JUDGMENT OF THE COURT (Grand Chamber)

7 December 2010 *

In Case C-439/08,

REFERENCE for a preliminary ruling under Article 234 EC from the hof van beroep te Brussel (Belgium), made by decision of 30 September 2008, received at the Court on 6 October 2008, in the proceedings

Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers (VEBIC) VZW,

intervening parties:

Raad voor de Mededinging,

Minister van Economie,

* Language of the case: Dutch.

THE COURT (Grand Chamber),

composed of. V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, K. Schiemann, J.-J. Kasel and D. Šváby, Presidents of Chambers, A. Rosas, R. Silva de Lapuerta, E. Juhász (Rapporteur), M. Safjan and M. Berger, Judges,

Advocate General: P. Mengozzi,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 20 January 2010,

after considering the observations submitted on behalf of:

— Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers (VEBIC) VZW, by P. Engels, J. Troch and B. van Hulst, advocaten,

— Raad voor de Mededinging, by W. Devroe, advocaat,

— the Belgian Government, by J.-C. Halleux and C. Pochet, acting as Agents,

— the Polish Government, by M. Dowgielewicz, K. Zawisza and A. Kramarczyk, acting as Agents,

— European Commission, by A. Bouquet and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 March 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2, 5, 15(3) and 35(1) and (2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1, 'the Regulation').

2 The reference has been made in proceedings brought by the Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers VZW (a Flemish Federation of Bakers and Confectioners, Ice-Cream Makers and Chocolate Makers) 'VEBIC', seeking annulment of a decision by which the Raad voor

de Mededinging (the 'Competition Council') found there to be pricing agreements between artisan bakers and imposed a fine on VEBIC.

Legal context

European Union legislation

3 Recital 5 in the preamble to the Regulation is worded as follows:

'In order to ensure an effective enforcement of the Community competition rules and at the same time the respect of fundamental rights of defence, this Regulation should regulate the burden of proof under Articles 81 and 82 of the Treaty. It should be for the party or the authority alleging an infringement of Article 81(1) and Article 82 of the Treaty to prove the existence thereof to the required legal standard. …'

4 Recital 6 to the Regulation states:

'In order to ensure that the Community competition rules are applied effectively, the competition authorities of the Member States should be associated more closely with their application. To this end, they should be empowered to apply Community law.'

5 Recital 8 to the Regulation states:

'In order to ensure the effective enforcement of the Community competition rules and the proper functioning of the cooperation mechanisms contained in this Regulation, it is necessary to oblige the competition authorities and courts of the Member States to also apply Articles 81 and 82 of the Treaty where they apply national competition law to agreements and practices which may affect trade between Member States.'

6 Recital 21 to the Regulation is worded as follows:

'Consistency in the application of the competition rules also requires that arrangements be established for cooperation between the courts of the Member States and the Commission. This is relevant for all courts of the Member States that apply Articles 81 and 82 of the Treaty, whether applying these rules in lawsuits between private parties, acting as public enforcers or as review courts. In particular, national courts should be able to ask the Commission for information or for its opinion on points concerning the application of Community competition law. The Commission and the competition authorities of the Member States should also be able to submit written or oral observations to courts called upon to apply Article 81 or Article 82 of the Treaty. …'

7 The third sentence of Recital 34 to the Regulation reads as follows :

'In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve its objective, which is to allow the Community competition rules to be applied effectively. '

8 The first and second sentences of Recital 35 to the Regulation are worded as follows:

'In order to attain a proper enforcement of Community competition law, Member States should designate and empower authorities to apply Articles 81 and 82 of the Treaty as public enforcers. They should be able to designate administrative as well as judicial authorities to carry out the various functions conferred upon competition authorities in this Regulation. …'

9 Under the title 'Burden of proof', the first sentence of Article 2 of the Regulation provides:

'In any national or Community proceedings for the application of Articles 81 and 82 of the Treaty, the burden of proving an infringement of Article 81(1) or of Article 82 of the Treaty shall rest on the party or the authority alleging the infringement.'

