JUDGMENT OF THE COURT (Grand Chamber)

1 July 2008 *

In Case C-49/07,

REFERENCE for a preliminary ruling under Article 234 EC, from the Diikitiko Efetio Athinon (Greece), made by decision of 21 November 2006, received at the Court on 5 February 2007, in the proceedings

Motosykletistiki Omospondia Ellados NPID (MOTOE)

v

Elliniko Dimosio,

THE COURT (Grand Chamber),

composed of V. Skouris, President, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, J.N. Cunha Rodrigues, A. Borg Barthet, M. Ilešič, J. Malenovský, J. Klučka (Rapporteur), T. von Danwitz, A. Arabadjiev and C. Toader, Judges,

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

* Language of the case: Greek.

having regard to the written procedure and further to the hearing on 23 January 2008,

after considering the observations submitted on behalf of:

— the Motosykletistiki Omospondia Ellados NPID (MOTOE), by A. Pliakos, dikigoros,

— the Greek Government, by S. Spyropoulos, K. Boskovits, S. Trekli and Z. Chatzipavlou, acting as Agents,

— the Commission of the European Communities, by T. Christoforou and F. Amato, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2008,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Articles 82 EC and 86 EC.

2 The reference has been made in the course of proceedings between the Motosykletistiki Omospondia Ellados NPID (MOTOE) (Greek Motorcycling Federation; 'MOTOE') and the Elliniko Dimosio (Greek State) regarding financial compensation for the non-material harm which MOTOE claims to have suffered as a result of the implicit refusal by the Greek State to grant it authorisation to organise motorcycling competitions.

Legal context

3 Under Article 49 of the Greek Road Traffic Code, in the version resulting from Law No 2696/1999 (FEK A' 57):

'1. Competitions involving … motorcycles or mopeds on public or private roads or spaces are allowed to take place only after authorisation has been granted.

2. Authorisation under the previous paragraph shall be given:

…

(c) for all competitions involving … motorcycles or mopeds, by the Minister for Public Order or the authorities empowered by him, following the consent of the legal person which officially represents in Greece the … Fédération Internationale de Motocyclisme (International Motorcycling Federation) [("the FIM")]'.

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

4 MOTOE is a non-profit-making association governed by private law whose object is the organisation of motorcycling competitions in Greece. Its members include various regional motorcycling clubs.

5 On 13 February 2000, that association submitted to the competent minister an application for authorisation to organise competitions within the framework of the MOTOE Panhellenic Cup in accordance with a programme appended to that application.

6 In accordance with Article 49(2) of the Greek Road Traffic Code, that programme was sent to Elliniki Leskhi Aftokinitou kai Periigiseon (Automobile and Touring Club of Greece; 'ELPA'), a legal person and a non-profit-making association which represents the FIM in Greece, for it to consent for the purposes of granting the authorisation applied for.

7 By letter of 16 March 2000 ELPA requested MOTOE, first, to communicate to it specific rules for each of the planned events two months before the date upon which it would take place, so as to allow scrutiny of the list of participants, the route or track for the race, the safety measures adopted and, more generally, all the conditions for the safe running of the event. Second, it asked the clubs organising the events to lodge a copy of their statutes with Ethniki Epitropi Agonon Motosykletas (the National Motorcycle-Racing Committee; 'ETHEAM'), created by ELPA and entrusted with organising and supervising motorcycling events.

8 By application No 28/5.5.2000 sent to the competent ministry, MOTOE restated its request, in respect of six clubs, for authorisation to hold six races on dates from 9 July 2000 to 26 November 2000. It appended to that application the specific rules for the holding of those events as well as copies of those clubs' statutes. That application was also forwarded to ELPA with a view to its giving a declaration of consent for the holding of those events.

