Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 March 2013*

(Competition — Article 101(1) TFEU — Application of similar national regulations — Jurisdiction of the Court — Bilateral agreements between an insurance company and car repairers relating to hourly repair charges — Charges paid depending on the number of insurance contracts concluded for the insurance company by those repairers in their capacity as brokers — Concept of 'agreement having as its object the restriction of competition')

In Case C-32/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Magyar Köztársaság Legfelsőbb Bírósága (Hungary), made by decision of 13 October 2010, received at the Court on 21 January 2011, in the proceedings

Allianz Hungária Biztosító Zrt,

Generali-Providencia Biztosító Zrt,

Gépjármű Márkakereskedők Országos Szövetsége,

Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft,

Paragon-Alkusz Zrt., the legal successor of the Magyar Opelkereskedők Bróker Kft

v

Gazdasági Versenyhivatal,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Ilešič (Rapporteur), A. Borg Barthet, M. Safjan and M. Berger, Judges,

Advocate General: P. Cruz Villalón,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 7 June 2012,

after considering the observations submitted on behalf of:

— Allianz Hungária Biztosító Zrt, by Z. Hegymegi-Barakonyi and P. Vörös, ügyvédek,

* Language of the case: Hungarian.

— Generali-Providencia Biztosító Zrt, by G. Fejes and L. Scheuer-Szabó, ügyvédek,

— the Hungarian Government, Z. Fehrér, K. Szíjjártó and K. Molnár, acting as Agents,

— the European Commission, by V. Bottka, L. Malferrari and M. Kellerbauer, acting as Agents,

— the EFTA Surveillance Authority, by X. Lewis and M. Schneider, acting as Agents

after hearing the Opinion of the Advocate General at the sitting on 25 October 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 101(1) TFEU.

2 The request has been made in the context of a dispute between the companies Allianz Hungária Biztosító Zrt ('Allianz'), Generali-Providencia Biztosító Zrt ('Generali'), Magyar Peugeot Márkakereskedők Biztosítási Alkusz Kft ('Peugeot Márkakereskedők') and Paragon-Alkusz Zrt, the legal successor of the Magyar Opelkereskedők Bróker Kft ('Opelkereskedők') and the association Gépjármű Márkakereskedők Országos Szövetsége ('GÉMOSZ'), on the one hand, and the Gazdasági Versenyhivatal (the competition authority) ('the GVH'), on the other hand, concerning a decision taken by the latter imposing fines on those undertakings and on Porsche Biztosítási Alkusz Kft ('Porsche Biztosítási') for having concluded a series of agreements with an anti-competitive object ('the contested decision').

Legal context

Hungarian legislation

3 The preamble to Law No LVII of 1996 on the prohibition of unfair market practices and the restriction of competition (A tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról szóló 1996. évi LVII. Törvény) ('Tpvt') states:

'The public interest in the maintenance of competition on the market, which benefits economic efficiency, social development and the interests of consumers and undertakings which respect business integrity, requires that the State ensure free and fair economic competition by means of legal regulation. That necessitates the adoption of rules of competition law which preclude market practices contrary to the requirements of fair competition or which restrict economic competition, prevent concentrations of undertakings which are damaging to competition, while respecting the requisite organisational and procedural conditions. In order to fulfil those objectives, the Parliament – aware of the need to harmonise European Community rules and the practice of Hungarian law in the field of competition – adopts the following law …'.

4 Paragraph 11(1) and (2) of the Tpvt, entitled 'Prohibition of agreements restricting competition' provides:

'1. All agreements between undertakings and all decisions by associations of undertakings, bodies governed by public law, associations and other similar entities ... which have as their object, or which have or are likely to have as their effect, the prevention, restriction or distortion of competition are prohibited. Agreements concluded between undertakings which are not independent of each other cannot be covered by this definition.

2. The prohibition shall apply in particular to:

(a) directly or indirectly fixing purchase or selling prices or any other trading conditions;

(b) limiting or controlling production, distribution, technical development or investments;

(c) sharing supply markets, limiting the choice of suppliers and excluding certain consumers for the purchase of various goods;

(d) market sharing, excluding sales or restricting the choice of types of sale;

(repealed)

(f) preventing market access;

(g) cases where, in relation to transactions of the same value or type, there is discrimination between the parties to the contract, in particular as regards pricing, payment deadlines, terms and methods of sale and purchase, which put certain parties to the contract at a competitive disadvantage;

(h) making the conclusion of the contract subject to the acceptance of obligations which do not, whether according to their character or according to commercial practice, have any connection with the purpose of those contracts.'