10 Article 5 of the Regulation, entitled 'Powers of the competition authorities of the Member States', provides:

'The competition authorities of the Member States shall have the power to apply Articles 81 and 82 of the Treaty in individual cases. For this purpose, acting on their own initiative or on a complaint, they may take the following decisions:

— requiring that an infringement be brought to an end,

— ordering interim measures,

— accepting commitments,

— imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Where on the basis of the information in their possession the conditions for prohibition are not met they may likewise decide that there are no grounds for action on their part.'

11 Article 15 of the Regulation, entitled 'Cooperation with national courts', provides at paragraph 3, first subparagraph:

'Competition authorities of the Member States, acting on their own initiative, may submit written observations to the national courts of their Member State on issues relating to the application of Article 81 or Article 82 of the Treaty. With the permission of the court in question, they may also submit oral observations to the national courts of their Member State. Where the coherent application of Article 81 or Article 82 of the Treaty so requires, the Commission, acting on its own initiative, may submit written observations to courts of the Member States. With the permission of the court in question, it may also make oral observations.'

12 Article 35 of the Regulation, entitled 'Designation of competition authorities of Member States', provides as follows at paragraphs 1 and 2:

'1. The Member States shall designate the competition authority or authorities responsible for the application of Articles 81 and 82 of the Treaty in such a way that the provisions of this regulation are effectively complied with. The measures necessary to empower those authorities to apply those Articles shall be taken before 1 May 2004. The authorities designated may include courts.

2. When enforcement of Community competition law is entrusted to national administrative and judicial authorities, the Member States may allocate different powers and functions to those different national authorities, whether administrative or judicial.'

National legislation

13 The Law on the protection of economic competition (Wet tot bescherming van de economische mededinging), as consolidated by the Royal Decree of 15 September 2006 (*Belgisch Staatsblad* of 29 September 2006, p. 50613, 'the WBEM'), entered into force on 1 October 2006. Article 1 defines the Belgian competition authority as follows:

'4. The Belgian competition authority: the Competition Council and the Competition Service of the Federal Public Service Economy, SMEs, Self-employed and Energy, each acting under its powers as laid down in the present law.

The Belgian Competition Authority shall be the competition authority responsible for the application of Articles 81 and 82 of the Treaty referred to in Article 35 of the Regulation …'

14 Article 2(1) of the WBEM provides:

'The following shall be prohibited, without the need for a prior decision to that effect: all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or appreciable distortion of competition on the Belgian market concerned, or in a substantial part thereof, and in particular those which:

1. directly or indirectly fix purchase or selling prices or any other trading conditions;

…'

15 Article 11 of the WBEM provides:

'1. A Competition Council is hereby established. That Council shall be an administrative court with the power to adopt decisions and the other powers conferred on it by this Law.

2. The Competition Council shall comprise:

(i) the General Assembly of the Council;

(ii) the Auditoraat (investigatory authority);

(iii) the Registry.

…'

16 Article 12(1) of the WBEM provides:

'The General Assembly of the Council shall be composed of twelve councillors. …'

17 Article 20 of the WBEM specifies :

'Each chamber of the Council and the Chairman, or the councillor to whom he delegates powers in a case of interim measures, shall rule by means of a reasoned decision in all cases referred to them, after hearing the arguments put forward by the parties concerned and, at their request, any complainants, or a by legal adviser of their choosing.'

18 Article 25 of the WBEM sets up an Auditoraat within the Competition Council, composed of a minimum of 6 members and a maximum of 10 members, including the *auditeur-generaal*, *auditeurs* or *adjunct-auditeurs* (investigating and enforcement officers, 'Auditor General', 'Auditors' and 'Assistant Auditors').

19 Article 29 of the WBEM is worded as follows:

'1. Auditors shall be responsible for:

1. receiving complaints and applications for interim measures relating to restrictive practices, and notifications of concentrations;

2. directing and organising investigations and ensuring enforcement of decisions taken by the Competition Council;

3. issuing travel orders to officials of the Competition Service …;

4. drafting the reasoned report and submitting it to the Competition Council;

5. filing complaints and applications for interim measures;

…

2. …

Without prejudice to Article 27, Auditors may not seek or accept any directions concerning the processing of cases lodged under Article 44(1) or the position they will adopt at meetings of the Auditoraat held in order to determine the priorities for the policy of implementing the law and deciding on the order in which cases will be processed.

