JUDGMENT OF THE COURT (Sixth Chamber)

20 November 2003 *

In Case C-416/01,

REFERENCE to the Court under Article 234 EC by the Tribunal Supremo (Spain) for a preliminary ruling in the proceedings pending before that court between

Sociedad Cooperativa General Agropecuaria (ACOR)

and

Administración General del Estado,

participant:

Ebro Puleva SA, formerly **Azucarera Ebro Agrícolas SA**

and

Azucareras Reunidas de Jaén SA,

on the interpretation of Council Regulations (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3), and

* Language of the case: Spanish.

(EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1),

THE COURT (Sixth Chamber),

composed of: V. Skouris (Rapporteur), acting for the President of the Sixth Chamber, C. Gulmann, J.N. Cunha Rodrigues, J.-P. Puissochet and F. Macken, Judges,

Advocate General: J. Mischo,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Sociedad Cooperativa General Agropecuaria (ACOR), by R. García-Palencia, abogado,

— Ebro Puleva SA, formerly Azucarera Ebro Agrícolas SA, by F. Santos Carrascosa, abogado,

— the Spanish Government, by N. Díaz Abad, acting as Agent,

— the Commission of the European Communities, by M. Condou-Durande and S. Pardo Quintillán, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Sociedad Cooperativa General Agropecuaria (ACOR), represented by R. García-Palencia, Ebro Puleva SA, represented by M. Araujo Boyd, abogado, Azucareras Reunidas de Jaén SA, represented by J. Pérez-Bustamante, abogado, the Spanish Government, represented by N. Díaz Abad, and the Commission, represented by M. Condou-Durande and S. Pardo Quintillán, at the hearing on 26 February 2003,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2003,

gives the following

Judgment

1 By order of 3 October 2001, received at the Court on 22 October 2001, the Tribunal Supremo referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Council Regulations (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3), and (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

2 That question was raised in the context of a dispute between Sociedad Cooperativa General Agropecuaria (hereinafter 'ACOR') and the Administración General del Estado. Ebro Puleva SA, formerly known as Azucarera Ebro Agrícolas SA, and Azucareras Reunidas de Jaén SA (hereinafter 'ARJ') also intervened in the main proceedings.

Legal framework

Community legislation

3 According to the case-file, the relevant Community legislation in force at the material time with regard to the main proceedings consisted of Regulations Nos 1785/81 and 193/82.

4 Regulation No 1785/81 has in the meantime been replaced by Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1), itself replaced by Regulation No 1260/2001 which is the regulation now in force. The latter also replaced Regulation No 193/82 (see Article 49 of Regulation No 1260/2001).

5 The common organisation of the markets in the sugar sector includes, in particular, a system of quotas. Community legislation distinguishes between two types of quota and three kinds of sugar. A quota sugar, which represents consumption within the Community, may be freely marketed in the common market and its disposal is guaranteed by the intervention price. The B quota is the

quantity of sugar produced in excess of the A quota but without exceeding a 'maximum quota' provided for by the regulation. B quota sugar may also be freely marketed in the common market, but without an intervention price guarantee, or exported to non-member countries with export aid. Finally, sugar produced in excess of the sum of A and B quotas is 'C sugar' and must be exported without export aid being granted.

6 Under Article 24(1) of Regulation No 1785/81 (which became Article 27(1) of Regulation No 2038/1999 and, subsequently, Article 11(1) of Article No 1260/2001), 'Member States shall, under the conditions of this Title, allocate an A quota and a B quota to each sugar-producing undertaking... which either had... a basic quota as defined, as the case may be, in Regulation (EEC) No 3330/70 or in Regulation (EEC) No 1111/77...'