9 ELPA and ETHEAM sent MOTOE a document reminding it of certain rules relating to the organisation of motorcycling events in Greece. In particular, it is stated in that document that championships, cups and prizes organised in the framework of motorcycling events are announced by ETHEAM following authorisation from ELPA, which is the only legal representative of the FIM in Greece. If an entity or club which satisfies the necessary requirements for the organising and holding of events wishes a specific cup or prize to be announced, it must, according to that document, submit the announcement to ETHEAM. ETHEAM, after assessing the terms of that announcement, makes a decision in which it also defines the conditions for holding the event, in accordance with the international and national rules. For consent for organisation of an event to be granted, including within the framework of a cup or prize, each organiser who has taken on one of those events must satisfy the requirements laid down in the National Motorcycle Competition Code and ETHEAM's circulars. ELPA and ETHEAM also reminded MOTOE that if, in the course of the year, an organiser requests that additional events be announced, the dates of those events must not affect the dates already scheduled, and this must be in the interests of both the racers and the organisers. For that reason, the programme of events to be organised during 2001 had to be lodged with ELPA and ETHEAM no later than 15 September 2000.

10 In reply to MOTOE's request seeking information on the outcome of its applications for authorisation, the competent ministry indicated to MOTOE, in August 2000, that it had not received a document from ELPA with its consent under Article 49 of the Greek Road Traffic Code.

11 Pleading the unlawfulness of that implicit rejection, MOTOE brought an action before the Diikitiko Protodikio Athinon (Administrative Court of First Instance, Athens), seeking compensation of GRD 5 000 000 for the non-material damage that it claims to have suffered on account of its being unable to hold the events in question.

12 MOTOE claimed that Article 49 of the Greek Road Traffic Code is contrary, first, to the constitutional principle that administrative organs must be impartial and, second, to Articles 82 EC and 86(1) EC, on the ground that the national provision at issue enables ELPA, which itself organises motorcycling competitions, to impose a monopoly in that field and to abuse that position.

13 ELPA intervened before the Diikitiko Protodikio Athinon in support of the Greek State. ELPA annexed to its statement in intervention, amongst other documents, its statutes of association of 1924, and its yearbook for 2000 regarding motorcycling events which was published by ETHEAM. That yearbook includes ETHEAM's circulars for 2000, which relate, inter alia, to the supporting documents that competitors had to provide in order to be entitled to a licence, to the rules for events which had to be lodged, to the determination of fees and to other issues of a financial nature. The yearbook also contains the Ethnikos Athlitikos Kanonismos Motosikletas (National Sporting Rules for Motorcycling; 'the EAKM').

14 As regards EAKM, the following must be mentioned:

— Article 10.7 thereof states that every sports meeting which includes events in respect of ELPA and ETHEAM championships, cups or prizes may be combined with the commercial promotion of a sponsor referred to in the events' title or secondary title, but only after ELPA and ETHEAM have given their consent;

— Article 60.6 of the EAKM states that, during sports meetings, advertising on riders' clothes, helmets (on condition that the advertising does not affect helmets' technical characteristics) and motorcycles is permitted. In speed events and motocross within the framework of ELPA and ETHEAM championships, cups and prizes, the organisers may not require a racer, passenger or motorcycle to advertise any product, unless the competitor has given his consent. However, when a sponsorship agreement concluded by ETHEAM and ELPA is applicable, riders, passengers and motorcycles are obliged to observe the terms of that agreement;

— according to Article 110.1 of the EAKM, '[t]he organiser [of a motorcycling event], either directly or through the supervisory authority [namely ELPA and ETHEAM], must ensure that the sports meeting is covered by insurance which should include his own liability and that of manufacturers, riders, passengers … in the event of accidents and of loss or injury to third parties during the event and during practice.'

15 The Diikitiko Protodikio Athinon dismissed MOTOE's action on the ground, inter alia, first, that Article 49 of the Greek Road Traffic Code ensures that international rules for the safe running of motorcycling events are observed and, second, that MOTOE did not assert that that provision resulted in a dominant position within the common market, or that that provision might affect trade between Member States, or that ELPA abused such a position.

16 MOTOE lodged an appeal against that judgment with the Diikitiko Efetio Athinon, which states, first of all, that ELPA's activities are not limited to purely sporting matters, namely to the power conferred on ELPA in Article 49 of the Greek Road Traffic Code, given that it also engages in activities classified as 'economic' by the referring court, which consist in entering into sponsorship, advertising and insurance contracts. The Diikitiko Efetio Athinon, therefore, wonders whether ELPA can be classified as an undertaking for the purposes of Community competition law, in particular, for the purposes of Articles 82 EC and 86 EC, so that it would be subject to the prohibition on the abuse of a dominant position. The referring court interprets Article 49 of the Greek Road Traffic Code as meaning that ELPA is the only legal person entitled to give consent to any application for authorisation to organise a motorcycling event. It draws attention to the fact that that association itself takes on, in parallel, the organising of events and the determination of prizes as well as the economic activities referred to above.

