Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 December 2025*

(Reference for a preliminary ruling – Competition – Article 102 TFEU – Abuse of a dominant position – Market for the storage of automotive fuels – Abuse – Refusal of access to essential infrastructure for third-party undertakings – Infrastructure financed by public funds – Privatisation of that infrastructure)

In Case C-245/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-oblast (Administrative Court, Sofia Province, Bulgaria), made by decision of 5 April 2024, received at the Court on 5 April 2024, in the proceedings

'Lukoil Bulgaria' EOOD,

'Lukoil Neftohim Burgas' AD

v

Komisia za zashtita na konkurentsiata,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu–Matei (Rapporteur), S. Rodin, S. Gervasoni and N. Fenger, Judges,

Advocate General: L. Medina,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 10 April 2025,

after considering the observations submitted on behalf of:

– 'Lukoil Bulgaria' EOOD and 'Lukoil Neftohim Burgas' AD, by Y. Pekunov and A. Velichkov, advokati, A. Pekunova, yuriskonsult, and A. Robertson KC,

– Komisia za zashtita na konkurentsiata, by M. Goranova, N. Mincheva and Y. Nenkova,

– the Bulgarian Government, by T. Mitova, R. Stoyanov and T. Tsingileva, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by F. Castillo de la Torre, V. Hitrovs, E. Rousseva and C. Sjödin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 102 TFEU.

2 The request has been made in proceedings between, on the one hand, 'Lukoil Bulgaria' EOOD ('Lukoil Bulgaria') and 'Lukoil Neftohim Burgas' AD ('Lukoil Burgas'), which belong to the Lukoil economic group ('the Lukoil Group'), and, on the other, the Komisia za zashtita na konkurentsiata (Commission on Protection of Competition, Bulgaria) ('the Bulgarian competition authority'), concerning the validity of Decision No 332 of 4 April 2023 ('the decision of the Bulgarian competition authority') by which that authority found that those companies had abused their dominant position on the market for the storage of automotive fuels ('the fuels') in Bulgaria, which is prohibited by both Article 102 TFEU and the corresponding provisions of the law of that Member State.

Legal context

European Union law

3 Article 102 TFEU provides:

'Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.'

Bulgarian law

4 Article 21 of the Zakon za zashtita na konkurentsiata (Law on the Protection of Competition) (DV No 102 of 28 November 2008; the 'ZZK') provides:

'Any conduct of undertakings that hold a monopoly or a dominant position and any conduct of two or more undertakings that hold a collective dominant position, which is liable to prevent, restrict or distort competition or to affect the interests of consumers, shall be prohibited. In particular, the following shall be prohibited:

…

2. limiting production, trade or technical development to the prejudice of consumers;

…

5. refusing, without any justification, to provide goods or services to an actual or potential customer, in order to prevent that customer from carrying out its economic activity.'

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

5 The applicants in the main proceedings are two companies established in Bulgaria that belong to the Lukoil Group, whose activity in that Member State dates back to the privatisation, commencing in 1995, of the Neftohimicheski kombinat Burgas (petrochemical combine of Burgas, Bulgaria). In 1963, that entity began – as a State-owned undertaking and by initially operating the refinery of Burgas (Bulgaria) – its activities in the petroleum and petrochemical sectors, for which it subsequently had transport and storage infrastructure, consisting in three pipelines and seven oil depots and terminals.

6 On the basis of a privatisation contract concluded on 12 October 1999, the Bulgarian State transferred to the Lukoil Group 58% of the capital of the company having succeeded the petrochemical combine of Burgas. That group thus became the owner of the transport and storage infrastructure operated by that company. By Decree No 181 of 20 July 2009, the Bulgarian State declared that the port of Burgas, including the Rosenets port terminal (Bulgaria) connected to that port, and the pipelines leading there, constituted strategic infrastructure, that is to say, facilities and activities of importance to national security.

7 According to the information provided by the referring court, Lukoil Burgas is the main producer of petroleum products in Bulgaria. That company operates the refinery of Burgas and the Rosenets port terminal for which it holds a service concession granted on 22 March 2011 by the Bulgarian State. The Bulgarian State retains a golden share in the capital of Lukoil Burgas, conferring on it special rights. As a result of those rights, the general meeting of Lukoil Burgas must obtain the prior written consent of that Member State and satisfy certain conditions whenever it intends to adopt a decision substantially reducing fuel production or refusing to grant access to the port facilities and pipelines in exchange for fair compensation.