7 So far as concerns the transfer of quotas, the 14th recital of the preamble to Regulation No 1785/81 states that the Member States have 'in the form of rules and special Community criteria, in addition to the power to allocate the quotas on the basis of sugar producing... undertakings, the power to amend subsequently the quotas of existing undertakings... and to reallocate to other undertakings the quantities of quotas withdrawn' with the aim of 'meet[ing], should the case arise, the restructuring needs of the sugar beet and sugar cane crop sectors, the sugar production sector and the isoglucose production sector...'. Furthermore, according to the 15th recital of that regulation, 'since the production quotas allocated to undertakings constitute a means of guaranteeing producers Community prices and an outlet for their production, quota transfers should be made taking into consideration the interests of all the parties concerned and in particular those of sugar beet and sugar cane producers'. The 24th recital in Regulation No 2038/1999 is worded identically to the 15th recital in Regulation No 1785/81. The wording of the 18th and 19th recitals in Regulation No 1260/2001 is similar to that of the two abovementioned recitals in Regulation No 1785/81.

8 Article 25 of Regulation No 1785/81 (which became Article 30 of Regulation No 2038/1999 and, subsequently, Article 12 of Regulation No 1260/2001) provides:

'1. Member States may transfer A quotas and B quotas between undertakings under the conditions laid down in this Article, taking into consideration the interests of each of the parties concerned and in particular those of sugar beet producers or sugar cane producers.

2. Member States may reduce the A quota and the B quota of each sugar-producing undertaking or each isoglucose-producing undertaking situated in their territories by a total quantity not exceeding... 10% of the A quota or of the B quota, as the case may be, fixed for each of them in accordance with Article 24.

...

3. The withdrawn quantities of A quotas and B quotas shall be allocated by the Member States to one or more other undertakings, whether or not in possession of a quota, situated in the same region within the meaning of Article 24(2) excluding the undertakings from which these quantities were withdrawn.

...'

9 So far as concerns, in particular, what is to be done with quotas in the event of the merger or transfer of sugar-producing undertakings, Article 2(1)(a) of Regulation No 193/82 (which became Point II(1)(a) of Annex IV to Regulation No 1260/2001) provides that 'the Member States shall allocate to the undertaking resulting from the merger an A quota and a B quota equal respectively to the sum of the A quotas and the sum of the B quotas allocated prior to the merger to the sugar-producing undertakings concerned'.

10 However, under Article 2(2) of that regulation (which became Point II(2) of Annex IV to Regulation No 1260/2001):

'Where a number of the sugar beet or cane producers directly affected by one of the operations referred to in paragraph 1 expressly show their willingness to supply their beet or cane to a sugar-producing undertaking which is not party to those operations, the Member State may make the allocation on the basis of the production absorbed by the undertaking to which they intend to supply their beet or cane.'

11 Finally, according to Article 4 of Regulation No 193/82 (which became Point IV of Annex IV to Regulation No 1260/2001):

'... the measures, taken pursuant to Article 2 and Article 3, may take effect only if:

(a) the interests of each of the parties concerned are taken into consideration,

and

(b) the Member State concerned considers them to be such as to improve the structure of the beet, cane and sugar-manufacturing sectors,

and

(c) they concern undertakings established in the same region within the meaning of Article 24(2) of Regulation (EEC) No 1785/81.'

National law

12 Spanish Law No 16/89 of 17 July 1989 on the protection of competition (BOE No 170 of 18 July 1989, p. 22747) governs, among other things, supervision of concentrations. The measure contested in the main proceedings by which the Spanish Council of Ministers approved the merger between the companies Ebro Agrícolas, Compañía de Alimentación SA and Sociedad General Azucarera de España SA was adopted on 25 September 1998 on the basis of that law.

Facts in the main proceedings and the national court's question

13 At the material time for the purposes of the main proceedings, the sugar sector in Spain comprised four undertakings among which was distributed the maximum sugar production quota assigned to that Member State, namely 1 000 000 tonnes

of sugar, of which 960 000 tonnes were from the A quota and 40 000 tonnes from the B quota. Distribution was as follows:

— Ebro Agrícolas, Compañía de Alimentación SA, one of the undertakings involved in the merger, 540 786 tonnes; that undertaking had 10 sugar factories (out of the 19 industrial sugar processing installations operating in Spain),

— Sociedad General Azucarera de España SA, the other undertaking involved in the merger, 241 688 tonnes; that undertaking had five sugar beet processing centres and a cane sugar processing factory,

— ACOR, 147 797 tonnes; that undertaking had two factories in the northern region,

— ARJ, 69 732 tonnes, of which 66 900 tonnes were A quota and 2 832 tonnes B quota; that undertaking possessed a single factory in the southern region.