5 According to the explanatory memorandum for the Tpvt, the proposal in Paragraph 11 was justified by the following considerations:

'Significant changes with very important economic consequences are expected in the field of antitrust law. The main reason for the changes is the harmonisation of the law. … Article 85 of the EEC Treaty sets out a general prohibition of agreements and prohibits both horizontal and vertical agreements. … In the field of agreements, the proposal confirms the principle of general prohibition – like the law on capital markets and Article 85 of the EEC Treaty. That means that the regulation lays down the principle of the general prohibition of agreements and adopts the system of exceptions and derogations. … Paragraph 11(1) of the proposal does not prohibit merely everything which restricts or excludes (prevents) competition, as does the law on capital markets, but also, in accordance with Article 85 of the EEC Treaty, everything which distorts competition. … Apart from the general prohibition of agreements, the proposal – based on the regulatory approach applied in the law on capital markets and in Article 85 of the EEC Treaty – draws up a non-exhaustive list of examples of typical agreements which restrict competition. That list is broader than that in the law on capital markets and is similar to the list of agreements appearing in Article 85(1) of the EEC Treaty.'

The dispute in the main proceedings and the question submitted for a preliminary ruling

6 Once a year, the Hungarian insurers, and in particular Allianz and Generali, agree with the repair shops conditions and rates applicable to repair services payable by the insurer in the case of accidents involving insured vehicles. Those shops are thus able to carry out repairs immediately according to the conditions and rates agreed with the insurer.

7 Since the end of 2002, many authorised dealers which also operate as repair shops have requested GÉMOSZ, the national association of authorised dealers, to negotiate on their behalf annual framework agreements with the insurers concerning hourly charges for the repair of damaged cars.

8 Those dealers are connected with the insurers in two ways. First, they repair, in the event of accidents, cars insured by the insurers and, secondly, they act as intermediaries for the insurers by offering, as agents of their own insurance brokers or associated brokers, car insurance to their customers on the occasion of the sale or repair of vehicles.

9 During 2004 and 2005, framework agreements were concluded between GÉMOSZ and Allianz. Allianz later concluded individual agreements with those dealers on the basis of the framework agreements. Those agreements provided that the dealers would receive higher remuneration for car repairs where Allianz car insurance made up a certain percentage of the insurance sold by the dealer.

10 During that time, Generali did not conclude any framework agreements with GÉMOSZ, but rather individual agreements with those dealers. While those agreements did not contain a written clause concerning increased remuneration like those included in the Allianz agreements, the GVH nevertheless found that, in practice, Generali provided similar commercial incentives.

11 By the contested decision, the GVH found that those agreements and other agreements concluded by the five applicants in the main proceedings and by Porsche Biztosítási were incompatible with Paragraph 11 of the Tpvt. Those agreements can be summarised as follows:

— horizontal agreements consisting of three decisions taken by GÉMOSZ between 2003 and 2005, which set out 'recommended prices' to the authorised dealers for car repairs and which were applicable to the insurers;

— framework agreements concluded in 2004 and 2005 between GÉMOSZ and Allianz and individual agreements concluded at the same time between certain authorised dealers and Allianz and Generali respectively, which made the hourly repair charge dependent on the number of insurance policies signed;

— various agreements concluded between 2000 and 2005 respectively between Allianz and Generali, on the one part, and Peugeot Márkakereskedők, Opelkereskedők and Porsche Biztosítási as insurance brokers, on the other, seeking to influence their practices by specifying a minimum number or percentage of car insurance policies to be obtained by the broker over a given period of time and by providing that the broker's remuneration be fixed according to the number of policies taken out with the insurer.

12 The GVH found that that bundle of agreements, considered together and individually, had as its object the restriction of competition in the car insurance contracts market and the car repair services market. The GVH held that, as there was no impact on intra-Community trade, Article 101 TFEU was not applicable to those agreements and that their unlawfulness derived solely from domestic competition law. On the basis of that unlawfulness, it prohibited the continuation of the practices in question and imposed fines in the following amounts: HUF 5 319 000 000 on Allianz, HUF 1 046 000 000 on Generali, HUF 360 000 000 on GÉMOSZ, HUF 13 600 000 on Peugeot Márkakereskedők and HUF 45 000 000 on Opelkereskedők.