8 Lukoil Bulgaria's business consists in the distribution of petroleum products. For its main activities in the wholesale of fuels, that company has depots spread out across Bulgaria. During the period between 1 January 2016 and 30 November 2020, Lukoil Bulgaria had three tax warehouses where products subject to excise duty were held. For its retail distribution of fuels, Lukoil Bulgaria uses its national network of petrol stations.

9 After finding that, in March 2020, the retail price of fuels had decreased in Bulgaria to a lesser extent (-11%) than the crude oil price on the global markets (-47%), the Varhovna administrativna prokuratura (Public Prosecutor's Office at the Supreme Administrative Court, Bulgaria) requested the Bulgarian competition authority to investigate whether any infringements of competition law relating to the setting of retail fuel prices existed.

10 According to the Administrativen sad Sofia-oblast (Administrative Court, Sofia Province, Bulgaria), which is the referring court, it is apparent from the decision of the Bulgarian competition authority that the Lukoil Group is the largest authorised warehouse keeper for fuels and the market leader in the wholesale and retail trade for those products in Bulgaria. It has unique transport and storage infrastructure in that Member State, which facilitates the marketing of the products of Lukoil Burgas.

11 According to the decision of the Bulgarian competition authority, during the period between 1 January 2016 and 31 March 2021 ('the infringement period'), Lukoil Bulgaria and Lukoil Burgas engaged in several different types of abuse of a dominant position with a common anticompetitive aim, by refusing other producers or importers of fuels access to the transport and storage infrastructure that they operate. Lukoil Bulgaria and Lukoil Burgas refused, in particular, to grant third-party undertakings access to the tax warehouses that they manage ('the land depots'), to the depots located in the port terminals of Rosenets and Varna (Bulgaria) ('the sea depots'), and to the pipelines.

12 The Bulgarian competition authority found that, due to the different nature of those facilities and their different ownership structures, some of the actions had to be categorised as 'refusing, without any justification, to provide goods or services', within the meaning of Article 21(5) of the ZZK, whereas other actions had to be categorised as 'limiting production, trade and technical development to the prejudice of consumers', within the meaning of Article 21(2) of the ZZK. Nevertheless, the fact that those actions were part of a common strategy of the Lukoil Group compelled that authority to regard them as a single infringement, both of point (b) of the second paragraph of Article 102 TFEU and of Article 21(2) and (5) of the ZZK, while specifying that the infringement under Article 21(5) is a special case of the general infringement under Article 21(2).

13 By way of a penalty, that authority imposed a fine of approximately 140 million leva (BGN) (approximately EUR 72 million) on Lukoil Burgas, and a fine of approximately BGN 55 million (approximately EUR 28 million) on Lukoil Bulgaria.

14 In the first place, as the decision of the Bulgarian competition authority addresses not only one but several instances of unlawful conduct, the referring court considers that, in the light of the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, of the right of individuals to be heard before the adoption of a measure adversely affecting them, and of the right to an effective remedy guaranteed by Article 47 of the Charter of Fundamental Rights, it must be determined, for the purpose of resolving the dispute before that court, whether the Bulgarian competition authority was required, before finding that

each of those infringements existed, to define the relevant market that is affected, the anticompetitive actions and effects, and all the relevant facts such as to lead to a finding that those infringements were committed.

15 In the second place, the referring court explains that it is apparent from the decision of the Bulgarian competition authority that that authority considered the conditions laid down by the judgment of 26 November 1998, *Bronner* (C-7/97, 'the judgment in *Bronner*', EU:C:1998:569), for finding that a refusal of access to essential infrastructure constitutes abuse of a dominant position, not to be applicable to the infrastructure of a dominant undertaking which is not the owner thereof or which did not cover its construction costs. According to that authority, those conditions are therefore inapplicable where the dominant undertaking has received, as in the present case, essential infrastructure from the State and the investments made by that undertaking did not run counter to the public interest. It is apparent from that decision that the construction of all the sea depots, the land depots – with the exception of those in Iliyantsi (Bulgaria) and Ruse (Bulgaria) – and the pipelines, to which Lukoil Burgas and Lukoil Bulgaria refused to grant access during the infringement period, was financed with public funds. Moreover, according to that decision, following the amendments made on 18 September 2020 to the legislation on excise duties and tax warehouses, Lukoil Bulgaria, as an authorised warehouse keeper, has been required, as from 23 December 2020, to guarantee independent third parties access to at least 15% of the overall storage capacity of its facilities, with the exception of the pipelines connecting Burgas to Sofia (Bulgaria).

