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 – Wholesale market for fuel in Bulgaria – Margin squeeze on competitors – Product market definition – Vertically divided market – Taking into account the excise duty regime)

In Case C-260/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-oblast (Administrative Court, Sofia Province, Bulgaria), made by decision of 15 April 2024, received at the Court on 15 April 2024, in the proceedings

'Lukoil Bulgaria' EOOD

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, by Y. Pekunov, A. Velichkov, advokati, A. Pekunova, yuriskonsult, and A. Robertson, KC,

– the 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,

– the European Commission, by V. Hitrovs, E. Rousseva and I. Söderlund, acting as Agents,

* Language of the case: Bulgarian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

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 'Lukoil Bulgaria' EOOD ('Lukoil Bulgaria') and the Komisia za zashtita na konkurentsiata (Commission on Protection of Competition, Bulgaria) ('the Bulgarian competition authority') concerning the validity of Decision No 184 of 16 February 2023 ('the decision of the Bulgarian competition authority') by which the latter found that that company had committed an abuse of a dominant position.

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:

'The conduct of undertakings which constitutes a monopoly or a dominant position and of two or more undertakings in a collective dominant position and which is liable to hinder, restrict or distort competition and which affects the interests of consumers consisting, in particular, in:

'1. directly or indirectly fixing purchase or selling prices or any other unfair trading conditions;

2. a restriction of production, trade and technical development to the detriment of consumers;

3. the application of different conditions for the same type of contract with regard to certain partners, which places the latter in a situation of inequality between competitors;

4. making the conclusion of contracts conditional upon the other party assuming additional obligations or concluding additional contracts which, by their nature or according to normal commercial usage, are not linked to the subject matter of the main contract or its performance;

5. an unjustified refusal to supply a good or service to an actual or potential customer, in order to hinder the customer's business activities.'

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

5 It is apparent from the order for reference that, in Bulgaria, the activities of Lukoil economic group ('the Lukoil group') include the production, wholesale and retail distribution of petroleum products, thus covering the entire value chain in the marketing of those products. Within that group, 'Lukoil Neftohim Burgas' AD, which has the only crude oil refinery in Bulgaria, is the largest producer of motor fuels sold in that Member State. Lukoil Bulgaria is active in the wholesale market for motor fuels, namely automotive petrol and diesel fuel ('the wholesale fuel market'), and operates one of the largest national service station chains.

6 According to the decision of the Bulgarian competition authority, the Lukoil Group has a unique logistical, storage and transport infrastructure in Bulgaria, which gives it an exceptional competitive advantage on the wholesale fuel market, in which it is in a dominant position.

7 By that decision, that authority found that Lukoil Bulgaria had implemented a pricing practice on that market under which the latter company applied to fuel subject to excise duty (the downstream market) selling prices lower than those which it applied to fuels under suspension of those duties (the upstream market). That pricing practice resulting in a margin squeeze constitutes an abuse of a dominant position contrary to Article 21 of the ZZK.

8 In the action which it brought against that decision before the Administrativen sad Sofia-oblast (Administrative Court, Sofia Province, Bulgaria), which is the referring court, Lukoil Bulgaria claims, inter alia, that that authority incorrectly defined the relevant market.

9 In the first place, Lukoil Bulgaria submits, first, that the relevant market should have included liquefied petroleum gas (LPG) and methane, both of which are substitutes for petrol and diesel. Their exclusion would have led to an overestimation of Lukoil Bulgaria's market power. The Bulgarian competition authority rejects that argument on the ground that LPG and methane are only partially substitutable for petrol and diesel.

10 Second, Lukoil Bulgaria argues that, since petrol and diesel are not substitutable products, either on the demand side or on the supply side, they do not form part of the same market. The Bulgarian competition authority, for its part, contends that, although petrol and diesel are not, from the end consumer's perspective, substitutable, trade in those two types of fuel, by the same suppliers, and the formation of their prices on the wholesale fuel market do however take place under identical conditions.