17 The Diikitiko Efetio Athinon next observes that the applicants, who have been refused authorisation to hold a motorcycling event since they have failed to obtain ELPA's consent, have no effective remedy under national law against such a decision. First, it is not provided that refusals by ELPA to give consent must contain a statement of reasons and, second, where a refusal of authorisation by the competent ministry is the subject of a legal action alleging failure to state reasons and that action is upheld, Greek law does not provide for authorisation to be granted to the applicant. Further, ELPA is not subject to control or to appraisal of any kind as regards the use that it makes of the power which is conferred on it by Article 49 of the Greek Road Traffic Code. Those circumstances present any person from another Member State of the European Union who wishes to organise motorcycling events in Greece with a *fait accompli*.

18 In these circumstances the Diikitiko Efetio Athinon decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Can Articles 82 EC and 86 EC be interpreted so as also to include within their scope the activity of a legal person which has the status of national representative of the [FIM] and engages in economic activity as described above by entering

into sponsorship, advertising and insurance contracts, in the context of the organisation of motor sport events by it?

(2) Should the answer [to the first question] be in the affirmative, is Article 49 of [the Greek Road Traffic Code], which, in relation to issue by the competent national public authority (in the present case, the Ministry for Public Order) of permission to organise a motor-vehicle competition, gives the foregoing legal person the power to provide a concurring opinion as to the holding of the competition without that power being made subject to restrictions, obligations and review, compatible with those provisions of the Treaty?'

Examination of the questions referred for a preliminary ruling

19 By its questions, which should be considered together, the referring court essentially asks, first, whether a legal person, which is a non-profit-making association such as ELPA, falls within the scope of Articles 82 EC and 86 EC, given that its activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts and, second, whether those Treaty provisions preclude a rule, such as that laid down in Article 49 of the Greek Road Traffic Code, in so far as it confers on such an association the power to give its consent to applications for authorisation to organise those events, without that power being made subject to restrictions, obligations or review.

20 In this respect, it must be borne in mind, first, that Community competition law refers to the activities of undertakings (Case 13/77 *GB-Inno-BM* [1977] ECR 2115, paragraph 31, and Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraph 38 and the case-law cited). More specifically, Article 82 EC applies to undertakings holding a dominant position.

21 Although the Treaty does not define the concept of an undertaking, the Court has consistently held that any entity engaged in an economic activity, irrespective of its legal form and the way in which it is financed, must be categorised as an undertaking (Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21, and Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paragraph 46).

22 It should be borne in mind in this regard that any activity consisting in offering goods or services on a given market is an economic activity (see, in particular, Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851, paragraph 36, and Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 75). Provided that that condition is satisfied, the fact that an activity has a connection with sport does not hinder the application of the rules of the Treaty (Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraph 4, and Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 73) including those governing competition law (see, to that effect, Case C-519/04 P *Meca-Medina and Majcen* v *Commission* [2006] ECR I-6991, paragraphs 22 and 28).

23 As stated in the order for reference, and as also confirmed at the hearing before the Court, ELPA organises, in cooperation with ETHEAM, motorcycling events in Greece and, enters, in that connection, into sponsorship, advertising and insurance contracts designed to exploit those events commercially. Those activities constitute a source of income for ELPA.

24 According to the case-law of the Court of Justice, activities which fall within the exercise of public powers are not of an economic nature justifying the application of the Treaty rules of competition (see, to that effect, Case C-364/92 *SAT Fluggesellschaft* [1994] ECR I-43, paragraphs 30 and 31).