16 The referring court is uncertain whether, in order to disregard the conditions laid down by the judgment in *Bronner* on the ground that the dominant undertaking operates essential infrastructure following privatisation or the grant of a concession, account must be taken of other circumstances, such as the obligations arising from a privatisation agreement, the amount of the investments made by the dominant undertaking since then, and whether those investments were made on the initiative of that undertaking or at the request of the State.

17 The referring court points out, in that regard, that, even though the Bulgarian competition authority found that the conditions laid down by the judgment in *Bronner* are inapplicable to infrastructure financed by public funds and subsequently acquired by the dominant undertaking via privatisation or made available through the grant of a concession, the dissenting opinions of two of the members of that authority suggest that another result would be possible on the basis of the judgment of 12 January 2023, *Lietuvos geležinkeliai* v *Commission* (C-42/21 P, EU:C:2023:12).

18 According to the referring court, it is apparent from paragraph 75 of the Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article [102 TFEU] to abusive exclusionary conduct by dominant undertakings (OJ 2009 C 45, p. 7) that the knowledge that they may have a duty to supply against their will may lead dominant undertakings to scale back their investments, or even to forego them completely. In the same vein, the competitors of the dominant undertaking would be tempted to free ride on investments made by it. None of those consequences would be in the interest of consumers.

19 In those circumstances, the Administrativen sad Sofia-oblast (Administrative Court, Sofia Province) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Where the national competition authority has identified different types of behaviours, some of which have been classified as a refusal to grant access to an essential facility and others as a restriction of trade, but which have been combined into an overall strategy of the undertaking, is it permissible to find there to have been a single infringement under Article 102 TFEU or must separate infringements, classified respectively as a refusal to grant access to an essential facility and a restriction of trade, be found to have been committed?

(2) Must the competition authority exclude the application of the *Bronner* test to the alleged infringement under Article 102 TFEU in the form of a refusal to supply in all cases where the undertaking in a dominant position in relation to the essential facility has received public funding (on the basis of a privatisation contract/a concession), or is it necessary to assess the amount of the investment, the performance of the privatisation contract/concession (on the basis of which the essential facility was acquired) and whether the investment was made in connection with the performance of the investment contract/concession or on that undertaking’s own initiative?

(3) If the foregoing question is answered in the affirmative, is observance of the principle of proportionality set out in [paragraph 75 (under the title “Refusal to supply and margin squeeze”) of the Communication from the Commission – Guidance on the Commission’s enforcement priorities in applying Article [102 TFEU] to abusive exclusionary conduct by dominant undertakings] ensured, where the dominant undertaking has invested in the essential facility, by applying restrictive criteria determined on the basis of the principle of “that which is most necessary” for preserving competition, with proportionate account being taken of the interests of the dominant undertaking?’

Admissibility of the request for a preliminary ruling

20 The Bulgarian competition authority submits that the request for a preliminary ruling is inadmissible. That authority claims, more specifically, that the first question does not concern an interpretation of EU law, but rather the substance of the dispute in the main proceedings, and that the second question is worded in a very general manner.

21 In accordance with settled case-law, in proceedings under 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. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgments of 21 April 1988, *Pardini*, 338/85, EU:C:1988:194, paragraph 8, and of 22 October 2024, *Kolin Inşaat Turizm Sanayi ve Ticaret*, C-652/22, EU:C:2024:910, paragraph 36 and the case-law cited).

22 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts

of the main action or its purpose, 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 (judgment of 9 September 2021, *GE Auto Service Leasing*, C-294/20, EU:C:2021:723, paragraph 40 and the case-law cited).

23 In the present case, the referring court is seeking from the Court an interpretation of Article 102 TFEU due to doubts that it has regarding, first, the evidence that the Bulgarian competition authority was required to gather in order to find that an infringement of that provision exists, consisting, for a dominant undertaking, in refusing to grant its competitors access to infrastructure for the transport and storage of petroleum products, which it controls (first question), and, second, the application, to such a situation, of the case-law arising from the judgment in *Bronner* (second and third questions). That court has provided, in that regard, the precise reasons which have led it to refer questions to the Court for a preliminary ruling.

