation laying down conditions relating to gifts and the *Wet Beperking Cadeaustelsel* conforms fully with the objectives in the general interest which are pursued by the Treaty.

As regards compatibility with Community law, the Netherlands Government is of the opinion that in view of the circumstances of the case Article 34 of the EEC Treaty has no rôle to play in that respect.

Nor does the Law in question constitute a measure contrary to Article 30. It applies both to national products and to imported products and makes no distinction between trade within the country and import or export trade. If, however, application of the Law were likely to influence inter-State trade, that influence would be ascribable solely to the disparity between the applicable legislation in the various Member States. It does not limit the import or sale of the products as such.

In the absence of any applicable Community provisions the Member

States each retain the power to regulate the marketing of goods within their own territory. It is only in cases where national rules of that kind might result in obstacles to intra-Community trade that it is appropriate to consider whether or not they may be justified for the reasons set out in Article 36 of the EEC Treaty or whether they are justified by the mandatory requirements of fairness in commercial transactions and protection of the consumer. Such an examination, which moreover would in this case necessarily lead to the conclusion that the rules in question were justified, is unnecessary here.

3. Observations of the Belgian Government

The Belgian Government states that pursuant to Article 35 of the Belgian Law on Trade Practices of 14 July 1971 (*Moniteur Belge*, 30 June 1971), the offering of products or services, free or otherwise, to the consumer at the time of and in conjunction with the sale of other products or services is prohibited; the offering of a product whose purchase is subject to the purchase of another product (the main product) is prohibited. Exceptions to that rule are allowed. Article 37 (5) of the Law allows the offering, free of charge and in conjunction with the purchase of a main product, "of objects bearing an advertising inscription which is clearly visible and indelible, which are not marketed as such, provided that the purchase price paid by the person offering them does not exceed 5% of the sale price of the main product or of the service in connection with which they are given".

Oosthoek would not therefore be permitted to offer an atlas or dictionary

free of charge when encyclopaedias were purchased in Belgium unless those items satisfied those conditions.

4. Observations of the German Government

In the view of the German Government a prohibition such as the one in question does not fall within the scope of Article 30 of the EEC Treaty. It applies without distinction to national and foreign goods, regardless of their origin, and relates only to the method of marketing. Intra-Community trade is possible subject only to the reservation that it is prohibited to describe a product as a gift when two products are offered together. Such rules do not have the effect of restricting imports.

Even if Article 30 of the EEC Treaty did apply to sales promotion methods, the rules relating to fair trading and consumer protection justify methods such as the one in question, by virtue of Article 36 of the EEC Treaty. There has been no harmonization of laws regarding gifts or unfair competition and there are no Community rules relating thereto; obstacles caused by disparities in the legislation of the various Member States relating to the marketing of goods must therefore be accepted in so far as such provisions are necessary to satisfy the overriding need to safeguard public health and ensure fair trading or the protection of consumers. The offering of a gift diverts the customer's attention and has the result of distorting competition based on commercial rivalry which should have as its focus the quality and value of the goods. Gifts dissimulate the price, giving the impression that something is being obtained for nothing,

whilst in fact the price of the gift is already incorporated in the price of the goods in connection with which the gift is offered. Measures to do away with gifts are therefore necessary to maintain fair competition. There are legal provisions in the majority of the Member States intended to restrict the system of gifts. In the Federal Republic of Germany that area is governed by the Zugabeverordnung [Free Gift Rules] of 9 March 1932 — Reichsgesetzblatt [State Law Gazette] I, p. 121. Harmonization of legislation will be required at a later stage to eliminate the differences in that area.

Such rules conform with Community law since the prohibition is of a general nature and is directed only against that type of marketing. The general application of national rules governing marketing which apply without distinction to imported and national products and which have no specific relevance to intra-Community trade is not contrary to Article 30 of the EEC Treaty. Although provisions such as those in question in this case involve restrictions affecting marketing conditions, they do not thereby have a particular impact on intra-Community trade.

Consequently, the German Government is of the opinion that the prohibition of the marketing methods described in the order making the reference is compatible with Community law and in particular with the principle of the free movement of goods.

It is not therefore necessary for the Court to give a ruling on the question whether or not such a prohibition is justified on any of the grounds referred to in Article 30 of the Treaty. Moreover, prohibition of the system of gifts is necessary to protect consumers and to ensure fairness of competition.

5. Observations of the Danish Government

The Danish Government states that Article 6 (1) of Danish Law No 297 of 14 June 1974 relating to the marketing of products and services prohibits the offering of gifts in connection with the sale of goods or services to consumers. That prohibition has existed in Danish law since 1912. It has a twofold objective, namely the protection of consumers and the protection of competing traders. In general, gifts are presented so as to give the consumer the impression that they cost nothing, whereas they are in fact taken into account in the calculation of the price of the main item. The addition of a gift therefore leads the consumer into error and deprives him of the opportunity to make price comparisons.