14 On 25 September 1998, the Spanish Council of Ministers, in pursuance of the abovementioned Law No 16/89, approved the merger between Ebro Agrícolas, Compañía de Alimentación SA and Sociedad General Azucarera de España SA. That merger enabled the new company, Azucarera Ebro Agrícolas SA (hereinafter 'Ebro'), to control 78.23% of the Spanish A and B sugar quotas as against 14.77% controlled by ACOR and 6.97% by ARJ. So far as concerns purchases of national A and B beet, the new company would control 75.21% in the northern region, where its competitor ACOR only controlled 24.79%; 88.36% in the southern region, where its competitor ARJ controlled 11.64%; and 50.08% in the central region, where its competitor ARJ controlled 49.92%.

15 In order to ensure the effective protection of competition on the sugar market, the Spanish Government nevertheless made that merger subject to a number of conditions. Under the first condition, Ebro 'must devise a restructuring programme, with specific objectives and timetables, to be submitted for approval by the Ministry of Finance and the Ministry of Agriculture, Fisheries and Food by 1 September 1999'. The second condition requires that 'in order to increase the opportunities for competition in the market, the Ministry of Agriculture, Fisheries and Food, in accordance with Council Regulation (EEC) No 1785/81, shall in turn reallocate, for value, up to 30 000 tonnes of the Spanish sugar production quota to undertakings situated in Spanish territory. So that the reallocation of the quota may be determined using market mechanisms, the price of the quota to be transferred and the distribution thereof shall be decided by public auction of up to 30 000 tonnes of the... quotas' which have been assigned to Ebro. The sixth condition requires that, 'as part of the quota reallocation which is to be conducted by auction the Government will adopt the measures necessary to prevent any possible adverse effects for national agricultural producers of sugar beet...'.

16 According to the case-file, the Commission was informed of the approval by the Spanish Government for the merger and, after examining it, decided to initiate infringement proceedings. The second condition mentioned above, relating to the transfer of production quotas by public auction, was one of the aspects inquired into by the Commission. However, since the Spanish authorities appeared to be willing to confirm in writing that they would not resort to sale by public auction for the reallocation of quotas, the infringement proceedings were not proceeded with any further. None the less, since such confirmation was not forthcoming, the Commission informed the Spanish authorities that it reserved the right, without time-limit, to resort to the infringement proceedings provided for by Article 226 EC should it be decided to put the second condition into effect.

17 In the meantime, on 1 December 1998, ACOR challenged the decision of the Council of Ministers of 25 September 1998 by bringing an action before the

Tribunal Supremo, claiming that the reallocation of quotas for consideration rather than free of charge was contrary to Community legislation on the common organisation of the markets in the sugar sector.

18 The Tribunal Supremo found, first, that even if it should be the case that under the Community legislation set forth in paragraphs 8 to 11 of the present judgment the Member State may exercise the power to transfer quotas without requiring the recipient undertaking to pay financial consideration to the transferring undertaking, possibly because of the fundamental aim of regulating the market to which the quota system applies, it does not follow, at least not obviously, that such a requirement, and therefore the 'for value' nature of the transfer agreed, is prohibited. The Tribunal Supremo points out, furthermore, that where the State decides not to apply the rule laid down in Article 2(1)(a) of Regulation No 193/82 in the event of a merger of undertakings, it is because it considers that a different reallocation is necessary in order to improve the structure of the beet and sugar-manufacturing sectors and that, because of the fundamental aim of regulating the market which it pursues, a requirement that the transfer must be for value does not appear necessarily to preclude, or constitute a serious obstacle to, reallocation.