24 In those circumstances, it cannot be argued that, by its first question, the referring court requests not an interpretation of Article 102 TFEU, but the application of that provision to the dispute in the main proceedings, and, furthermore, it is not quite obvious that the interpretation of that provision bears no relation to the actual facts of the dispute in the main action or its purpose, or that the problem raised in the request for a preliminary ruling is hypothetical. Moreover, in view of the request for a preliminary ruling, the Court has before it the material necessary to give a useful answer to the questions submitted to it.

25 Accordingly, it must be found that the request for a preliminary ruling is admissible.

Consideration of the questions referred

The first question

26 According to settled case-law, under the procedure laid down by Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgments of 17 July 1997, *Krüger*, C-334/95, EU:C:1997:378, paragraphs 22 and 23, and of 29 April 2025, *Prezydent Miasta Mielca*, C-453/23, EU:C:2025:285, paragraph 38 and the case-law cited).

27 According to the information provided by the referring court, the Bulgarian competition authority found that, throughout the infringement period, Lukoil Bulgaria and Lukoil Burgas had refused to grant third parties access to the infrastructure for the transport and storage of fuels which they respectively controlled and which consisted of the land depots, the sea depots and pipelines. That authority, even though it determined that there was a single infringement of point (b) of the second paragraph of Article 102 TFEU, found in its decision that each of those three types of refusal of access constituted conduct that could be categorised either as restrictions of trade, within the meaning of Article 21(2) of the ZZK, or as refusals, without any justification, of access to services, within the meaning of Article 21(5) of the ZZK.

28 It is also apparent from the request for a preliminary ruling that the referring court is uncertain whether the Bulgarian competition authority was required to establish that the conditions of Article 102 TFEU were satisfied for each of the infringements under Article 21(2) and (5) of the ZZK, respectively, or whether the authority could confine itself to finding that there was a single infringement of Article 102 TFEU for that conduct as a whole.

29 Thus, it must be held that, by its first question, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that, for a competition authority to be able to find that the conduct of two companies belonging to the same dominant undertaking, consisting, according to that authority, in refusing to grant access to facilities that are under their respective control and that form part of the same essential infrastructure controlled by that undertaking, and in restricting trade in that regard, constitutes an abuse of that dominant position, that authority is required to establish that the conditions of Article 102 TFEU are satisfied with regard both to the types of conduct categorised as restrictions of trade and to the types of conduct categorised as refusals of access to such facilities.

30 In that connection, it is important to recall that Article 102 TFEU prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it, in so far as it may affect trade between Member States. The purpose of Article 102 TFEU is to prevent competition from being restricted to the detriment of the public interest, individual undertakings and consumers, by sanctioning the conduct of undertakings in a dominant position that has the effect of hindering competition on the merits and is thus likely to cause direct harm to consumers, or which causes them harm indirectly by hindering or distorting that competition (judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 87 and the case-law cited).

31 Such conduct covers any practice which, on a market where the degree of competition is already weakened precisely because of the presence of one or more undertakings in a dominant position, through recourse to means different from those governing normal competition between undertakings, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition (judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 88 and the case-law cited).

32 However, it is not the purpose of Article 102 TFEU to prevent an undertaking from acquiring, on its own merits, a dominant position on a market, or to ensure that competitors less efficient than an undertaking in such a position should remain on the market (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 126 and the case-law cited).

33 On the contrary, competition on the merits may, by definition, lead to the departure from the market or the marginalisation of competitors which are less efficient and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 127 and the case-law cited).

34 In order to find, in a given case, that conduct must be categorised as 'abuse of a dominant position', it is necessary, as a rule, to demonstrate, through the use of methods other than those which are part of competition on the merits between undertakings, that that conduct has the actual or potential effect of restricting that competition by excluding equally efficient competing

undertakings from the market(s) concerned, or by hindering their growth on those markets, although the latter may be either the dominated markets or related or neighbouring markets, where that conduct is liable to produce its actual or potential effects (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 129 and the case-law cited).

35 That demonstration, which may entail the use of different analytical templates depending on the type of conduct at issue in a given case, must however be made in the light of all the relevant factual circumstances, irrespective of whether they concern the conduct itself, the market(s) in question or the functioning of competition on that or those market(s). That demonstration must, moreover, be aimed at establishing, on the basis of specific, tangible points of analysis and evidence, that that conduct, at the very least, is capable of producing exclusionary effects (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 130 and the case-law cited).