25 As regards the possible effect of the exercise of public powers on the classification of a legal person such as ELPA as an undertaking for the purposes of Community competition law, it must be noted, as the Advocate General did at point 49 of her Opinion, that the fact that, for the exercise of part of its activities, an entity is vested with public powers does not, in itself, prevent it from being classified as an undertaking for the purposes of Community competition law in respect of the remainder of its economic activities (Case C-82/01 P *Aéroports de Paris* v *Commission* [2002] ECR I-9297, paragraph 74). The classification as an activity falling within the exercise of public powers or as an economic activity must be carried out separately for each activity exercised by a given entity.

26 In the present case, it is necessary to distinguish the participation of a legal person such as ELPA in the decision-making process of the public authorities from the economic activities engaged in by that same legal person, such as the organisation and commercial exploitation of motorcycling events. It follows that the power of such a legal person to give its consent to applications for authorisation to organise those events does not prevent its being considered an undertaking for the purposes of Community competition law so far as concerns its economic activities referred to above.

27 As regards the effect that the fact that ELPA does not seek to make a profit may have on that classification, it should be noted that, in Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraphs 122 and 123), the Court stated that the fact that the offer of goods or services is made without profit motive does not prevent the entity which carries out those operations on the market from being considered an undertaking, since that offer exists in competition with that of other operators which do seek to make a profit.

28 That is the case of activities engaged in by a legal person such as ELPA. The fact that MOTOE, the applicant in the main proceedings, is itself a non-profit-making association has, from that point of view, no effect on the classification as an undertaking of a legal person such as ELPA. First, it is not inconceivable that, in Greece, there exist, in addition to the associations whose activities consist in organising and commercially exploiting motorcycling events without seeking to make a profit, associations

which are engaged in that activity and do seek to make a profit and which are thus in competition with ELPA. Second, non-profit-making associations which offer goods or services on a given market may find themselves in competition with one another. The success or economic survival of such associations depends ultimately on their being able to impose, on the relevant market, their services to the detriment of those offered by the other operators.

29 Consequently, a legal person such as ELPA must be considered an undertaking for the purposes of Community competition law. However, in order for it to fall within the scope of Article 82 EC, it must also occupy a dominant position within the common market or in a substantial part of it.

30 In that regard, it must be observed that, in proceedings under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court (Case C-450/06 *Varec* [2008] ECR I-581, paragraph 23). However, in order to give the national court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary.

31 Before it is possible to assess whether a legal person such as ELPA has a dominant position within the meaning of Article 82 EC, it is necessary to define the relevant market, both from the point of view of the goods or services concerned and from the geographic point of view (Case 27/76 *United Brands and United Brands Continentaal* v *Commission* [1978] ECR 207, paragraph 10).

32 According to settled case-law, for the purposes of applying Article 82 EC, the relevant product or service market includes products or services which are substitutable or sufficiently interchangeable with the product or service in question, not only in terms of their objective characteristics, by virtue of which they are particularly suitable for satisfying the constant needs of consumers, but also in terms of the conditions of competition and the structure of supply and demand on the market in question (see, to that effect, Case 31/80 *L'Oréal* [1980] ECR 3775, paragraph 25;

Case 322/81 *Nederlandsche Banden Industrie Michelin* v *Commission* [1983] ECR 3461, paragraph 37; and Case C-62/86 *AKZO* v *Commissio*n [1991] ECR I-3359, paragraph 51).

33 In that regard, it is clear from the order for reference that the activities in which ELPA is engaged consist, first, in the organisation of motorcycling events and, second, in their commercial exploitation by means of sponsorship, advertising and insurance contracts. Those two types of activities are not interchangeable but are rather functionally complementary.

34 The definition of the relevant geographical market calls, just like the definition of the product or service market, for an economic assessment. The geographical market can thus be defined as the territory in which all traders operate under the same conditions of competition in so far as concerns specifically the relevant products or services. From that point of view, it is not necessary for the objective conditions of competition between traders to be perfectly homogeneous. It is sufficient if they are similar or sufficiently homogeneous (see, to that effect, *United Brands and United Brands Continentaal* v *Commission*, cited above, paragraphs 44 and 53). Furthermore, the market may be confined to a single Member State (see, to that effect, *Nederlandsche Banden Industrie Michelin* v *Commission*, cited above, paragraph 28).