11 The referring court considers that it is therefore necessary to determine whether, for the purposes of the application of Article 102 TFEU, a national competition authority may place on the same market fuel products which are not substitutable. According to that court, if that were the case, the decision of the Bulgarian competition authority could have brought petrol and diesel within the same market. However, in such a case, the Bulgarian competition authority's refusal to include LPG in that same market would be deprived of reasonable justification, since petrol is partly substitutable by LPG.

12 In the second place, Lukoil Bulgaria submits that the Bulgarian competition authority wrongly considered that the wholesale fuel market could be vertically divided into two sub-markets, namely, upstream, the market for fuel sold under an excise duty suspension arrangement and, downstream, the market for fuel intended for final consumption after the payment of those duties.

13 Lukoil Bulgaria claims, inter alia, that the Bulgarian competition authority stated that that company has a relatively high market share on the wholesale fuel market, of between 40 and 60%, and holds a dominant position on that market and on the sub-market for fuels sold under the excise duty suspension arrangement. However, the decision of the Bulgarian competition authority does not contain any assessment of that company's market shares on the two sub-markets distinguished in that decision and does not identify the operators present in each of those sub-markets. Lukoil Bulgaria submits that EU law precludes a competition authority from finding that an undertaking is in a dominant position without expressly indicating its market shares, which the Bulgarian competition authority disputes.

14 The referring court therefore asks whether, in order to find an infringement such as that allegedly committed by Lukoil Bulgaria, the Bulgarian competition authority was required to examine all the essential characteristics of the two markets concerned, by determining, for each of them, the market shares, the market volume and the market participants.

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

'(1) Must Article 102 TFEU and the principles of [respect for] the rights of the defence, legal certainty and the protection of legitimate expectations, including the presumption of innocence, be interpreted as meaning that, in the event of an unlawful margin squeeze, the relevant markets (the markets in which the infringement was committed) are two vertically related markets, namely an upstream market and a downstream market, and that it is

precisely in relation to those two relevant markets that the competition authority is required, when making the accusation and adopting the final decision, to make statements of fact relating to the size of those markets, the participants in those markets and [to] the market shares of those participants, including the market shares of the undertaking to which it imputes a dominant position on those markets?

(2) Must Article 102 TFEU, interpreted in conjunction with the principles of [respect for] the rights of the defence, legal certainty and the protection of legitimate expectations, including the presumption of innocence, be interpreted as meaning that, in proceedings under Article 102 TFEU, that article does not allow products between which there is neither demand-side nor supply-side substitutability to be included in one and the same national product market, as the [Bulgarian competition authority] did in the [main proceedings] by including diesel fuel and A-95H petrol in a single product market for motor fuels?

(3) If it is permissible to include in a single national product market motor fuels between which there is no demand-side or supply-side substitutability, is it permissible not to include in the product market for motor fuels the third main motor fuel in the national market, namely [LPG], which has a market share in the national market that is equal to the market share of petrol?'

Admissibility of the request for a preliminary ruling

16 The Bulgarian competition authority and the Bulgarian Government dispute the admissibility of the request for a preliminary ruling. Those interested parties essentially put forward three arguments in that regard.

17 First, the decision of the Bulgarian competition authority is based exclusively on the application of Bulgarian law and Article 102 TFEU is not applicable since the alleged abuse of a dominant position does not affect trade between Member States. Second, the referring court has not defined the factual and legislative context of the questions referred for a preliminary ruling nor has it explained the factual circumstances on which those questions are based, all of which are necessary in order to obtain an interpretation of EU law which will be of use to it. In reality, that court confined itself to reproducing the arguments of the parties to the dispute in the main proceedings. Third, the Bulgarian competition authority submits that the present request for a preliminary ruling amounts, in practice, to transferring to the Court of Justice the jurisdiction of the referring court to resolve the question of the definition of the relevant market, which is essential for the resolution of that dispute.

18 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).

19 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).

20 In the present case, with regard to the first argument mentioned in paragraph 17 of the present judgment, it is not obvious that the requested interpretation of Article 102 TFEU bears no relation to the facts of the main action or its purpose.

21 First, it is apparent from the request for a preliminary ruling that the referring court considers that Article 102 is applicable to the case in the main proceedings. Moreover, Article 102 must be automatically applied by any national court (judgment of 13 July 2006, *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 31).