The Danish Government suggests that the question referred to the Court be answered to the effect that national legislation designed to limit sales accompanied by gifts is not contrary to the rules of Community law on the free movement of goods even though sales with gifts may be permitted in another Member State.

6. Observations of the Commission

The Commission first gives brief details of the legislation regarding gifts in force in the Member States and points out that in all except the United Kingdom, Ireland and Greece there are extremely complicated, heterogeneous and contro-

versial rules concerning gifts offered to consumers. There are no provisions on this matter in Community law.

Article 34 of the EEC Treaty is not applicable to the legislation in question because the latter does not have as its object or effect any specific restrictions on exports leading to a difference of treatment as between the internal trade of a Member State and its export trade.

As regards Article 30 of the EEC Treaty, the Commission is of the opinion that intra-Community trade in the main product, namely the encyclopaedia, is in fact indirectly obstructed since legislation which is very restrictive with regard to gifts may have an impact on the sale of the main product. Moreover, Oosthoek is obliged to carry out different promotion operations for the product imported into Belgium, which increases its costs.

Article 36 of the EEC Treaty is not applicable in this case since it does not cover measures for regulation of the economy. As regards the exception set out in the judgment of 20 February 1979 in Case 120/78 "*Cassis de Dijon*" [1979] ECR 649, the cases in which it has so far been applied are concerned with restrictions directly affecting the marketing of the product in question whereas in this case there is no direct restriction. However, there is no reason not to extend that exception to measures indirectly affecting marketing. All of these are measures intended to regulate the economy; they are primarily qualitative and protect both general interests and individual interests, in particular those of consumers and traders. They are to be distinguished from political and economic measures intended to achieve economic objectives. The exception to the prohibition of measures of equivalent effect created by

the "*Cassis de Dijon*" judgment must therefore apply to all national measures for the organization of the economy which regulate the distribution, manufacture or consumption of a product.

The objectives of the Netherlands rules at issue fully justify the measure in question. They seek to achieve those objectives by reasonable means which do not create pointless obstacles to intra-Community trade and they are not disproportionate with respect to their aims.

The Commission suggests therefore that the reply should be to the effect that Articles 30 to 36 of the EEC Treaty must be interpreted as meaning that a measure by a Member State which renders the offering of gifts as a means of sales promotion subject to the condition that the gift and the product with which it is offered must bear a direct relationship with each other regarding the use thereof by the consumer does not fall within the scope of the prohibition of measures having equivalent effect.

III — Oral procedure

At the sitting on 22 June 1982, oral argument was presented by the following: C. Gielen and A. F. de Savornin Lohmann, for the plaintiff in the main action; J. W. de Zwaan and L. Bayens for the Netherlands Government; M. Seidel for the Government of the Federal Republic of Germany; and T. van Rijn for the Commission.

The Advocate General delivered his Opinion at the sitting on 22 September 1982.

Since the number of judges able to take part in the deliberations was no longer sufficient to enable the Court to give a valid decision pursuant to Article 15 of the Statute of the Court of Justice of the EEC, the oral procedure was re-opened

by order of 16 November 1982. At the sitting on 9 December 1982, the parties were given an opportunity to present further oral argument. The Advocate General delivered a further Opinion at the sitting on the same day.

Decision

- 1 By judgment of 9 October 1981 which was received at the Court on 3 November 1981 the Gerechtshof [Regional Court of Appeal], Amsterdam, referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 30 and 34 of the EEC Treaty in order to enable it to determine whether Netherlands legislation intended to restrict the freedom to offer or give free gifts within the framework of a commercial activity was compatible with Community law.
- 2 The question was raised in proceedings brought by the Netherlands company Oosthoek's Uitgeversmaatschappij BV (hereinafter referred to as "Oosthoek") against a judgment of the Arrondissementsrechtbank [District Court], Utrecht, imposing three fines of HFL 85 each on Oosthoek for infringement of the Wet Beperking Cadeaustelsel 1977 [Law on the restriction of free gift schemes].
- 3 Article 2 (1) of that Law prohibits the offering or giving of products as free gifts within the framework of a commercial activity. There are, however, several exceptions to that prohibition, in particular that provided for in Article 4 (3) of the Law which permits a free gift to be offered or given provided that it is usually used or consumed at the same time as all the products in respect of the purchase of which it is offered or given (a criterion usually described as related consumption or use — in Dutch "consumptieverwantschap"), if it bears a mark which is indelible and clearly visible when it is used in the normal way and which clearly shows that it is intended for advertising purposes, and if its value does not exceed 4% of the sale price of all the products in respect of the purchase of which it is offered or given.