3. When the Auditoraat decides to initiate an investigation under Article 44(1), the official directing the Competition Service shall, in cooperation with the Auditor-General, appoint the officials from that service who will make up the team responsible for the investigation.

Officials who are assigned to an investigation team may not take any directions except from the Auditor directing that investigation.

…'

20 Article 34 of the WBEM provides that the Competition Service is to be responsible inter alia for identifying and investigating the practices referred to in Chapter II of that law, under the authority of the Auditoraat.

21 Under Article 45(4), first subparagraph, of the WBEM:

'Where the Auditoraat considers that a complaint or an application or, where relevant, an ex officio investigation is founded, the Auditor shall, on behalf of the Auditoraat, submit a reasoned report to the Chamber of the Competition Council. That report shall contain the investigation report, the objections and a proposal for a decision. It shall be accompanied by the investigation file and a list of the documents it contains. The list shall indicate the confidentiality of the documents in relation to each of the parties having access to the file.'

22 Article 75 of the WBEM reads as follows:

'An appeal may be brought before the Brussels Court of Appeal against decisions of the Competition Council and of its Chairman, as well as against tacit decisions on the permissibility of concentrations as a result of the lapsing of the time-limits referred to in Articles 58 and 59, except where the Competition Council makes a ruling under Article 79.

The Court of Appeal shall have unlimited jurisdiction to rule on alleged restrictive practices and, where relevant, on the penalties that are imposed and on the permissibility of concentrations. The Court of Appeal may take into consideration any developments that have taken place since the Council took the decision under appeal.

The Court of Appeal may impose fines and penalty payments under the provisions set out in Section 8 of Chapter IV.'

23 Article 76(1) and (2) of the WBEM provides:

'1. No separate appeal may be brought against decisions whereby the Competition Council refers a case back to the Auditor.

2. Appeals provided for in Article 75 may be brought by parties to proceedings before the Competition Council, by the complainant or by any other person demonstrating a valid interest under Article 48(2) or Article 57(2) who has applied to the Competition Council for leave to be heard. An appeal may also be brought by the Minister, without the need for him to demonstrate a valid interest and without him having been represented before the Competition Council.

…

The [Brussels Court of Appeal] may request the Auditoraat at the Competition Council to carry out an investigation and to submit a report to it. …

The Brussels Court of Appeal shall set the time limits within which the parties must exchange their written observations and lodge them at the court registry.

The Minister may lodge written observations at the registry of the Brussels Court of Appeal and consult the file at the Registry without removing it. The Brussels Court of Appeal shall set time limits for the submission of such observations. The Registry shall inform the parties of their content.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

24 VEBIC was created with the aim of representing the interests of its affiliates and their members. The members of VEBIC are the provincial trade associations of the Flemish Region, established as non-profit-making associations.

25 The local bakers' associations, which the individual baker can join, are members of the provincial trade association. It is only the artisan bakeries which are covered by these local groupings as the interests of industrial bakeries are served by the Federatie van Grote Bakkerijen in België (Federation of Large Bakeries in Belgium).

26 Following the deregulation of bread prices in Belgium on 1 July 2004, the Minister van Economie (Minister for the Economy) sent a letter to the Competition Council requesting it to investigate the possible existence of price-fixing agreements between bakers' associations and bakers.

27 Following a number of investigatory measures, on 8 June 2007 the Auditor-General at the Competition Council submitted to the Chairman of that Council his report containing the objections and the investigation file: the report was sent to VEBIC.

28 The Auditoraat concluded that VEBIC had infringed Article 2(1) of the WBEM by publishing and distributing to its members a price index for bread, together with cost structures.

29 The Auditoraat's report stated that the decisions of the bakers' federations did not affect trade between Member States and that therefore the European Union ('EU') competition rules were not applicable to the practices under investigation.

30 The objections set out in the report may be summarised as follows:

— by compiling and distributing an index reflecting the cost price increase which could be voluntarily applied by the bakers, VEBIC was indirectly distributing a guide price to the bakers. The index was based on the last regulated bread price, which was the same for each baker. By applying this index to a uniform base figure, different bakers would all arrive at the same selling price. This was an infringement of Article 2(1) of the WBEM.