35 As stated in the order for reference, and as was also confirmed at the hearing before the Court, the activities in which ELPA engages are confined to the territory of Greece. However, the territory of a Member State may constitute a substantial part of the common market (see, to that effect, Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 31). It is for the referring court, however, to determine whether the criterion relating to similar or sufficiently homogeneous conditions of competition is satisfied in the main proceedings.

36 It is with reference to the market thus defined that that court will have to assess whether ELPA has a dominant position.

37 It should be recalled in this respect that it is clear from the case-law that the concept of a 'dominant position' under Article 82 EC concerns a position of economic strength held by an undertaking, which enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers (*United Brands and United Brands Continentaal* v *Commission*, cited above, paragraph 65; Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 38; and *Nederlandsche Banden-Industrie-Michelin* v *Commission*, cited above, paragraph 30).

38 It should be added that an undertaking can be put in such a position when it is granted special or exclusive rights enabling it to determine whether and, as the case may be, in what conditions, other undertakings may have access to the relevant market and engage in their activities on that market.

39 It should further be observed that Article 82 EC cannot be infringed by a rule such as that laid down in Article 49 of the Greek Road Traffic Code unless trade between Member States is affected by it. As the Advocate General pointed out in points 63 and 64 of her Opinion, such an effect on trade between Member States can be assumed only if it is possible to foresee with a sufficient degree of probability, on the basis of a set of objective legal and factual elements, that the behaviour in question may have an influence, direct or indirect, actual or potential, on trade between Member States in such a way as might hinder the attainment of a single market between Member States (Case C-475/99 *Ambulanz Glöckner* [2001] ECR I-8089, paragraph 48). Purely hypothetical or speculative effects that the conduct of an undertaking in a dominant position may have do not satisfy that criterion. Similarly, the impact on intra-community trade must not be insignificant (Joined Cases C-215/96 and C-216/96 *Bagnasco and Others* [1999] ECR I-135, paragraph 60, and *Ambulanz Glöckner*, cited above, paragraph 48).

40 Accordingly, the effect on intra-Community trade is normally the result of a combination of several factors which, taken separately, are not necessarily decisive (Case C-250/92 *DLG* [1994] ECR I-5641, paragraph 54).

41 Furthermore, the assessment of whether the effect on trade between Member States is appreciable must take account of the conduct of the dominant undertaking in question, in so far as Article 82 EC precludes all conduct which is capable of affecting freedom of trade in a manner which might harm the attainment of the objectives of a single market between the Member States, in particular by sealing off domestic markets or by affecting the structure of competition within the single market (Case 22/78 *Hugin Kassaregister and Hugin Cash Registers* v *Commission* [1979] ECR 1869, paragraph 17).

42 The fact that the conduct of an undertaking in a dominant position relates only to the marketing of products in a single Member State is not sufficient to preclude the possibility that trade between Member States might be affected (see, to that effect, Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 45). Such conduct may have the effect of reinforcing the partitioning of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about (see, by analogy, Joined Cases C-295/04 to C-298/04 *Manfredi and Others* [2006] ECR I-6619, paragraphs 45 and 46).

43 So far as concerns, second, the scope of Article 86 EC, paragraph 1 thereof provides that, in the case of undertakings to which Member States grant special or exclusive rights, Member States are neither to enact nor maintain in force any measure contrary, in particular, to the rules contained in the Treaty with regard to competition. In this respect, it should be noted that a legal person such as ELPA, to which the power to give consent to applications for authorisation to organise motorcycling events has been granted, must be considered an undertaking which has been granted by the Member State concerned special rights within the meaning of Article 86(1) EC.

44 Article 86(2) EC allows Member States to confer, on undertakings to which they entrust the operation of services of general economic interest, exclusive rights which may hinder the application of the rules of the Treaty on competition in so far as restrictions on competition, or even the exclusion of all competition, by other economic operators are necessary to ensure the performance of the particular tasks assigned to the undertakings holding the exclusive rights (Case C-320/91 *Corbeau* [1993] ECR I-2533, paragraph 14).