36 In addition, conduct may be categorised as 'abuse of a dominant position' not only where it has the actual or potential effect of restricting competition on the merits by excluding equally efficient competing undertakings from the market(s) concerned, but also where it has been proven to have the actual or potential effect – or even the object – of impeding potentially competing undertakings at an earlier stage, through the placing of obstacles to entry or the use of other blocking measures or other means different from those which govern competition on the merits, from even entering that or those market(s) and, in so doing, preventing the growth of competition therein to the detriment of consumers, by limiting production, product or alternative service development or innovation (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 131 and the case-law cited).

37 The Court has previously held that the list of practices and types of conduct referred to in Article 102 TFEU is not exhaustive, so that the list of abusive practices contained in that provision does not exhaust the methods of abusing a dominant position prohibited by EU law (see, to that effect, judgments of 21 February 1973, *Europemballage and Continental Can* v *Commission*, 6/72, EU:C:1973:22, paragraph 26, and of 16 March 2023, *Towercast*, C-449/21, EU:C:2023:207, paragraph 46).

38 In the present case, the referring court is hearing a dispute concerning the unilateral conduct of two companies belonging to the same undertaking, which were each subject to a penalty due to, essentially, their refusal to grant access to several facilities under their respective control; those facilities, together, are alleged to be, on the relevant market, essential infrastructure. Therefore, Lukoil Bulgaria and Lukoil Burgas are criticised, on the basis of Article 102 TFEU, for having engaged in one type of abusive conduct, rather than different types of conduct.

39 In that respect, it is sufficient to point out that, according to settled case-law, EU competition law, inasmuch as it targets the activities of undertakings, enshrines as the decisive criterion the existence of unity of conduct on the market, without allowing the formal separation between various companies that results from their separate legal personalities to preclude such unity for the purposes of the application of the competition rules (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 41 and the case-law cited).

40 In the present case, two companies of the same undertaking are alleged to have contributed to an abuse of their dominant position, consisting in refusing to grant access to facilities that are under their respective control and that form part of the same essential infrastructure controlled by that undertaking, and in restricting trade in that regard.

41 In a situation such as that at issue in the main proceedings, the competition authority is not required to establish that both the category of actions regarded by that authority as a refusal of access to that essential infrastructure and the category of actions regarded by that authority as a restriction of trade in relation to that infrastructure individually satisfy all of the constitutive elements of abuse of a dominant position, within the meaning of Article 102 TFEU, provided that the authority is able to establish that all those elements are present with regard to the overall abusive conduct for which that undertaking is criticised.

42 Consequently, the answer to the first question is that Article 102 TFEU must be interpreted as meaning that, for a competition authority to be able to find that the conduct of two companies belonging to the same dominant undertaking, consisting, according to that authority, in refusing to grant access to facilities that are under their respective control and that form part of the same essential infrastructure controlled by that undertaking, and in restricting trade in that regard, constitutes an abuse of that dominant position, that authority is not required to establish that the conditions of Article 102 TFEU are satisfied with regard both to the types of conduct regarded as unjustified refusals of access to those facilities and to the types of conduct regarded as restrictions of trade, provided that the authority is able to establish that those conditions are satisfied with regard to the overall abusive conduct for which that undertaking is criticised.

The second and third questions

43 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that the conditions laid down in paragraph 41 of the judgment in *Bronner*, under which a refusal to grant access to infrastructure may be regarded as an abuse of a dominant position, are not applicable where that infrastructure was developed not by the dominant undertaking for the needs of its own business, but by the public authorities, and was either subject to a service concession granted by the State in favour of that undertaking or was acquired by that undertaking in the context of privatisation.

44 It must be borne in mind that the Court has held that a refusal to grant access to infrastructure developed by a dominant undertaking for the purposes of its own business and owned by it may constitute an abuse of a dominant position provided not only that that refusal is likely to eliminate all competition in the market in question on the part of the entity applying for access and that such a refusal is incapable of being objectively justified, but also that the infrastructure, in itself, is indispensable to carrying on that entity's business, inasmuch as there is no actual or potential substitute in existence for that infrastructure (see, to that effect, the judgment in *Bronner*, paragraph 41, and judgment of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 89 and the case-law cited).

