OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 16 December 1986 *

Mr President,
Members of the Court,

A — Facts

1. In the case on which I must state my opinion today, the dispute in the main proceedings has arisen out of the following circumstances.

2. The plaintiff, the Vereniging van Vlaamse Reisbureaus (Association of Flemish Travel Agencies), seeks an order restraining the defendant, the Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten (Social service of the local and regional services), subject to a financial penalty, from granting rebates to its members or to third parties on travel arranged by it.

3. The plaintiff is a non-profit association for the protection and promotion of the interests of Flemish travel agents. The defendant, which is also a non-profit association, offers its own travel programme to the staff of local and provincial government departments and acts as a travel agent where individual members of the staff wish to book a holiday with a commercial tour operator. When it acts as an agent it makes price rebates on travel, inasmuch as it passes on to the traveller all or part of the commission which is normally paid to a travel agent.

4. In the proceedings before the Rechtbank van Koophandel, Brussels, the plaintiff relies on Article 22 of the Royal Decree of 30 June 1966 on travel agencies. According to that provision, which appears in Chapter III of the Royal Decree, entitled 'Rules of Conduct', a travel agent must:

'(1) *With regard to his clients:*

...

(b) Observe the prices and fares agreed upon or required by law;

...

(3) *With regard to his fellow travel agents:*

Refrain from any act contrary to fair commercial practice diverting or attempting to divert their clients or the clients of one of them, harming or attempting to harm their reputation or, more generally, interfering or attempting to interfere with their ability to compete.

The following are deemed to be acts contrary to fair commercial practice:

...

(e) Failure to observe prices and fares agreed upon or imposed by law;

(f) The sharing of commissions, the granting of rebates and the offer of benefits of any kind contrary to trade practice.

...'

* Translated from the German.

5. Article 22 of the Royal Decree is based in turn on Article 22 of the Code of Conduct drawn up in 1963 by the Belgische Beroepsvereniging der Reisagenten (Union of Belgian Travel Agents, hereinafter referred to as 'BBR').

6. Under Article 54 of the Belgian Law of 14 July 1971 on trade practices, acts which are contrary to fair commercial practice are prohibited.

7. Furthermore, the agreements between tour operators and travel agents submitted to the Court by the Belgian Government refer, under the heading 'General Conditions of Cooperation', to the travel agents' code of conduct. A tour operator may cease to do business with a travel agent who contravenes that code.

8. The Rechtbank van Koophandel, Brussels, took the view that the practical effect of Article 22 of the Royal Decree of 30 June 1966 is that approved travel agencies can fix prices among themselves or at least that by a simple order of the authorities price-fixing measures, which by their nature are intended to protect purely commercial interests, can be made compulsory. It expressed doubt as to whether such a regulation is compatible with Articles 85 and 86 of the EEC Treaty, and therefore referred the following questions to the Court for a preliminary ruling:

'(A) Are the provisions of Article 22 (3) (e) and (f) of the Belgian Royal Decree of 30 June 1966, which provide that it is contrary to fair commercial practice for an approved travel agency (that is to say, a travel agency holding the authorization provided for in the Law of 21 April 1965):

(1) to offer prices and tariffs other than those agreed or imposed by law,

(2) to share commission, give rebates or offer advantages, in any form whatsoever, on conditions which are contrary to customary practice,

compatible with Article 85 (1) of the EEC Treaty, in particular where it appears that acts which are contrary to fair commercial practice are prohibited by virtue of Article 54 of the Belgian Law of 14 July 1971 on Trade Practices?

(B) Are agreements adopted by travel agents on the basis of those provisions compatible with Article 85 (1) of the EEC Treaty?

(C) Are the abovementioned provisions of Belgian domestic law and any agreements adopted in implementation thereof compatible with Articles 30 and 34 of the EEC Treaty?'

9. The parties to the main proceedings, the Belgian, French and Irish Governments and the Commission of the European Communities have submitted observations on those questions.

10. The Belgian and French Governments and the Commission point out that in its first question the national court asks whether a legislative provision of a Member State is compatible with Article 85 (1) of the EEC Treaty, although that article is concerned only with the actions of undertakings. They therefore propose that the question should be understood as asking

whether the Belgian provision is compatible with the duties of the Member States under Article 5 of the EEC Treaty in conjunction with Article 3 (f) and Article 85.

11. According to the plaintiff in the main proceedings and the French, Belgian and Irish Governments, the provision at issue is compatible with the provisions of the EEC Treaty; the opposite view is taken by the defendant in the main proceedings and, though less unequivocally, the Commission.

12. With regard to the second question the parties to the main proceedings submit that in this case there were no agreements to which Article 85 (1) might apply.

13. According to the Belgian Government it is not clear what agreements the national court had in mind. No price agreements among travel agents were involved, since prices are set by tour operators. If, however, the national court was referring to agreements between travel agents and a tour operator, such agreements are compatible with Article 85 of the EEC Treaty since they can have no effect on competition and trade between Member States.