19 It goes on to state that since the conditions imposed under the decision of the Council of Ministers of 25 September 1998 have not yet been met or put into effect, the interpretation which it seeks concerns not only the Community legislation in force when the decision was adopted but also that in force at present.

20 In view of those considerations, the Tribunal Supremo decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'If, in the exercise of its power of administrative review of a merger of undertakings, the competent authority of a Member State deems it necessary to

redistribute sugar production quotas among undertakings situated in its territory in order to safeguard competition:

(a) Do the provisions of Council Regulation (EEC) No 1785/81 of 30 June 1981, and Council Regulation (EEC) No 193/82 of 26 January 1982, preclude those authorities from stipulating that such a transfer or reallocation of quotas is for value and, therefore, that the recipient undertaking or undertakings must pay financial consideration?

(b) Even if the answer is in the negative, do the same provisions nevertheless preclude the price of the quota to be transferred, and the distribution thereof, from being decided by public auction? Do those provisions preclude recourse to public auction even where it has been stipulated that, as part of the reallocation of quotas carried out by such a procedure, the measures required to prevent any possible adverse effects for national agricultural producers of sugar beet will be adopted?

(c) Does the entry into force of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector, which repeals the earlier regulations, affect the interpretation of the Community legislation and the answers of the Court?'

Reply of the Court

The first part of the question

21 In view of the fact that sugar is a product covered by a common organisation of the market, it must be borne in mind, first and foremost, that where there is a

regulation on the common organisation of the market in a given domain, the Member States are, according to settled case-law, under an obligation to refrain from taking any measures which might undermine or create exceptions to it (see Case C-462/01 *Hammarsten* [2003] ECR I-781, paragraph 28, Case C-355/00 *Freskot* [2003] ECR I-5263, paragraph 19, and Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraph 63).

22 It is therefore appropriate to examine whether the provisions governing the common organisation of the markets in the sugar sector enable the Member States to adopt, as regards sugar quotas, measures such as those being challenged before the national court.

23 At the material time for the purposes of the main proceedings, the common organisation of the markets in the sugar sector was governed by Regulation No 1785/81.

24 Article 24(1) of that regulation empowers the Member States to allocate, on conditions laid down therein, an A quota and a B quota to each sugar-producing undertaking which had been provided with a basic quota.

25 Article 25(1) of that regulation enables Member States to transfer A quotas and B quotas between undertakings while observing the conditions laid down in that article and taking into consideration the interests of each of the parties concerned and in particular those of sugar beet producers or sugar cane producers.

26 According to paragraph 2 thereof, Member States may reduce, in that regard, the A quota and the B quota of each sugar-producing undertaking situated in their territories by a total quantity not exceeding 10% of the A quota or of the B quota, as the case may be, fixed for each of them in accordance with Article 24 of the aforementioned regulation.

27 Under Article 25(3) of Regulation No 1785/81, the withdrawn quantities of A quotas and B quotas are to be allocated as such by the Member States to one or more other undertakings situated in their territory.

28 It is clear from the 14th recital of the preamble to that regulation that the power of Member States to amend the quotas of existing undertakings and reallocate to other undertakings the quantities of quotas withdrawn is conferred on them with the aim of 'meet[ing], should the case arise, the restructuring needs of the sugar beet and sugar cane crop sectors, the sugar production sector and the isoglucose production sector'.

29 Article 25(4) provides that the Council is to adopt general rules for the adjustment of quotas, in particular in the event of merger or transfer of undertakings. Such rules were adopted by Regulation No 193/82.

30 According to Article 2(1)(a) of that latter regulation, in the event of the merger of sugar-producing undertakings, the Member States are to allocate to the undertaking resulting from the merger an A quota and a B quota equal respectively to the sum of the A quotas and the sum of the B quotas allocated prior to the merger to the sugar-producing undertakings concerned.