22 Second, according to the content of the decision of the Bulgarian competition authority as set out in the order for reference, Lukoil Bulgaria operates throughout the territory of the Republic of Bulgaria and the pricing practice at issue in the main proceedings is implemented at national level. Such a finding, which it is for the referring court to ascertain, is, in itself, sufficient for it to be considered that that practice is capable of affecting trade between Member States, within the meaning of Articles 101 and 102 TFEU (see, to that effect, judgment of 5 December 2006, *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 45 and the case-law cited). Where a national competition authority applies provisions of national law prohibiting abuse of a dominant position to the conduct of an undertaking capable of affecting trade between the Member States within the meaning of Article 102 TFEU, Article 3(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) requires it also to apply Article 102 TFEU in parallel (see, to that effect, judgment of 3 April 2019, *Powszechny Zakład Ubezpieczeń na Życie*, C-617/17, EU:C:2019:283, paragraph 26 and the case-law cited).

23 With regard to the second argument referred to in paragraph 17 of the present judgment, it should be recalled that, as stated in Article 94(c) of the Rules of Procedure of the Court, the request for a preliminary ruling is to contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings.

24 In the present case, it is apparent from paragraphs 11 and 14 of the present judgment that the referring court has, in essence, set out the reasons which led it to make a reference to the Court of Justice for a preliminary ruling. Moreover, it is apparent from the observations of the parties to the main proceedings, the Bulgarian Government and the European Commission that they were, in essence, in a position to adopt a complete and useful position on the questions referred.

25 That said, none of the grounds of the order for reference makes it possible to identify the reasons which led the referring court to question the principles of respect for the rights of the defence, legal certainty and the protection of legitimate expectations, including the presumption of innocence. It follows that, to that extent, the first and second questions referred for a preliminary ruling are inadmissible.

26 As regards the third argument referred to in paragraph 17 of the present judgment, it should be noted that the questions referred concern the interpretation of Article 102 TFEU, without the Court being asked to apply Article 102 to the case in the main proceedings. In that regard, it should be recalled that the procedure for referring questions for a preliminary ruling under Article 267 TFEU establishes a relationship of close cooperation between the national courts and the Court of Justice based on the assignment to each of different functions and constitutes an instrument by means of which the Court provides the national courts with the criteria for the interpretation of EU law which they need in order to dispose of disputes which they are called upon to resolve, without authorising the Court to apply the rules of EU law in a particular case (see, to that effect, judgments of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 59 and the case-law cited; of 8 December 2022, *HYA and Others (Impossibility of questioning prosecution witnesses)*, C-348/21, EU:C:2022:965, paragraph 49, and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraphs 50 to 55 and the case-law cited).

27 In those circumstances, the reference for a preliminary ruling is admissible in so far as it concerns the interpretation of Article 102 TFEU.

Consideration of the questions referred

The first question

28 By its first question, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that, in order to find the existence of an abusive practice of margin squeeze committed by a vertically integrated undertaking, a competition authority must establish, for both the upstream market and the downstream market concerned, the volumes of those markets and the shares of those markets held by that undertaking and by its competitors.

29 In the present case, it is apparent from the file available to the Court that the Bulgarian competition authority found that the margin squeeze alleged against Lukoil Bulgaria is carried on within the wholesale fuel market between two sub-markets, namely, the upstream sub-market, which is the wholesale market for fuels placed under an excise duty suspension arrangement and the downstream sub-market, which is the wholesale fuel market after excise duty has been paid. The margin squeeze results from the fact that Lukoil Bulgaria sells fuel wholesale on the downstream market, that is, after excise duty has been paid, at a price lower than the price at which it sells fuel placed under an excise duty suspension arrangement on the upstream market.

30 In the first place, it should be recalled that an abusive practice of margin squeeze consists of a pricing practice which, in the absence of any objective justification, is unfair in so far as it squeezes the margins of competing undertakings and is therefore liable to have an exclusionary effect on competitors who are at least as efficient as the dominant undertaking (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 30 and 31).