13 Following the action for annulment brought by the applicants in the main proceedings, the Fővárosi Bíróság (Budapest Municipal Court) partially reversed the contested decision, which, however, was restored on appeal by decision of the Fővárosi Ítélőtábla (Regional Court of Appeal, Budapest).

14 The applicants in the main proceedings appealed against that judgment before the Legfelsőbb Bíróság (Hungarian Supreme Court), claiming in particular that the agreements in question did not have as their object the restriction of competition.

15 The Legfelsőbb Bíróság notes, first, that the wording of Paragraph 11(1) of the Tpvt is almost identical to that of Article 101(1) TFEU and that the interpretation of Paragraph 11 of the Tpvt, which will ultimately be adopted with respect to the agreements at issue, will in the future also have an impact on the interpretation of Article 101 TFEU in that Member State. That court points out, moreover, that there is a clear interest in having a uniform interpretation of the provisions and concepts of European Union law. The Legfelsőbb Bíróság notes, secondly, that the Court has not yet given judgment with regard to whether agreements such as those at issue in the main proceedings can be treated as 'agreements which, by their nature, are restrictive of competition by reason of their object'.

16 Accordingly, the Legfelsőbb Bíróság decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do bilateral agreements between an insurance company and individual car repairers, or between an insurance company and a car repairers' association, under which the hourly repair charge paid by the insurance company to the repairer for the repair of vehicles insured by the insurance company depends, among other things, on the number and percentage of insurance policies taken out with the insurance company through the repairer, acting as the insurance broker for the insurance company in question, qualify as agreements which have as their object the prevention, restriction or distortion of competition, and thus contravene Article 101(1) TFEU?'

The jurisdiction of the Court

17 Allianz, Generali, the Hungarian Government and the European Commission consider that the Court has jurisdiction to answer the question submitted even though Article 101(1) TFEU is not applicable to the main proceedings because the agreements at issue in those proceedings do not have an impact on intra-Community trade.

18 The Commission, supported on this point during the hearing by Generali and the Hungarian Government, refers to the special connection between Article 101 TFEU and Paragraph 11 of the Tpvt, which stems not only from the use of identical concepts, but also from the decentralised system of applying competition law established by 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). It is apparent, moreover, from the order for reference that the Legfelsőbb Bíróság will follow the guidelines provided by the Court and that it will apply them uniformly in both purely internal situations and in situations in which Article 101 TFEU is also applicable. Allianz claims, in particular, that the European Union has an interest in the uniform interpretation of a provision reproducing European Union law, such as Paragraph 11 of the Tpvt.

19 In that regard, it must be recalled that, under Article 267 TFEU, the Court has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and acts of the EU institutions. In the context of cooperation between the Court and the national courts, established by Article 267 TFEU, it is for the national courts alone to assess, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court. Consequently, where questions submitted by national courts concern the interpretation of a provision of EU law, the Court is, in principle, obliged to give a ruling (see Case C-482/10 *Cicala* [2011] ECR I-14139, paragraphs 15 and 16 and the case-law cited).

20 Applying that case-law, the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning European Union law in situations where the facts of the cases being considered by the national courts were outside the direct scope of European Union law but where those provisions had been rendered applicable by domestic law, which adopted, for internal situations, the same approach as that provided for under European Union law. In those circumstances, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation,

provisions or concepts taken from European Union law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, to that effect, inter alia, Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 37; Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraphs 27 and 32; Case C-1/99 *Kofisa Italia* [2001] ECR I-207, paragraph 32; Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 19; Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraph 21; Case C-352/08 *Modehuis A. Zwijnenburg* [2010] ECR I-4303, paragraph 33; and Case C-603/10 *Pelati* [2012] ECR, paragraph 18).

21 Concerning this request for a preliminary ruling, it should be noted that Paragraph 11(1) and (2) of the Tpvt faithfully reproduces Article 101(1) TFEU. It is clearly apparent, moreover, from the preamble to and the explanatory memorandum for the Tpvt that the Hungarian legislature sought to harmonise domestic competition law with that of the European Union and that, in particular, Paragraph 11(1) aims to prohibit 'in application of Article 85 of the EEC Treaty', now Article 101 TFEU, 'everything which distorts competition'. It is therefore not contested that that legislature decided to treat internal situations and situations governed by European Union law in the same way.