31 However, paragraph 2 of that article provides that, where a number of the sugar-beet or cane producers directly affected by such a merger expressly show their willingness to supply their beet or cane to a sugar-producing undertaking which is not party to the merger, the Member State may make the allocation on the basis of the production absorbed by the undertaking to which they intend to supply their beet or cane.

32 Finally, Article 4 of the same regulation provides that the measures thus taken may take effect only if the interests of each of the parties concerned are taken into consideration and if the Member State concerned considers them to be such as to improve the structure of the beet, cane and sugar-manufacturing sectors and they concern undertakings established within the territory of that State.

33 In Case C-1/94 *Cavarzere Produzioni Industriali and Others* [1995] ECR I-2363, paragraph 34), the Court acknowledged that the power of manœuvre conferred on Member States by Article 25 of Regulation No 1785/81 may be exercised at the same time as an adjustment of quotas pursuant to Article 2 of Regulation No 193/82 following a transfer of undertakings or factories, provided that the specific conditions governing the application of each of those provisions are complied with.

34 That finding also applies to mergers of undertakings.

35 It therefore follows from Article 25(1) and (2) of Regulation No 1785/81 and Articles 2(1)(a) and 4 of Regulation No 193/82 that a Member State is permitted, in the event of the merger of sugar-producing undertakings, to reallocate among the sugar undertakings established in its territory part of the quotas of the undertaking resulting from the merger, provided that that part does not exceed 10% of the A quota or the B quota of that undertaking, that the interests of each

of the parties are taken into consideration and in particular those of sugar beet and sugar cane producers and that the reallocation is such as to improve the structure of the beet, cane and sugar-manufacturing sectors following the merger.

36 The Commission claims that the power to amend the allocation of production quotas was delegated to the Member States by Article 25 of Regulation No 1785/81 in order to meet the restructuring needs of the sugar beet and sugar cane crop sectors and that, consequently, the Member States are not permitted to make use of that delegated power for any aims other than those pursued by that provision. However, in the case before the national court, the Spanish authorities provided for the possibility of amending the allocation of the quotas allocated to the undertaking resulting from the merger, not in order to carry out the restructuring of the sugar beet crop sector or the sugar-producing sector but in order to safeguard competition on the Spanish sugar market.

37 It must be observed in that regard that the fact that quotas are reallocated in order to safeguard competition on the national sugar market does not necessarily mean that it is carried out with aims other than those pursued by Community provisions on sugar quotas.

38 As regards a common organisation such as that of sugar, in which the markets are closely regulated and where competition is weak, including at national level, it is not inconceivable that measures intended to maintain competition on the national market, such as the reallocation of quotas, may also help to improve the structure not only of the sugar-producing sector but also of the beet sector, in view of the links connecting beet producers and sugar manufacturers in the context of that common organisation of the markets.

39 In the present case, it is true that the conditions to which the Spanish authorities made its approval subject, which included the devising of an industrial restructuring programme for the undertaking resulting from the merger and the redistribution of part of its quotas, were imposed with a view to safeguarding competition on the national sugar market following the merger of the two largest producers in Spain. However, it is clear from the order for reference that the Spanish authorities took the view in that connection that the merger 'could bring about improvements in the production and marketing of sugar... if it led to an overall restructuring of the sector, a restructuring of the undertakings involved in the merger and a transfer of the gains in efficiency to consumers and users'.

40 In those circumstances, a measure such as that being challenged in the main proceedings cannot be criticised for making approval of a merger of sugar-producing undertakings subject to the reallocation of part of the quotas of the undertaking resulting from the merger, pursuant to national competition law.

41 It is appropriate to examine, next, whether such a measure may be criticised for requiring that such reallocation of quotas should be carried out for value by public auction.

42 In that connection, as the national court rightly pointed out in its order for reference, neither Articles 24 and 25 of Regulation No 1785/81, which concern the allocation and the transfer of quotas respectively, nor the other provisions of Title III of that regulation, which is devoted to the system of quotas, nor, finally the provisions of Regulation No 193/82 state expressly whether reallocation of quotas should be for consideration or free-of-charge.