— VEBIC cites concrete percentage values for individual cost factors for all five parameters concerned.

31 The Auditor General proposed to the Chamber of the Competition Council that the practice complained of should be prohibited and a penalty payment imposed in the event of breach of the prohibition. He also proposed that a fine should be imposed in view of the aggravating circumstances, in particular the fact that VEBIC was well aware that price-fixing agreements were illegal and had not taken the opportunity to notify the competition authority of the method used to calculate prices.

32 On 13 August 2007 VEBIC submitted written observations on the Auditoraat's report, disputing the substantive findings in the report and raising objections alleging infringement of procedural principles, including infringement of the rights of defence.

33 On 25 January 2008, the Competition Council adopted a decision by which, first, it found that VEBIC had, from 1 July 2004 to 8 June 2007, infringed Article 2 of the WBEM and required it to bring the infringement to an end and, second, it imposed a fine of EUR 29 121 on VEBIC.

34 On 22 February 2008, VEBIC brought proceedings before the hof van beroep te Brussel seeking annulment of that decision.

35 That court notes that the WBEM does not allow the Auditoraat, which is the body responsible for investigations within the Competition Council, to take part in the proceedings before it.

36 Under Articles 75 and 76 of the WBEM, the Competition Council, of which the Auditoraat forms part, is not entitled to lodge written observations in proceedings brought against a decision that it has taken. Only the Federal Minister responsible for the Economy is entitled to do so.

37 Since the relevant minister did not avail himself of the opportunity to submit written observations, the only party to have taken part in the appeal proceedings is VEBIC, which has acted as the appellant.

38 The statutory provisions governing the procedure to be followed before the hof van beroep te Brussel and their interpretation in Belgium raise questions, in that court's view, as to the compliance of that procedure with EU law, so far as the effectiveness of the competition rules applicable in the European Union is concerned, and as to the fundamental rights of the defence, since there is no provision enabling the national

competition authority to take part in the appeal in order to ensure that the general economic interest is safeguarded.

39 In those circumstances, the hof van beroep te Brussel, before giving judgment in the appeal before it, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must the provisions [of Articles 2, 15(3) and 35(1) of the Regulation] be interpreted to mean that national competition authorities derive directly from [those provisions] an entitlement to submit written observations on arguments raised in the context of appeal proceedings brought against a decision made by them and that they can themselves present arguments in fact and in law, with the result that this entitlement cannot be excluded by a Member State?

2. Must the same provisions be interpreted to mean that, for the effective application of the competition rules with a view to protecting the general interest, the public enforcement bodies which are designated as the competition authorities are not only entitled but also have a duty to participate in the appeal proceedings against their decisions by stating their position in relation to the arguments raised in fact and in law?

3. If questions 1 and 2 are answered in the affirmative, must those provisions then be interpreted to mean that, in the absence of national provisions concerning the participation by the competition authority in the proceedings before the review body and where various authorities are designated, it is the authority which is competent to take the decisions set out in Article 5 of the Regulation which shall participate in the appeal proceedings against its decision?

4. Are the answers to the above questions different if the competition authority acts, in accordance with national law, as a court of law and/or if the final decision is taken on completion of an investigation by a body belonging to that court and charged with drawing up the objections and a draft decision?'

Admissibility of the questions referred

40 At the hearing before the Court of Justice, VEBIC argued that the reference for a preliminary ruling was inadmissible on the ground that the interpretation sought of the Regulation and of EU law more generally had no relevance to the outcome of the dispute in the main proceedings. In the present case, there is no link between the dispute and any provisions of EU law since, as the Competition Council stated in the course of its investigation, VEBIC's practices did not affect trade between the Member States and, consequently, only national competition law was to apply. Moreover, according to VEBIC, the national court has not yet given a definitive decision on the question as to whether national competition law alone should be applied or whether, on the contrary, EU law is also applicable. The question before the Court of Justice is thus hypothetical and without any relevance to the dispute before the national court.