22 Moreover, it follows from the order for reference that the Legfelsőbb Bíróság considers that the concepts referred to in Paragraph 11(1) of the Tpvt must in fact be interpreted in the same way as the equivalent concepts in Article 101(1) TFEU and that it is bound in that regard by the interpretation of those concepts provided by the Court.

23 In those circumstances, it must be held that the Court has jurisdiction to answer the question submitted, concerning Article 101(1) TFEU, even though the latter provision does not directly govern the situation at issue in the main proceedings.

Admissibility of the request for a preliminary ruling

24 The Hungarian Government disputes the admissibility of the request for a preliminary ruling on the ground that the facts set out by the referring court do not contain all the information necessary to allow the Court to give a useful answer to the question submitted to it. That government claims inter alia that, in order to determine whether the bilateral agreements to which the question refers had as their object the restriction of competition, it is necessary to take into account not only those agreements, but the whole of the system of agreements and of the fact that they are mutually reinforcing.

25 The EFTA Surveillance Authority, without raising the inadmissibility of that request, notes also that the referring court does not explain the economic and legal context of the agreements at issue in the main proceedings, so that it is difficult to provide it with a useful answer.

26 According to settled case-law, the Court may refuse to rule on a question submitted by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its subject-matter, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25; and Case C-180/11 *Bericap Záródástechnikai* [2012] ECR, paragraph 58).

27 With regard, more particularly, to the information that must be provided to the Court in an order for reference, that information does not serve only to enable the Court to provide answers which will be of use to the national court; it must also enable the governments of the Member States and other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. For those purposes, it is necessary that the national court should

define the factual and legislative context of the questions which it is asking or, at the very least, explain the factual circumstances on which those questions are based (see Case C-25/11 *Varzim Sol* [2012] ECR, paragraph 30 and the case-law cited).

28 The order for reference contains an adequate description of the legal and factual context to the dispute in the main proceedings, and the information provided by the referring court makes it possible for the significance of the question referred to be determined. Thus, the order for reference has given the interested parties a genuine opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice, as is indeed shown by the content of the observations submitted to the Court.

29 On the basis of the information included in the order for reference, the Court is, moreover, able to provide the Legfelsőbb Bíróság with a useful answer. In that regard, it should be noted that, in the context of the procedure referred to in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the role of the latter is limited to interpreting the provisions of European Union law referred to it, in this case, Article 101(1) TFEU. Therefore, it is not for the Court, but for the Legfelsőbb Bíróság to apply that interpretation to the present case and thus to determine in the end whether, taking account of all of the information relevant to the situation in the main proceedings and the economic and legal context of which it forms a part, the agreements at issue have as their object the restriction of competition. Consequently, even if the order for reference does not set out that information and that context in sufficient detail so as to enable that determination to be carried out, such a lacuna does not affect the Court's fulfilment of the task assigned to it by Article 267 TFEU.

30 The request for a preliminary ruling is therefore admissible.

Consideration of the question submitted for a preliminary ruling

31 By its question, the referring court asks, in essence, whether Article 101(1) TFEU must be interpreted as meaning that agreements whereby car insurance companies come to bilateral arrangements, either with car dealers acting as car repair shops, or with an association representing the latter, concerning the hourly charge to be paid by the insurance company for repairs to vehicles insured by it, stipulating that that charge depends, inter alia, on the number and percentage of insurance contracts that the dealer has sold as intermediary for that company, can be considered a restriction of competition 'by object' within the meaning of that provision.

32 Allianz and Generali consider that such agreements do not constitute a restriction 'by object' and can therefore be treated as infringing Article 101(1) TFEU solely to the extent that it is shown that they are in fact likely to produce anti-competitive effects. By contrast, the Hungarian Government and the Commission suggest that the question submitted be answered in the affirmative. The EFTA Surveillance Authority considers that the answer to that question depends on the extent to which those agreements harm competition, which should be determined by the referring court.

33 It must first of all be recalled that, to be caught by the prohibition laid down in Article 101(1) TFEU, an agreement must have 'as [its] object or effect the prevention, restriction or distortion of competition within the internal market'. According to established case-law since the judgment in Case 56/65 *LTM* [1966] ECR 337, the alternative nature of that requirement, indicated by the conjunction 'or', leads, first of all, to the need to consider the precise object of the agreement in the economic context in which it is to be applied.

