Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

21 June 2016*

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Article 101 TFEU — Road transport — Price of road haulage services for hire or reward which may not be lower than the minimum operating costs — Competition — Fixing of costs by the Ministry of Infrastructure and Transport)

In Case C-121/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Cagliari (Cagliari District Court, Italy), made by decision of 28 October 2015, received at the Court on 29 February 2016, in the proceedings

Salumificio Murru SpA

v

Autotrasporti di Marongiu Remigio,

THE COURT (Eighth Chamber),

composed of D. Šváby (Rapporteur), President of the Chamber, J. Malenovský and M. Vilaras, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision on the action by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 101 TFEU, read in conjunction with Article 4(3) TEU.

2 The request has been made in proceedings between Salumificio Murru SpA and Autotrasporti di Marongiu Remigio concerning the payment of an amount corresponding to the difference between the amount actually paid for various transport operations and the amount due in accordance with national legislation fixing the price of road haulage services for hire or reward.

* Language of the case: Italian.

Legal context

3 Italian Law No 32 of 1 March 2005, delegating to the executive reform of the law on the carriage of passengers and goods by road (GURI No 57 of 10 March 2005, p. 5), aims, in particular, to introduce regulated liberalisation and to replace the previous system of compulsory bracket tariffs with a system based on free bargaining for setting prices for road transport services.

4 In the context of the delegation provided for by Law No 32 of 1 March 2005, the Italian Government issued various legislative decrees, including Legislative Decree No 284 of 21 November 2005 (Ordinary Supplement to GURI No 6 of 9 January 2006) establishing the General Council for Road Transport and Logistics (Consulta generale per l'autotrasporto e la logistica; 'the General Council'), an institution with consultative functions, and, as a body of the General Council, the Monitoring Centre for Road Transport (Osservatorio sulle attività di autotrasporto; the 'Monitoring Centre'), composed of 10 members selected by the President of the General Council. The Monitoring Centre monitors, inter alia, compliance with provisions on road safety and social security, and updates the practices and customs applicable to road haulage contracts concluded orally.

5 Subsequently, Article 83*bis* of Decree-Law No 112 of 25 June 2008 ('Decree-Law No 112/2008') reduced the scope of the tariff liberalisation introduced by Legislative Decree No 286 of 21 November 2005, by providing, as regards contracts concluded orally, that the charges payable by customers may not be lower than the minimum operating costs which the Monitoring Centre was asked to fix. Those costs include the average cost of fuel per kilometre, in respect of the various types of vehicle, set every month, and the proportion, expressed as a percentage, of the operating costs of the road haulage undertaking for hire or reward represented by fuel costs, fixed every six months.

6 Article 83*bis*(10) of Decree-Law No 112/2008 provided that 'until such time as the determinations in paragraphs 1 and 2 [which governed the activities of the Monitoring Centre] are available, the Ministry of Infrastructure and Transport shall draw up, in respect of the various types of vehicle and the mileage, the indexes on the cost of fuel per kilometre and the relative proportions on the basis of the data in its possession and the findings made every month by the Ministry of Economic Development on the average price of road diesel, after having heard the trade associations most representative of hauliers and customers'.

7 Article 83*bis*(11) provides that 'the provisions of paragraphs 3 and 10 of the present Article shall apply in respect of the changes in the cost of road diesel as from 1 January 2009 or from the last adjustment carried out from that date'.

8 Consequently, from June 2009, the Ministry of Infrastructure and Transport published, on a monthly basis, the data on the average costs of fuel, until the publication on 2 November 2011 of the tables drawn up by the Monitoring Centre set up in July 2010.

9 Article 83*bis* of Decree-Law No 112/2008 was amended by Article 1(248) of Law No 190/2014, which came into force on 1 January 2015, to the effect that remuneration is now to be determined freely by the parties. However, Article 83*bis* of Decree-Law No 112/2008, as amended by Law No 190/2014, does not apply *ratione temporis* to the dispute in the main proceedings.

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

10 Salumificio Murru was ordered to pay EUR 37136.27, plus default interest, costs and fees, to the company Autotrasporti di Marongiu Remigio, in settlement of the price of the haulage carried out by the latter pursuant to an oral agreement concluded with Salumificio Murru, corresponding, in particular, to the payment of the difference between the amounts paid and the amounts due under Article 83*bis*(6) to (9) of Decree-Law No 112/2008.

11 Salumificio Murru applied to have the order for payment set aside, submitting, inter alia, that that provision is constitutionally unlawful and contrary to EU law. Autotrasporti di Marongiu Remigio contended that the application to set aside should be dismissed.