41 It is settled case-law that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to

the Court (Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 16, and Case C-260/07 *Pedro IV Servicios* [2009] ECR I-2437, paragraph 28).

42 Where questions submitted by national courts concern the interpretation of a provision of EU law, the Court of Justice is bound, in principle, to give a ruling unless it is obvious that the request for a preliminary ruling is in reality designed to induce the Court to give a ruling by means of a fictitious dispute, or to deliver advisory opinions on general or hypothetical questions, or that the interpretation of EU law requested bears no relation to the actual facts of the main action or its purpose, or that the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Case C-306/99 *BIAO* [2003] ECR I-1, paragraph 89, and *Confederación Española de Empresarios de Estaciones de Servicio*, paragraph 17).

43 That is not the position in the dispute in the main proceedings.

44 In that regard, it is apparent from, inter alia, the decision making the reference that the hof van beroep te Brussel has unlimited jurisdiction and the right to set aside or vary the decisions of the Competition Council. More specifically, according to the national court, the premiss on which the decision of the Competition Council at issue in the main proceedings is founded — that the practices under consideration do not affect trade between Member States and that, in this instance, only internal competition rules apply — could be rebutted by matters of fact which indicate that those anti-competitive practices have effects not only within the geographical area in which the practices occur but also in relation to trade between Member States. The

hof van beroep te Brussel thus concludes that the practices at issue may fall within Article 101 TFEU.

45 Furthermore, the fact that the national court has not yet given a definitive decision on the question as to whether national competition law alone should be applied or whether, on the contrary, EU law is also applicable is no bar at all to the admissibility of its reference.

46 Indeed, as the Advocate General has stated in point 42 of his Opinion, first, it would be illogical if, for the purposes of the admissibility of a reference for a preliminary ruling, the national court had to give a definitive decision on an issue which, directly or indirectly, forms the subject-matter of its reference. Second, it is clear that, in the present case, the questions referred by the national court necessarily assume that the Regulation is applicable.

47 In that regard, it is clear from the case-law that, in view of the division of responsibilities between the national courts and the Court of Justice, the referring court cannot be required to make all the findings of fact and of law required by its judicial function first before it may then bring the matter before the Court. It is sufficient that both the subject-matter of the dispute in the main proceedings and the main issues raised for the Community legal order may be understood from the reference for a preliminary ruling, in order to enable the Member States to submit their observations in accordance with Article 23 of the Statute of the Court of Justice and to participate effectively in the proceedings before the Court (Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 41).

48 It follows from the foregoing that the reference for a preliminary ruling is admissible.

Consideration of the questions referred

49 Since the four questions asked by the national court are connected, it is appropriate to consider them together.

50 In this instance, the questions have arisen in the course of an appeal against a decision of the Competition Council. In the national court's view, the difficulty resides in the fact that, in the absence of a respondent, the only party to the proceedings before it is the appellant in the main action.

51 In the national court's view, a situation in which neither a representative of a competition authority nor a person representing the general interest with regard to competition participates in proceedings brought before a court against the decision of the competition authority raises questions as to the compatibility of the national rules at issue with EU law, in particular with Articles 2, 15(3) and 35(1) of the Regulation.

52 The national court's questions must therefore be considered to be asking, in essence, whether a national competition authority is entitled, by virtue of those provisions of the Regulation, to participate, as a defendant or respondent, in judicial proceedings concerning one of its own decisions.

53 It should be noted at the outset that the right of national competition authorities to participate in proceedings brought against their own decisions and to enjoy the same rights as a party to those proceedings does not derive from the wording of Articles 2 and 15(3) of the Regulation.

54 First, Article 2 of the Regulation states that the burden of proving an infringement of Article 101 TFEU or Article 102 TFEU rests on 'the authority alleging the infringement' but the provision does not confer any procedural right whatsoever on such an authority.

55 Second, the first subparagraph of Article 15(3) of the Regulation, which authorises a national competition authority to submit written observations to the national courts of its Member State on issues relating to the application of Articles 101 TFEU and 102 TFEU and, with the permission of the court in question, to submit oral observations, does not refer to such an authority participating in national judicial proceedings as a defendant or respondent.