34 Accordingly, where the anti-competitive object of the agreement is established it is not necessary to examine its effects on competition. Where, however, the analysis of the content of the agreement does not reveal a sufficient degree of harm to competition, the effects of the agreement should then be

considered and, for it to be caught by the prohibition, it is necessary to find that factors are present which show that competition has in fact been prevented, restricted or distorted to an appreciable extent (see Case C-8/08 *T-Mobile Netherlands and Others* [2009] ECR I-4529, paragraphs 28 and 30; Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P *GlaxoSmithKline Services and Others* v *Commission and Others* [2009] ECR I-9291, paragraph 55; Joined Cases C-403/08 and C-429/08 *Football Association Premier League and Others* [2011] ECR I-9083, paragraph 135; and Case C-439/09 *Pierre Fabre Dermo-Cosmétique* [2011] ECR I-9419, paragraph 34).

35 The distinction between 'infringements by object' and 'infringements by effect' arises from the fact that certain forms of collusion between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition (see Case C-209/07 *Beef Industry Development Society and Barry Brothers* [2008] ECR I-8637, paragraph 17; *T-Mobile Netherlands and Others*, paragraph 29; and Case C-226/11 *Expedia* [2012] ECR, paragraph 36).

36 In order to determine whether an agreement involves a restriction of competition 'by object', regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part (see *GlaxoSmithKline Services and Others* v *Commission and Others*, paragraph 58; *Football Association Premier League and Others*, paragraph 136; and *Pierre Fabre Dermo-Cosmétique*, paragraph 35). When determining that context, it is also appropriate to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question (see *Expedia*, paragraph 21 and the case-law cited).

37 In addition, although the parties' intention is not a necessary factor in determining whether an agreement is restrictive, there is nothing prohibiting the competition authorities, the national courts or the Courts of the European Union from taking that factor into account (see, to that effect, *GlaxoSmithKline Services and Others* v *Commission and Others*, paragraph 58 and the case-law cited).

38 The Court has, moreover, already held that, in order for the agreement to be regarded as having an anti-competitive object, it is sufficient that it has the potential to have a negative impact on competition, that is to say, that it be capable in an individual case of resulting in the prevention, restriction or distortion of competition within the internal market. Whether and to what extent, in fact, such an effect results can only be of relevance for determining the amount of any fine and assessing any claim for damages (see *T-Mobile Netherlands and Others*, paragraph 31).

39 Concerning the agreements referred to in the question submitted, it should be noted that they relate to the hourly charge to be paid by the insurance company to car dealers, acting as repair shops, for the repair of cars in the event of accidents. They provide that that charge is increased in accordance with the number and percentage of insurance contracts that the dealer sells for that company.

40 Such agreements therefore link the remuneration for the car repair service to that for the car insurance brokerage. The linkage of those two different services is possible because of the fact that the dealers act in relation to the insurers in a dual capacity, namely as intermediaries or brokers, offering car insurance to their customers at the time of sale or repair of vehicles, and as repair shops, repairing vehicles after accidents on behalf of the insurers.

41 However, while the establishment of such a link between two activities which are in principle independent does not automatically mean that the agreement concerned has as its object the restriction of competition, it can nevertheless constitute an important factor in determining whether that agreement is by its nature injurious to the proper functioning of normal competition, which is the case, in particular, where the independence of those activities is necessary for that functioning.

42 Moreover, it is necessary to take account of the fact that such an agreement is likely to affect not only one, but two markets, in this case those of car insurance and car repair services, and that its object must be determined with respect to the two markets concerned.

43 In that regard, it must, first, be noted that, in contrast to the view apparently held by Allianz and Generali, the fact that both cases concern vertical relationships in no way excludes the possibility that the agreement at issue in the main proceedings constitutes a restriction of competition 'by object'. While vertical agreements are, by their nature, often less damaging to competition than horizontal agreements, they can, nevertheless, in some cases, also have a particularly significant restrictive potential. The Court has thus already held on several occasions that a vertical agreement had as its object the restriction of competition (see Joined Cases 56/64 and 58/64 *Consten and Grundig* v *Commission* [1966] ECR 429; Case 19/77 *Miller International Schallplatten* v *Commission* [1978] ECR 131; Case 243/83 *Binon* [1985] ECR 2015; and *Pierre Fabre Dermo-Cosmétique*).