43 However, contrary to the arguments put forward by Ebro and the Spanish Government, the fact that Community legislation is silent in that respect does not mean that a Member State is permitted to require the reallocation of transfers to be for consideration.

44 In view of the detailed nature of Community legislation on the common organisation of the markets in the sugar sector, including the system of quotas, it may reasonably be assumed that if the Community legislature had had the intention of authorising the sale of quotas, it would have legislated expressly for it. However, Article 24 of Regulation No 1785/81 provides that 'Member States shall... allocate' an A quota and a B quota to each sugar-producing undertaking and, in the event of a subsequent transfer of those quotas, Article 25(3) likewise provides that the withdrawn quantities of A quotas and B quotas 'shall be allocated' by the Member States to one or more other undertakings. The use of the verb 'to allocate' suggests a grant that is not for consideration.

45 That first finding which may be extracted from the wording of those provisions is borne out by the purpose of the system of quotas as well as by their legal nature.

46 Indeed, it is clear from the 15th recital of the preamble to Regulation No 1785/81 that 'the production quotas allocated to undertakings constitute a means of guaranteeing producers Community prices and an outlet for their production'. As the Court observed in its judgment in Case 250/84 *Eridania and Others* [1986] ECR 117, paragraph 19, the quota system for the production of sugar is an essential part of the common organisation of the markets in that sector, which curbs production and aligns it as closely as possible with internal consumption

whilst promoting regional specialisation. Furthermore, the 15th recital and Article 25(1) of Regulation No 1785/81 and Article 4 of Regulation No 193/82 all emphasise how important it is, for a transfer of quotas, that the interests of each of the parties concerned, in particular those of sugar beet and sugar cane producers, be taken into consideration.

47 It follows that the system of quotas constitutes a mechanism for regulating the market in the sugar sector which aims to ensure the attainment of public-interest objectives.

48 Those characteristics of the system of quotas in the sugar sector mean that the quotas cannot be transferred from one undertaking to another for consideration, in accordance with market forces.

49 As the Commission rightly pointed out, the sale of quotas, in so far as it would be wholly based on financial considerations, would not take account of public-interest objectives laid down in the Community legislation in the sugar sector and would therefore not enable the national authorities to ensure observance of the conditions laid down in those provisions.

50 Furthermore, transfer for consideration would confer on undertakings purchasing quotas ownership over them. However, the existence of such a right would affect the discretion available to Member States in the exercise of the powers, as regards quotas, conferred on them by Community provisions. Such ownership would therefore affect the flexibility inherent in a mechanism for the regulation of the market such as the quotas in the sugar sector, which are capable of varying over time depending on the situation of the market or the needs of the common agricultural policy.

51 The finding that undertakings do not own the quotas allocated to them is not affected by the fact, as pointed out by Ebro, that in the event of the sale of a sugar-producing undertaking or a sugar factory, the latter acquire greater value because they are associated with a production quota.

52 The price paid in those cases corresponds to the value of the asset transferred, but that in no way implies that the quota with which that asset is associated belongs to the transferred undertaking or the transferring undertaking. If that were the case, there would be no need to provide in Article 2(1)(b) and (c) of Regulation No 193/82 that the Member State is to allocate the quota of the transferred undertaking or the transferring undertaking to the transferee undertaking or the purchasing undertaking.

53 Ebro argues that, under the national competition law in the context of which a transfer of quotas takes place, the disinvestment on which authorisation for a concentration is often contingent always involves a transfer, for consideration, of that of which the body resulting from the merger must divest itself, which is moreover to the benefit of its competitors.

54 Leaving aside the fact that that argument is based on the mistaken premiss that the quotas are the property of the undertaking to which they are allocated, it must be observed that, although the Member States are empowered to apply their national competition law in a sector covered by a common organisation of the markets, they must observe the principles and general rules governing the common agricultural policy and refrain from taking any measures which might

undermine or create exceptions to the common organisation of the market concerned (see Case C-134/92 *Mörlins* [1993] ECR I-6017 and the case-law cited in paragraph 21 of the present judgment).