31 According to the case-law of the Court of Justice, a margin squeeze constitutes an autonomous abuse, since the unfairness, within the meaning of Article 102 TFEU, of such a pricing practice is linked to the very existence of that margin squeeze, and not to its precise spread, with the result that it is in no way necessary to establish that wholesale prices for the product on the upstream market or retail prices on the downstream market are in themselves abusive on account of their

excessive or predatory nature, as the case may be (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 34 and the case-law cited).

32 In order to determine whether a dominant undertaking has abused its position by the pricing practices it applies, it is necessary to consider all the circumstances and to investigate whether the practice tends to remove or restrict the buyer's freedom to choose his sources of supply, to bar competitors from access to the market, to apply dissimilar conditions to equivalent transactions with other trading parties, or to strengthen the dominant position by distorting competition (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraph 28 and the case-law cited).

33 Such circumstances can arise where a vertically integrated undertaking which is dominant on an upstream market attempts to prevent normal competition in a market neighbouring the downstream market which it dominates, in so far as such conduct may have the effect of driving out the competitors who are at least as efficient as itself in that neighbouring market, that is the downstream market, by squeezing their margins. Such conduct is likely, not least because of the close links between the markets concerned, to weaken competition in the downstream market (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraph 87 and 91).

34 It is therefore for the referring court to take into consideration all the specific circumstances of the case in the main proceedings in order to assess whether the two markets identified by the Bulgarian competition authority constitute separate markets with close links.

35 In the second place, if the referring court considers that the two markets identified by the Bulgarian competition authority constitute two distinct but closely linked markets, that court will still have to examine, before finding an infringement of Article 102 TFEU, whether the vertically integrated undertaking is dominant on the upstream market (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 85 to 89).

36 That is the case if that undertaking has economic power which enables it to prevent effective competition being maintained on that upstream market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers (judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraph 23 and the case-law cited).

37 Furthermore, a dominant position derives in general from a combination of several factors which, taken separately, are not necessarily determinative (judgment of 14 February 1978, *United Brands and United Brands Continentaal* v *Commission*, 27/76, EU:C:1978:22, paragraph 66).

38 In that regard, the Court of Justice has ruled that, although the importance of the market shares may vary from one market to another, the possession, over a long period, of a very large market share constitutes in itself, save in exceptional circumstances, proof of the existence of a dominant position and that market shares of more than 50% constitute very large market shares (see, in that regard, judgments of 13 February 1979, *Hoffmann-La Roche* v *Commission*, 85/76, EU:C:1979:36, paragraph 41, and of 6 December 2012, *AstraZeneca* v *Commission*, C-457/10 P, EU:C:2012:770, paragraph 176).

39 That said, although, in order to assess the existence of a dominant position in a market, possession, over a long period, of a large market share is highly significant, the fact remains that a dominant position may also be established by taking into account other characteristics of the market concerned, such as the existence of significant barriers to entry or essential facilities, which make it possible to assess whether, on that market, that undertaking acts to an appreciable extent independently of its competitors, customers and consumers.

40 In that regard, in the present case, it is apparent from the order for reference that Lukoil Bulgaria operates on the entire fuel production chain until its final sale and has the only refinery and a unique logistical, storage and transport infrastructure in the country.

41 In the third place, it follows from the case-law of the Court of Justice that whether a pricing practice introduced by a vertically integrated undertaking which is dominant on an upstream market and resulting in the margin squeeze of that undertaking's competitors on the downstream market is abusive does not depend on whether that undertaking is dominant in that downstream market (see, to that effect, (judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraph 89).

42 That said, as the Commission observes, it cannot be ruled out that data relating to that downstream market may have to be taken into account in order to examine whether that pricing practice is contrary to Article 102 TFEU.

43 In order to establish an abuse of a dominant position consisting of a margin squeeze, a competition authority is required to demonstrate that the spread between the prices of the products or services concerned on the upstream market and those on the downstream market was either negative or insufficient to cover the specific costs which the dominant undertaking has to incur in order to supply its own products or services on the downstream market, so that that spread does not allow a competitor as efficient as that undertaking to compete for the supply of those products or services on the downstream market. The Court has also held that, in order to assess the lawfulness of the pricing policy applied by a dominant undertaking, reference should be made, as a general rule, to pricing criteria based on the costs incurred by the dominant undertaking itself and on its strategy (see, to that effect, judgment of 25 March 2021, *Slovak Telekom* v *Commission*, C-165/19 P, EU:C:2021:239, paragraphs 73 and 74 and the case-law cited).