- 4 Oosthoek markets in the Netherlands, in Belgium and in a small part of northern France, various encyclopaedias in the Dutch language, which are typeset and manufactured partly by Oosthoek in the Netherlands and partly by a company affiliated to Oosthoek in Belgium. Since 1974, in its newspaper and magazine advertisements and advertising brochures, Oosthoek has offered a dictionary, a universal atlas or a small encyclopaedia as a free gift to all subscribers to an encyclopaedia. Following the entry into force of the *Wet Beperking Cadeaustelsel* 1977 and in the light of that practice, proceedings were instituted against Oosthoek in the Netherlands for infringement of that Law.

- 5 According to Oosthoek, that practice is compatible with the provisions of the relevant Belgian legislation which, whilst it also prohibits the offering of free gifts for sales promotion purposes and provides for an exception similar to that contained in Article 4 (3) of the *Wet Beperking Cadeaustelsel* 1977, does not make the application of that exception subject to compliance with the criterion of related consumption or use.

- 6 The *Gerechtshof*, Amsterdam, taking the same view as that taken by the *Arrondissementsrechtbank*, Utrecht, in the judgment contested in the main proceedings, considered that there was no related consumption or use, as required by Article 4 (3) of the *Wet Beperking Cadeaustelsel*, in the case of encyclopaedias sold and the books offered as free gifts and that the sales promotion scheme operated by Oosthoek therefore constituted an infringement of that Law. However, since Oosthoek claimed that the *Wet Beperking Cadeaustelsel* 1977 was incompatible with Articles 30 and 34 of the EEC Treaty, the *Gerechtshof*, Amsterdam, considered it necessary to request the Court to give a preliminary ruling on the following question:

"Is it compatible with Community law (especially with the principle of the free movement of goods) for a publisher who, by offering free goods in the form of books, seeks to promote sales of various reference works, which are intended for the entire Dutch-speaking area and originate partly in the Netherlands and partly in Belgium, to have to discontinue in the Netherlands that method of promoting sales, which is allowed in Belgium, owing to the Netherlands *Wet Beperking Cadeaustelsel* solely because that Law requires a relationship to exist between the consumption or use of the free gift and the product which constitutes the basis for the offering of the free gift?"

- 7 In its question, the national court seeks in substance to ascertain whether Articles 30 and 34 of the EEC Treaty preclude the application by a Member State to products from, or intended for, another Member State of national legislation which prohibits the offering or giving, for sales promotion purposes, of free gifts in the form of books to purchasers of an encyclopaedia and requires, for the application of an exception to that prohibition, the existence of a relationship between the consumption or use of the free gift and the product sold.
- 8 In their observations, the Netherlands, German and Danish Governments express the view, *in limine*, that national legislation such as that at issue has no particular impact on intra-Community trade and does not fall within the scope of Articles 30 and 34 of the EEC Treaty.
- 9 In that regard, it must be stated that the application of the Netherlands legislation to the sale in the Netherlands of encyclopaedias produced in that country is in no way linked to the importation or exportation of goods and does not therefore fall within the scope of Articles 30 and 34 of the EEC Treaty. However, the sale in the Netherlands of encyclopaedias produced in Belgium and the sale in other Member States of encyclopaedias produced in the Netherlands are transactions forming part of intra-Community trade. In the view of the question raised by the national court, it is therefore necessary to determine whether provisions of the type contained in the Netherlands legislation are compatible with both Article 30 and Article 34 of the EEC Treaty.
- 10 Oosthoek maintains that the Netherlands legislation obliges it to adopt different sales promotion schemes in the various Member States which constitute a single market, involves it in additional costs and further difficulties and thus hinders the importation and exportation of the encyclopaedias in question. The requirement of related consumption or use is not justified by the need either to protect consumers or to safeguard competition.

- 11 The Commission considers that although the possibility that such a measure may indirectly hinder the importation of encyclopaedias cannot be ruled out, it is not contrary to Article 30 since it applies to all products without distinction and is justified by the objectives of consumer protection and organization of the economy.
- 12 In order to answer the question raised by the national court, it is necessary to consider the question relating to exportation separately from that relating to importation.
- 13 As regards exportation, Article 34 is concerned with national measures the aim or effect of which is specifically to restrict the flow of exports and thus establish a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to confer a particular advantage on domestic production or on the domestic market of the State in question. That is evidently not the position in the case of legislation such as that at issue as regards the sale in other Member States of the Community of encyclopaedias produced in the Netherlands. That legislation merely imposes certain restrictions on marketing conditions within the Netherlands without affecting the sale of goods intended for exportation.
- 14 As regards the restrictions on imports referred to in Article 30 of the EEC Treaty, it must be remembered that the Court has repeatedly held, since its judgment of 20 February 1979 in Case 120/78 *Rewe* [1979] ECR 649, that in the absence of common rules relating to marketing, obstacles to movement within the Community resulting from disparities between national rules must be accepted in so far as those rules, being applicable to domestic products and imported products without distinction, are justifiable as being necessary in order to satisfy mandatory requirements relating, *inter alia*, to consumer protection and fair trading.
- 15 Legislation which restricts or prohibits certain forms of advertising and certain means of sales promotion may, although it does not directly affect imports, be such as to restrict their volume because it affects marketing opportunities for the imported products. The possibility cannot be ruled out that to compel a producer either to adopt advertising or sales promotion schemes which differ from one Member State to another or to discontinue a