55 Accordingly, the application of national competition law to a transfer of sugar quotas cannot in any way mean that such transfer should be for consideration.

56 Ebro and the Spanish Government further contend that in the case of a merger at Community level of sugar-producing undertakings, namely the merger between the undertakings Südzucker AG (hereinafter 'Südzucker') and Saint-Louis, the Commission imposed conditions which resemble the transfer for consideration by public auction required by the Spanish Government in the measure being challenged in the main proceedings.

57 However, as the Advocate General points out in paragraphs 77 and 78 of his Opinion, one of the two conditions imposed by the Commission concerned the requirement on Südzucker to sell a 68% share in a Belgian undertaking, ensuring that the quota was retained by that undertaking, and the other the requirement on Südzucker to sell to an independent commercial undertaking not a quota, but an annual quantity of 90 000 tonnes of sugar already produced in its factories.

58 Since neither of those conditions constitutes or may be treated as a transfer of quotas for consideration, the argument put forward by Ebro and the Spanish Government must be rejected.

59 At the hearing, Ebro, relying on Case C-186/96 *Demand* [1998] ECR I-8529, paragraph 35, further argued that, in the context of the common organisation of the markets in the milk and milk products sector, the Court had accepted that quotas could be reallocated for consideration.

60 In that regard, without it being necessary to consider whether, despite a number of differences, the similarities which characterise the system of quotas in the milk and milk products sector, on the one hand, and that in the sugar sector, on the other, make it possible to transpose without further ado to the latter the findings made in the context of the former, it should be observed that paragraph 35 of the judgment in *Demand* is set in a specific context in which additional reference quantities had, after being withdrawn from the market in exchange for payment of compensation to those producers discontinuing milk production, been allocated to other producers because the withdrawal had resulted in a reduction greater than that initially envisaged. The competent national authorities then offered the surplus to those producers who wished to increase their quota against payment of a sum equal to the amount paid by way of compensation to producers who had discontinued milk production (see *Demand*, paragraph 21).

61 Since no similarity may be drawn between that situation and that in issue in the main proceedings, the argument based on *Demand* must be rejected.

62 In view of the foregoing considerations, the answer to the first part of the question must be that if, in the exercise of its power of administrative review of a merger of undertakings, the competent authority of a Member State deems it necessary to redistribute sugar production quotas among undertakings situated in its territory in order to safeguard competition, the provisions of Regulation No 1785/81 and those of Regulation No 193/82 preclude that authority from stipulating that such a transfer or reallocation of quotas should be for value.

The second part of the question

63 The second part of the question is raised in the event that the first part is answered in the negative.

64 Accordingly, in view of the answer to the first part of the question, there is no need to answer the second part.

The third part of the question

65 It is apparent from paragraphs 6 to 11 of the present judgment that the content of the relevant provisions of Regulation No 1785/81 was in fact subsequently reproduced in Regulation No 2038/1999 and then in Regulation No 1260/2001. Likewise, the content of the relevant provisions of Regulation No 193/82 was reproduced in Regulation No 1260/2001, which replaced it.

66 In the circumstances, the answer to the third part of the question must be that the entry into force of Regulation No 1260/2001 does not alter the interpretation of the Community legislation.

Costs

67 The costs incurred by the Spanish Government and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Tribunal Supremo by order of 3 October 2001, hereby rules:

1. If, in the exercise of its power of administrative review of a merger of undertakings, the competent authority of a Member State deems it necessary to redistribute sugar production quotas among undertakings situated in its territory in order to safeguard competition, the provisions of Council

Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector and Council Regulation (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector preclude that authority from stipulating that such a transfer or reallocation of quotas should be for value.

2. The entry into force of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector does not alter the interpretation of the Community legislation.

Skouris Gulmann Cunha Rodrigues

Puissochet Macken

Delivered in open court in Luxembourg on 20 November 2003.

R. Grass V. Skouris

Registrar President