45 In that regard, it must be recalled that the imposition of those conditions, in paragraph 41 of the judgment in *Bronner*, was justified by the specific circumstances of that case, which consisted in a refusal by a dominant undertaking to grant a competitor access to infrastructure that it owned and had developed for the needs of its own business, to the exclusion of any other conduct (see, to that

effect, the judgments of 25 March 2021, *Deutsche Telekom* v *Commission*, C-152/19 P, EU:C:2021:238, paragraph 45, and of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraphs 89 and 90 and the case-law cited).

46 Those conditions are intended to strike a fair balance between, on the one hand, the requirements of undistorted competition and, on the other hand, the freedom of contract and the right to property of the dominant undertaking (judgment of 12 January 2023, *Lietuvos geležinkeliai* v *Commission*, C-42/21 P, EU:C:2023:12, paragraph 86 and the case-law cited).

47 A finding that a dominant undertaking abused its position due to a refusal to conclude a contract with a competitor has the consequence of forcing that undertaking to conclude a contract with that competitor. Such an obligation is especially detrimental to the freedom of contract and the right to property of the dominant undertaking, since an undertaking, even if dominant, remains, in principle, free to refuse to conclude contracts and to use the infrastructure it has developed for its own needs (judgments of 25 March 2021, *Deutsche Telekom* v *Commission*, C-152/19 P, EU:C:2021:238, paragraph 46, and of 10 September 2024, *Google and Alphabet* v *Commission (Google Shopping)*, C-48/22 P, EU:C:2024:726, paragraph 91).

48 Furthermore, while, in the short term, an undertaking being held liable for having abused its dominant position due to a refusal to conclude a contract with a competitor has the consequence of encouraging competition, by contrast, in the long term, it is generally favourable to the development of competition and in the interest of consumers to allow a company to reserve for its own use the facilities that it has developed for the needs of its business. If access to a production, purchasing or distribution facility were allowed too easily there would be no incentive for competitors to develop competing facilities. In addition, a dominant undertaking would be less inclined to invest in efficient facilities if it could be bound, at the mere request of its competitors, to share with them the benefits deriving from its own investments (see, to that effect, judgments of 25 March 2021, *Deutsche Telekom* v *Commission*, C-152/19 P, EU:C:2021:238, paragraph 47, and of 25 March 2021, *Slovak Telekom* v *Commission*, C-165/19 P, EU:C:2021:239, paragraph 47).

49 Therefore, it is, in particular, the need for undertakings in a dominant position to continue to have an incentive to invest in developing high-quality products or services, in the interest of consumers, which justifies applying the conditions laid down in paragraph 41 of the judgment in *Bronner* where an undertaking in a dominant position has developed infrastructure for the needs of its own business and, moreover, owns that infrastructure (judgment of 25 February 2025, *Alphabet and Others*, C-233/23, EU:C:2025:110, paragraph 43). Since the latter two criteria are cumulative, it is sufficient for one of them not to be fulfilled in order for the conditions laid down in paragraph 41 of the judgment in *Bronner* to be inapplicable.

50 As regards more specifically the criterion that a dominant undertaking must own the infrastructure, that criterion seeks to limit the application of the conditions laid down in paragraph 41 of the judgment in *Bronner* to situations where, in order to strike a fair balance between the interests at stake, particular attention must be paid to the right to property or an equivalent degree of control exercised by the dominant undertaking, allowing it to refuse that third parties gain access to that infrastructure. In so far as the dominant undertaking has, with regard to that infrastructure, decision-making autonomy which is limited by prerogatives or obligations, imposed by legislation, regulations or contracts, which prohibit that undertaking

from refusing third parties access to that infrastructure, that undertaking cannot be regarded as owning that infrastructure and, consequently, it is not in a situation comparable to the undertaking in the case that gave rise to the judgment in *Bronner*.

51 In all those situations, a fair balance between competition and the rights of the dominant undertaking in respect of the essential infrastructure must reflect the restrictions to those rights following, in particular, from the involvement of the public authorities. That is why the Court has previously held that, where a dominant undertaking is subject to a regulatory obligation to grant access to its infrastructure, the conditions laid down in paragraph 41 of the judgment in *Bronner* are not applicable (see, to that effect, judgment of 12 January 2023, *Lietuvos geležinkeliai* v *Commission*, C-42/21 P, EU:C:2023:12, paragraph 89).