scheme which he considers to be particularly effective may constitute an obstacle to imports even if the legislation in question applies to domestic products and imported products without distinction.

- 16 It is therefore necessary to consider whether a prohibition of a free gift scheme, such as that contained in the Netherlands legislation, may be justified by requirements relating to consumer protection and fair trading.
- 17 In that regard, it is clear from the evidence before the Court that the *Wet Beperking Cadeautelsel 1977* pursues a twofold objective which is, in the first place, to prevent the disruption of normal competition by undertakings which offer products as free gifts or at very low prices with a view to promoting the sale of their own range of goods and, secondly, to protect consumers by the attainment of greater market transparency.
- 18 It is undeniable that the offering of free gifts as a means of sales promotion may mislead consumers as to the real prices of certain products and distort the conditions on which genuine competition is based. Legislation which restricts or even prohibits such commercial practices for that reason is therefore capable of contributing to consumer protection and fair trading.
- 19 The question raised by the national court with regard to legislation of that kind concerns, in particular, the criterion of related consumption or use the purpose of which, in the present case, is to define the scope of one of the exceptions relaxing the rule which in principle prohibits the offering of free gifts.
- 20 Even though no such criterion has been incorporated in the laws of other Member States, and in particular that of Belgium, it does not appear to be unrelated to the above-mentioned objectives of the Netherlands legislation or, in particular, to the desire to achieve market transparency to the extent considered necessary for the protection of consumers and to ensure fair trading. Accordingly, the incorporation of such a criterion in national

legislation in order to define the scope of an exception to a rule which prohibits the offering of free gifts does not exceed what is necessary for the attainment of the objectives in question.

- 21 The answer to the question raised must therefore be that Articles 30 and 34 of the EEC Treaty do not preclude the application by a Member State to products from, or intended for, another Member State of national legislation which prohibits the offering or giving, for sales promotion purposes, of free gifts in the form of books to purchasers of an encyclopaedia and requires, for the application of an exception to that prohibition, the existence of a relationship between the consumption or use of the free gift and the product constituting the basis for the offering of the gift.

Costs

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

On those grounds,

THE COURT,

in answer to the question referred to it by the Gerechtshof, Amsterdam, by judgment of 9 October 1981, hereby rules:

Articles 30 and 34 of the EEC Treaty do not preclude the application by a Member State to products from, or intended for, another Member State of national legislation which prohibits the offering or giving, for sales promotion purposes, of free gifts in the form of books to purchasers of an encyclopaedia and requires, for the application of an

exception to that prohibition, the existence of a relationship between the consumption or use of the free gift and the product constituting the basis for the offering of the gift.

Mertens de Wilmars	Pescatore	O'Keeffe	Everling
Mackenzie Stuart	Bosco	Koopmans	Due
			Bahlmann

Delivered in open court in Luxembourg on 15 December 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL
VERLOREN VAN THEMAAT
DELIVERED ON 22 SEPTEMBER 1982¹
AND CONFIRMED AT THE SITTING ON 9 DECEMBER 1982

*Mr President,
Members of the Court,*

1. Introduction

1.1. Summary of the problems involved

This case shows once again that the point of contact between cartel agreements, divergent legislation of the various Member States on marketing and Community law is an area in which pitfalls, obstacles, snares and traps abound. In view of certain of those complications, it is not easy to answer the question referred to the Court by the

Gerechtshof [Regional Court of Appeal], Amsterdam, in such a way as to avoid any consequences which conflict with the purport of the extensive case-law of the Court which is relevant to this case. I shall begin by giving a brief summary of those complications.

(a) It appears from the written observations (p. 10) submitted in this case by Oosthoek's Uitgeversmaatschappij BV [hereinafter referred to as "Oosthoek"] that it has fallen into a trap presented by the Vereniging ter Bevordering van de Belangen des Boekhandels [Association for the Promotion of the Interests of

¹ — Translated from the Dutch.