45 As regards the organisation and commercial exploitation of motorcycling events by a legal person such as ELPA, the Greek Government has not claimed that ELPA has been entrusted with the exercise of those activities through an act of public authority. It is not therefore necessary to examine further whether those activities may constitute a service of general economic interest (see, to that effect, Case 127/73 *BRT and Société belge des auteurs, compositeurs et éditeurs* [1974] ECR 313, paragraph 20, and Case 66/86 *Saeed Flugreisen and Silver Line Reisebüro* [1989] ECR 803, paragraph 55).

46 As regards the power to give consent to applications for authorisation to organise motorcycling events, that does indeed stem from an act of public authority, namely Article 49 of the Greek Road Traffic Code, but it cannot be classified as an economic activity, as the Advocate General observed at point 110 of her Opinion.

47 A legal person such as ELPA cannot therefore be considered an undertaking entrusted with a service of general economic interest within the meaning of Article 86(2) EC.

48 As regards, third, the question whether Articles 82 EC and 86(1) EC preclude a national rule, such as Article 49 of the Greek Road Traffic Code, which confers on a legal person like ELPA, which can itself take on the organisation of motorcycling events and their commercial exploitation, the power to give consent to applications for authorisation to organise those events, without that power being made subject to restrictions, obligations and review, it should be recalled that the mere creation or reinforcement of a dominant position through the grant of special or exclusive rights within the meaning of Article 86(1) EC is not in itself incompatible with Article 82 EC.

49 On the other hand, a Member State will be in breach of the prohibitions laid down by those two provisions if the undertaking in question, merely by exercising the special or exclusive rights conferred upon it, is led to abuse its dominant position or where

such rights are liable to create a situation in which that undertaking is led to commit such abuses (*Höfner and Elser*, cited above, paragraph 29; *ERT*, cited above, paragraph 37; Case C-179/90 *Merci convenzionali porto di Genova* [1991] ECR I-5889, paragraphs 16 and 17; and Case C-323/93 *Centre d'insémination de la Crespelle* [1994] ECR I-5077, paragraph 18). In this respect, it is not necessary that any abuse should actually occur (see, to that effect, Case C-55/96 *Job Centre* [1997] ECR I-7119, paragraph 36).

50 In any event, Articles 82 EC and 86(1) EC are infringed where a measure imputable to a Member State, and in particular a measure by which a Member State confers special or exclusive rights within the meaning of Article 86(1) EC, gives rise to a risk of an abuse of a dominant position (see, to that effect, *ERT*, cited above, paragraph 37; *Merci convenzionali porto di Genova*, cited above, paragraph 17; and Case C-380/05 *Centro Europa 7* [2008] ECR I-349, paragraph 60).

51 A system of undistorted competition, such as that provided for by the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators. To entrust a legal person such as ELPA, which itself organises and commercially exploits motorcycling events, the task of giving the competent administration its consent to applications for authorisation to organise such events, is tantamount *de facto* to conferring upon it the power to designate the persons authorised to organise those events and to set the conditions in which those events are organised, thereby placing that entity at an obvious advantage over its competitors (see, by analogy, Case C-202/88 *France* v *Commission* [1991] ECR I-1223, paragraph 51, and Case C-18/88 *GB Inno BM* [1991] ECR I-5941, paragraph 25). Such a right may therefore lead the undertaking which possesses it to deny other operators access to the relevant market. That situation of unequal conditions of competition is also highlighted by the fact, confirmed at the hearing before the Court, that, when ELPA organises or participates in the organisation of motorcycling events, it is not required to obtain any consent in order that the competent administration grant it the required authorisation.

52 Furthermore, such a rule, which gives a legal person such as ELPA the power to give consent to applications for authorisation to organise motorcycling events without that power being made subject by that rule to restrictions, obligations and review,

could lead the legal person entrusted with giving that consent to distort competition by favouring events which it organises or those in whose organisation it participates.

53 In the light of the foregoing, the answer to the questions referred must be that a legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC. Those articles preclude a national rule which confers on a legal person, which organises motorcycling events and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorisation to organise such competitions, without that power being made subject to restrictions, obligations and review.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

A legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship,

advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC. Those articles preclude a national rule which confers on a legal person, which organises motorcycling competitions and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorisation to organise such competitions, without that power being made subject to restrictions, obligations and review.

[Signatures]