44 Thus, in order to determine whether the spread between the prices of a dominant undertaking on the upstream market and the prices applied by that undertaking on the downstream market is capable of leading, on the latter market, to an exclusionary effect on its competitors which are at least as efficient as itself, it must be determined whether that undertaking would have been sufficiently efficient to offer services on the downstream market otherwise than at a loss if it had first been obliged to pay its own prices on the upstream market, which requires, in principle, the prices and costs of the dominant undertaking on the downstream market to be taken into account or, where it is not possible to refer to those prices and to those costs, the prices and costs of competitors on the same market to be taken into account (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 41 to 46).

45 Lastly, it should also be pointed out that the undertaking concerned is at liberty to demonstrate that its pricing practice, albeit producing an exclusionary effect on the downstream market, remains economically justified, which requires it to be demonstrated, on the basis of all the circumstances of the case, that such an exclusionary effect, which is disadvantageous for

competition, may be counterbalanced, or outweighed, by advantages in terms of efficiency which also benefit the consumer on that market (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 75 and 76).

46 Accordingly, the answer to the first question referred for a preliminary ruling is that Article 102 TFEU must be interpreted as meaning that, in order to find the existence of an abusive practice of margin squeeze committed by a vertically integrated undertaking, a competition authority must establish, first, the existence of a dominant position on the part of that undertaking on the upstream market, taking into account the market shares held by that undertaking or other relevant characteristics of that market which permit the inference that that undertaking has economic power enabling it to conduct itself, to an appreciable extent, independently of its competitors, customers and consumers, and second, the existence, on a downstream market linked to the upstream market, of a price, applied by the vertically integrated undertaking, which is capable of leading to an exclusionary effect on its competitors which are at least as efficient as itself, having regard to the characteristics of that downstream market.

The second and third questions

47 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 products between which there is no demand-side or supply-side substitutability, such as petrol and diesel, may be included in the definition of the relevant product market, whereas a product like LPG, for which there is demand-side or supply-side substitutability with at least one of those two fuels is excluded.

48 It is apparent from the case-law of the Court of Justice that the determination of the relevant market, for the purposes of applying Article 102 TFEU, is of essential significance, for the possibilities of competition can only be judged in relation to those characteristics of the products in question, and is, in principle, a prerequisite for any assessment of whether the undertaking concerned has a dominant position (see, to that effect, judgment of 21 February 1973, *Europemballage and Continental Can* v *Commission*, 6/72, EU:C:1973:22, paragraph 32). The purpose of that determination is to define the boundaries within which it must be assessed whether that undertaking is able to behave, to an appreciable extent, independently of its competitors, customers and consumers (see, to that effect, judgment of 9 November 1983, *Nederlandsche Banden-Industrie-Michelin* v *Commission*, 322/81, EU:C:1983:313, paragraph 37, and of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 127).

49 The definition of the relevant market involves defining, first, the product market and then, second, the geographical market (judgments of 14 February 1978, *United Brands and United Brands Continentaal* v *Commission*, 27/76, EU:C:1978:22, paragraphs 10 and 11, and of 27 June 2024, *Commission* v *Servier and Others*, C-176/19 P, EU:C:2024:549, paragraph 382).

50 As regards the product market, it is clear from the case-law of the Court of Justice that the concept of the relevant market implies that there can be effective competition between the products which form part of it and this presupposes that there is a sufficient degree of interchangeability or substitutability between all the products forming part of the same market in so far as a specific use of such products is concerned. Interchangeability or substitutability is not assessed solely in relation to the objective characteristics of the products at issue. The competitive conditions and the structure of supply and demand on the market must also be taken into consideration (see, to that effect, judgment of 27 June 2024, *Commission* v *Servier and Others*, C-176/19 P, EU:C:2024:549, paragraph 383 and the case-law cited).