56 It is also important to recall that, under Article 35(1) of the Regulation, the Member States are to designate the competition authority or authorities responsible for the application of Articles 101 TFEU and 102 TFEU in such a way that the provisions of that regulation are effectively complied with. The authorities so designated must, in accordance with the regulation, ensure that those Treaty Articles are applied effectively in the general interest (see Recitals 5, 6, 8, 34 and 35 in the preamble to the Regulation).

57 Although Article 35(1) of the Regulation leaves it to the domestic legal order of each Member State to determine the detailed procedural rules for legal proceedings

brought against decisions of the competition authorities designated thereunder, such rules must not jeopardise the attainment of the objective of the regulation, which is to ensure that Articles 101 TFEU and 102 TFEU are applied effectively by those authorities.

58 In that regard, as the Advocate General has remarked in point 74 of his Opinion, if the national competition authority is not afforded rights as a party to proceedings and is thus prevented from defending a decision that it has adopted in the general interest, there is a risk that the court before which the proceedings have been brought might be wholly 'captive' to the pleas in law and arguments put forward by the undertaking(s) bringing the proceedings. In a field such as that of establishing infringements of the competition rules and imposing fines, which involves complex legal and economic assessments, the very existence of such a risk is likely to compromise the exercise of the specific obligation on national competition authorities under the Regulation to ensure the effective application of Articles 101 TFEU and 102 TFEU.

59 A national competition authority's obligation to ensure that Articles 101 TFEU and 102 TFEU are applied effectively therefore requires that the authority should be entitled to participate, as a defendant or respondent, in proceedings before a national court which challenge a decision that the authority itself has taken.

60 It is for the national competition authorities to gauge the extent to which their intervention is necessary and useful having regard to the effective application of EU competition law.

61 However, as the Commission has correctly observed, if those authorities were, almost as a matter of course, not to enter an appearance, the effectiveness of Articles 101 TFEU and 102 TFEU would be jeopardised.

62 Under Article 35(1) of the Regulation, the competition authorities designated by the Member States may include courts. Under Article 35(2), when enforcement of EU competition law is entrusted to national administrative and judicial authorities, the Member States may allocate different powers and functions to those different national authorities, whether administrative or judicial.

63 In that regard, in the absence of EU rules, the Member States remain competent, in accordance with the principle of procedural autonomy, to designate the bodies of the national competition authority which may participate, as a defendant or respondent, in proceedings brought before a national court against a decision that the authority itself has taken, while at the same time ensuring that fundamental rights are observed and that EU competition law is fully effective.

64 In view of the foregoing, the answer to the questions referred is that Article 35 of the Regulation must be interpreted as precluding national rules which do not allow a national competition authority to participate, as a defendant or respondent, in judicial proceedings brought against a decision that the authority itself has taken. It is for the national competition authorities to gauge the extent to which their intervention is necessary and useful having regard to the effective application of EU competition law. However, if the national competition authority consistently fails to enter an appearance in such judicial proceedings, the effectiveness of Articles 101 TFEU and 102 TFEU is jeopardised. In the absence of EU rules, the Member States remain competent, in accordance with the principle of procedural autonomy, to designate the body or bodies of the national competition authority which may participate, as a defendant or respondent, in proceedings brought before a national court against a decision that

the authority itself has taken, while at the same time ensuring that fundamental rights are observed and that EU competition law is fully effective.

Costs

65 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 35 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty must be interpreted as precluding national rules which do not allow a national competition authority to participate, as a defendant or respondent, in judicial proceedings brought against a decision that the authority itself has taken. It is for the national competition authorities to gauge the extent to which their intervention is necessary and useful having regard to the effective application of European Union competition law. However, if the national competition authority consistently fails to enter an appearance in such judicial proceedings, the effectiveness of Articles 101 TFEU and 102 TFEU is jeopardised.

In the absence of European Union rules, the Member States remain competent, in accordance with the principle of procedural autonomy, to designate the body or bodies of the national competition authority which may participate, as a defendant or respondent, in proceedings brought before a national court against a decision which the authority itself has taken, while at the same time ensuring that fundamental rights are observed and that European Union competition law is fully effective.

[Signatures]