52 It must therefore be held that the circumstance that a dominant undertaking does not have full decision-making autonomy with regard to the access to the infrastructure that it operates is sufficient to preclude it from being considered to be the owner thereof and, consequently, to preclude the application of the conditions laid down in paragraph 41 of the judgment in *Bronner*. In such a situation, the cumulative nature of the two criteria for applying those conditions renders the question of whether or not the infrastructure at issue was developed for the needs of the dominant undertaking's own business irrelevant.

53 Nevertheless, Lukoil Bulgaria and Lukoil Burgas submit, in essence, that the conclusion should be different where infrastructure, over which the dominant undertaking clearly does not have full decision-making autonomy, was established and developed by the public authorities with public funds and then acquired by that undertaking at a competitively set price, and in which that undertaking subsequently invested on a large scale.

54 However, irrespective of the amount of the price paid for and of the investments made in the infrastructure in question by the dominant undertaking, as long as that undertaking does not enjoy full decision-making power with regard to the access to that infrastructure, its situation cannot be regarded as analogous to that of the undertaking in the case that gave rise to the judgment in *Bronner*.

55 Conversely, where there is such full decision-making autonomy, it cannot be deemed that the fact that the infrastructure was established or developed by the public authorities or with public funds is sufficient to preclude, in each instance, the application of the conditions laid down in paragraph 41 of the judgment in *Bronner*. As the Advocate General observed, in essence, in point 53 of her Opinion, provided that such infrastructure was acquired by the dominant undertaking at a price and under conditions resulting from a competitive procedure, that infrastructure is akin to infrastructure established or developed by that undertaking. By contrast, if it is determined that the privatisation process was not suitable for guaranteeing the competitive nature of the price and conditions for acquisition, such analogous treatment should then be ruled out.

56 In the same vein, where the dominant undertaking, which, however, is not the owner of the infrastructure concerned, enjoys exclusive rights which confer on that undertaking a decision-making autonomy allowing it fully to control access to that infrastructure, that infrastructure must be treated in the same way as infrastructure owned by that undertaking. Furthermore, as noted, in essence, by the Advocate General, in point 65 of her Opinion, provided

that those exclusive rights over that facility were acquired by the dominant undertaking at a price and under conditions resulting from a competitive procedure, that facility is akin to a facility established or developed by that undertaking.

57 In the light of the foregoing considerations, the answer to the second and third questions is that Article 102 TFEU must be interpreted as meaning that the conditions laid down in paragraph 41 of the judgment in *Bronner*, under which a refusal to grant access to infrastructure may be regarded as an abuse of a dominant position, are applicable to infrastructure which was developed by the public authorities before being acquired by a dominant undertaking, following privatisation, or before being used by that undertaking pursuant to exclusive rights transferred to it by those public authorities, provided that that privatisation or transfer of exclusive rights took place under conditions suitable for guaranteeing the competitive nature of the price and the other conditions for that privatisation and provided, moreover, that that undertaking enjoys full decision-making autonomy with regard to access to that infrastructure.

Costs

58 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 (Third Chamber) hereby rules:

1. Article 102 TFEU

must be interpreted as meaning that, for a competition authority to be able to find that the conduct of two companies belonging to the same dominant undertaking, consisting, according to that authority, in refusing to grant access to facilities that are under their respective control and that form part of the same essential infrastructure controlled by that undertaking, and in restricting trade in that regard, constitutes an abuse of that dominant position, that authority is not required to establish that the conditions of Article 102 TFEU are satisfied with regard both to the types of conduct regarded as unjustified refusals of access to those facilities and to the types of conduct regarded as restrictions of trade, provided that the authority is able to establish that those conditions are satisfied with regard to the overall abusive conduct for which that undertaking is criticised.

2. Article 102 TFEU

must be interpreted as meaning that the conditions laid down in paragraph 41 of the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569), under which a refusal to grant access to infrastructure may be regarded as an abuse of a dominant position, are applicable to infrastructure which was developed by the public authorities before being acquired by a dominant undertaking, following privatisation, or before being used by that undertaking pursuant to exclusive rights transferred to it by those public authorities, provided that that privatisation or transfer of exclusive rights took place under conditions suitable for guaranteeing the competitive nature of the price and the other conditions for that privatisation and provided, moreover, that that

undertaking enjoys full decision-making autonomy with regard to access to that infrastructure.

[Signatures]