12 In this context, the referring court notes that, in its judgment of 4 September 2014 in *API and Others* (C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147), the Court held that Article 101 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, pursuant to which the price of road haulage services for hire or reward may not be lower than minimum operating costs, which are fixed by a body composed mainly of representatives of the economic operators concerned.

13 The referring court notes, however, that the Court's finding in that judgment concerned a situation different to the situation before it now.

14 According to the referring court, that case concerned the minimum operating costs fixed by the Monitoring Centre, a body composed mainly of representatives of the economic operators concerned, whereas the dispute in the main proceedings concerns the minimum costs fixed by the Ministry of Infrastructure and Transport. The referring court therefore considers that the conclusions to be drawn from the judgment of 4 September 2014 in *API and Others* (C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147) may not be applied to the legislation at issue in the main proceedings.

15 In the light of the considerations set out in paragraphs 50 to 57 of the judgment of 4 September 2014 in *API and Others* (C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147), the referring court nevertheless asks whether the legislation at issue is contrary to the obligation for Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings.

16 In those circumstances, the Tribunale di Cagliari (Cagliari District Court, Italy) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 101 TFEU, read in conjunction with Article 4(3) TEU, be interpreted as precluding national legislation, such as that provided for in Article 83*bis*(10) of Decree-Law No 112/2008, in so far as the price of road haulage services for hire or reward may not be lower than minimum operating costs determined by the Ministry of Infrastructure and Transport and is not left to be freely determined by the contracting parties?

(2) In the light of the Ministry of Infrastructure and Transport's status of public authority, may the competition rules in the internal market be restricted by national legislation in order to pursue the aim of maintaining road safety?'

Consideration of the questions referred

17 Under Article 99 of its Rules of Procedure, where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

18 It is appropriate to apply that provision in the context of the present reference for a preliminary ruling.

19 By its questions, which should be examined together, the referring court asks, in essence, whether Article 101 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, pursuant to which the price of road haulage services for hire or reward may not be lower than minimum operating costs fixed by a national administration.

20 As is apparent from the Court's settled case-law, although it is true that Article 101 TFEU is concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, that article, read in conjunction with Article 4(3) TEU, which lays down a duty of cooperation between the European Union and the Member States, nonetheless requires the latter not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings (see judgment of 4 September 2014 in *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 28 and the case-law cited).

21 Article 101 TFEU, read in conjunction with Article 4(3) TEU, is infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Article 101 TFEU or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere (see judgment of 4 September 2014 in *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 29 and the case-law cited).

22 In the case at issue, it is common ground that the minimum costs referred to in Article 83*bis* of Decree-Law No 112/2008 are fixed by the Ministry of Infrastructure and Transport itself after the trade associations most representative of hauliers and customers have been heard.

23 Given the rules for fixing minimum costs, it is clear that the Member State has not divested its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere.

24 Such a conclusion is not affected by the fact that the minimum costs referred to in Article 83*bis* of Decree-Law No 112/2008 are fixed after the trade associations most representative of hauliers and customers have been heard (see, to that effect, judgment of 4 September 2014 in *API and Others*, C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147, paragraph 30 and the case-law cited).

25 For the same reasons relating to the fixing, by the Ministry of Infrastructure and Transport, of the minimum costs referred to in Article 83*bis* of Decree-Law No 112/2008, there is nothing in legislation such as that at issue in the main proceedings to suggest the existence of an agreement, decision or concerted practice between undertakings, within the meaning of Article 101 TFEU, that has been required or encouraged by public authorities, or the effects of which have been reinforced by them.

26 In this regard, the situation at issue in the main proceedings differs from the situation in the case that gave rise to the judgment of 4 September 2014 in *API and Others* (C-184/13 to C-187/13, C-194/13, C-195/13 and C-208/13, EU:C:2014:2147), in which the Court found, in paragraph 41, that the Monitoring Centre must be regarded as an association of undertakings within the meaning of Article 101 TFEU when it adopts decisions fixing minimum operating costs for road transport.

27 Consequently, it is not necessary, in this case, to examine whether legislation such as that at issue in the main proceedings imposes restrictions of competition that are in fact necessary to ensure the implementation of legitimate objectives.

28 In the light of all of the foregoing considerations, the answer to the question referred is that Article 101 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, pursuant to which the price of road haulage services for hire or reward may not be lower than minimum operating costs fixed by a national administration.

Costs

29 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 (Eighth Chamber) hereby rules:

Article 101 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, pursuant to which the price of road haulage services for hire or reward may not be lower than minimum operating costs fixed by a national administration.

[Signatures]