44 Next, with regard to determining the object of the agreements at issue in the main proceedings with respect to the car insurance market, it should be noted that, by such agreements, insurance companies such as Allianz and Generali aim to maintain or increase their market shares.

45 It is not disputed that, if there was a horizontal agreement or a concerted practice between those two companies designed to partition the market, such an agreement or practice would have to be treated as a restriction by object and would also result in the unlawfulness of the vertical agreements concluded in order to implement that agreement or practice. Allianz and Generali dispute however that they acted in agreement or concert and claim that the contested decision found that there was no such agreement or practice. It is for the referring court to check the accuracy of those claims and, to the extent that it is enabled under domestic law, to determine whether there is enough evidence to establish the existence of an agreement or concerted practice between Allianz and Generali.

46 Nevertheless, even if there is no agreement or concerted practice between those insurance companies, it will still be necessary to determine whether, taking account of the economic and legal context of which they form a part, the vertical agreements at issue in the main proceedings are sufficiently injurious to competition on the car insurance market as to amount to a restriction of competition by object.

47 That could in particular be the case where, as is claimed by the Hungarian Government, domestic law requires that dealers acting as intermediaries or insurance brokers must be independent from the insurance companies. That government claims, in that regard, that those dealers do not act on behalf of an insurer, but on behalf of the policyholder and it is their job to offer the policyholder the insurance which is the most suitable for him amongst the offers of various insurance companies. It is for the referring court to determine whether, in those circumstances and in light of the expectations of those policyholders, the proper functioning of the car insurance market is likely to be significantly disrupted by the agreements at issue in the main proceedings.

48 Furthermore, those agreements would also amount to a restriction of competition by object in the event that the referring court found that it is likely that, having regard to the economic context, competition on that market would be eliminated or seriously weakened following the conclusion of those agreements. In order to determine the likelihood of such a result, that court should in particular take into consideration the structure of that market, the existence of alternative distribution channels and their respective importance and the market power of the companies concerned.

49 Finally, with regard to determining the object of the agreements at issue in the main proceedings with respect to the car repair service market, it is necessary to take account of the fact that those agreements appear to have been concluded on the basis of 'recommended prices' established in the

three decisions taken by GÉMOSZ from 2003 to 2005. In that context, it is for the referring court to determine the exact nature and scope of those decisions (see, to that effect, Case C-260/07 *Pedro IV Servicios* [2009] ECR I-2437, paragraphs 78 and 79).

50 In the event that that court holds that the decisions taken by GÉMOSZ during that period in fact had as their object the restriction of competition by harmonising hourly charges for car repairs and that, by the agreements at issue, the insurance companies voluntarily confirmed those decisions, which can be assumed where the insurance company concluded an agreement directly with GÉMOSZ, the unlawfulness of those decisions would vitiate those agreements, which would then also be considered a restriction of competition by object.

51 In the light of all of the foregoing considerations, the answer to the question submitted is that Article 101(1) TFEU must be interpreted as meaning that agreements whereby car insurance companies come to bilateral arrangements, either with car dealers acting as car repair shops or with an association representing those dealers, concerning the hourly charge to be paid by the insurance company for repairs to vehicles insured by it, stipulating that that charge depends, inter alia, on the number and percentage of insurance contracts that the dealer has sold as intermediary for that company, can be considered a restriction of competition 'by object' within the meaning of that provision, where, following a concrete and individual examination of the wording and aim of those agreements and of the economic and legal context of which they form a part, it is apparent that they are, by their very nature, injurious to the proper functioning of normal competition on one of the two markets concerned.

Costs

52 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 (First Chamber) hereby rules:

Article 101(1) TFEU must be interpreted as meaning that agreements whereby car insurance companies come to bilateral arrangements, either with car dealers acting as car repair shops or with an association representing those dealers, concerning the hourly charge to be paid by the insurance company for repairs to vehicles insured by it, stipulating that that charge depends, inter alia, on the number and percentage of insurance contracts that the dealer has sold as intermediary for that company, can be considered to be a restriction of competition 'by object' within the meaning of that provision, where, following a concrete and individual examination of the wording and aim of those agreements and of the economic and legal context of which they form a part, it is apparent that they are, by their very nature, injurious to the proper functioning of normal competition on one of the two markets concerned.

[Signatures]