51 It follows from those considerations that the assessment of the substitutability of two products is not limited to determining whether those products are, from a functional point of view, capable of satisfying the same need, but also requires a determination as to whether, from an economic point of view, those products are in fact substitutable. Economic substitutability between two products may be found where changes in their relative prices lead to a shift in the sales of one to the other. In that regard, it must be pointed out that, from an economic point of view, demand substitutability constitutes the most immediate and effective disciplinary constraint on the suppliers of a given product. The assessment of that substitutability may consist in assessing the cross-price elasticity of demand by determining whether consumers of a product subject to a small but permanent price increase would switch to substitute products (see, to that effect, judgment of 27 June 2024, *Commission* v *Servier and Others*, C-176/19 P, EU:C:2024:549, paragraph 384).

52 Although an assessment making it possible to define the market on which the existence of a dominant position must be assessed requires findings of fact relating to the conditions of competition and to the structure of supply and demand on that market, which falls within the jurisdiction of the referring court, it conceivable that, despite the lack of functional substitutability between three types of motor fuel, such as diesel, petrol and LPG, for end consumer demand, there may be, in view of the specific supply conditions in Bulgaria, a sufficient degree of substitutability between some of those fuels on the wholesale market for fuels placed under a duty suspension arrangement, which would result in those fuels being included in the same product market.

53 Accordingly, it will be for the referring court to examine, in particular, first, whether petrol and diesel must be bulk stored in facilities of a similar or different nature and, second, whether LPG may be bulk stored in the same facilities as petrol and diesel or whether, on the contrary, it requires specific facilities.

54 It is apparent from the order for reference that the Bulgarian competition authority took into account, in determining the relevant market for the purposes of assessing the existence of a dominant position, only petrol and diesel, but not LPG, in so far as, for wholesalers, the storage conditions for those first two fuels are the same, which allows them, depending on demand, to offer one or other of those first two fuels, without that entailing additional costs for them.

55 By contrast, as regards LPG, according to the Bulgarian competition authority, there are specific requirements in Bulgaria as regards storage and resale after excise duty has been paid. Furthermore, LPG is transported differently from petrol and diesel.

56 Such considerations could constitute an objective justification for the distinction drawn by the Bulgarian competition authority between petrol and diesel, on the one hand, and LPG, on the other, which it is, however, for the referring court to ascertain.

57 In the light of the foregoing considerations, the answer to the second and third questions referred for a preliminary ruling is that Article 102 TFEU must be interpreted as meaning that only products which have a sufficient degree of substitutability may be included in the same market for the purposes of assessing the existence of a dominant position. Where the conduct which is alleged to constitute an infringement consists of pricing practices leading to margin squeeze, the competition authority must ascertain whether, despite the lack of functional substitutability

between three types of motor fuels, such as diesel, petrol and LPG, for end consumer demand, the conditions of competition and the structure of supply and demand support the conclusion that some of those fuels belong to the same product market on the upstream market.

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, in order to find the existence of an abusive practice of margin squeeze committed by a vertically integrated undertaking, a competition authority must establish, first, the existence of a dominant position on the part of that undertaking on the upstream market, taking into account the market shares held by that undertaking or other relevant characteristics of that market which permit the inference that that undertaking has economic power enabling it to conduct itself, to an appreciable extent, independently of its competitors, customers and consumers, and second, the existence, on a downstream market linked to the upstream market, of a price, applied by the vertically integrated undertaking, which is capable of leading to an exclusionary effect on its competitors which are at least as efficient as itself, having regard to the characteristics of that downstream market.**

2. **Article 102 TFEU must be interpreted as meaning that only products which have a sufficient degree of substitutability may be included in the same market for the purposes of assessing the existence of a dominant position. Where the conduct which is alleged to constitute an infringement consists of pricing practices leading to margin squeeze, the competition authority must ascertain whether, despite the lack of functional substitutability between three types of motor fuels, such as diesel, petrol and liquefied petroleum gas, for end consumer demand, the conditions of competition and the structure of supply and demand support the conclusion that some of those fuels belong to the same product market on the upstream market.**

[Signatures]