14. In the view of the French Government any such agreements, were they to exist, would be incompatible with Community law. It is however for the national court to determine whether or not that is the case.

15. According to the Irish Government, too, even agreements which recognize and apply prices and tariffs laid down by the competent national authorities may fall under Article 85 where they use the prices set by those authorities as a basis for excluding competition in other matters. The Irish Government also asks the Court not to include anything in its judgment which might interfere with the setting of air fares by governments.

16. In the Commission's view, the prohibition on the granting of rebates to clients included in the BBR Code of Conduct must be regarded as an agreement between undertakings for the purposes of Article 85 of the EEC Treaty. Since the activities of Belgian travel agents also involve travel organized by foreign tour operators, that agreement affects trade between Member States.

17. With regard to the third question, all the parties are agreed that Articles 30 and 34 of the EEC Treaty are not relevant since this case concerns the supply of services, not of goods.

18. The Belgian Government considers it appropriate to interpret the question as referring to Article 59 of the EEC Treaty on the freedom to provide services. It comes to the conclusion, however, that Article 22 of the Royal Decree does not restrict freedom to provide services on the market for the organization of tours or on the market for the services of travel agents.

19. For details of the observations which have been submitted reference may be made to the Report for the Hearing.

B — Opinion

Question A

20. It is clear, first of all, that the first question referred by the Rechtbank van Koophandel must indeed be rephrased. Article 85 of the EEC Treaty forms part of the body of rules on competition, which are directed in the first instance at undertakings. The Court of Justice has not derived direct obligations for the Member States from Article 85.

21. It may be argued that in view of the direct applicability of Article 85 of the EEC Treaty national courts may disregard conflicting rules of national law.[1] The Court has not so far adopted that view, however, but has examined the compatibility of provisions of national law with the rules of competition law included in the EEC Treaty on the basis of Article 5 of the EEC Treaty in conjunction with Articles 3 (f) and 85.

22. That course of action should also be followed in this case, since to give precedence to Article 85 of the EEC Treaty, which is directly applicable, over provisions of national law would require a very broad interpretation in which it would be necessary, as I shall demonstrate below, to leave aside the essential element of the existence of an agreement.

23. I therefore propose that the Court interpret the first question referred by the national court as asking whether it is compatible with the obligations of the Member States under Article 5 of the EEC Treaty, in conjunction with Article 3 (f) and Article 85, to enact legislation requiring travel agents to abide by the prices and tariffs agreed upon or imposed by law or prohibiting them from sharing the commission to which they are entitled on the sale of such travel or granting rebates or advantages to clients.

24. In replying to that question two issues must be distinguished:

It must be determined first of all whether the provisions of the EEC Treaty on competition create obligations for national legislatures at all; secondly, it must be determined whether rules of the kind here in question are compatible with Community competition law.

(i) *The obligation of the Member States to comply with Community competition rules*

25. As the Court has consistently held, Article 85 *et seq.* of the EEC Treaty concern the actions of undertakings, not the legislation of the Member States; however, the EEC Treaty does impose the obligation on Member States not to adopt or maintain in force any measure which could deprive those provisions of their effectiveness.[2]

26. According to the judgments of the Court, therefore, a provision of national law requiring the conclusion of agreements between undertakings is incompatible with

1 — See E. Paulis, 'Les états peuvent-ils enfreindre les articles 85 et 86 du Traité CEE?', *Journal des tribunaux*, 1985, p. 209 *et seq.*

2 — See the judgments of the Court of 13 February 1969 in Case 14/68 *Wilhelm* v *Bundeskartellamt* [1969] ECR 1; 16 November 1977 in Case 13/77 *Inno* v *ATAB* [1977] ECR 2115; 10 January 1985 in Case 229/83 *Centres Leclerc* v *Au blé vert* [1985] ECR 1; 29 January 1985 in Case 231/83 *Cullet* v *Centres Leclerc* [1985] ECR 315; 30 April 1986 in Joined Cases 209 to 213/84 *Ministère public* v *Asjes* [1986] ECR 1425.

Article 5 in conjunction with Articles 3 (f) and 85 of the EEC Treaty.

27. However, there was some dispute among the parties which submitted observations to the Court as to whether any agreements had in fact been entered into by undertakings after the enactment of the Royal Decree in question and whether the BBR Code of Conduct was still applied. The national court gave no further details in that respect. It is therefore necessary to consider the question whether a legislative provision such as that in issue in this case must be considered incompatible with the competition rules laid down in the Treaty even when it is intended not to require the conclusion of agreements but to make such agreements redundant. Agreements are indeed redundant in this case inasmuch as tour operators may set prices unilaterally and travel agents are bound by those prices.

28. The Court had to deal with an analogous problem in its judgment of 10 January 1985 in Case 229/83; it held that the answer must in principle be affirmative.

29. In the particular circumstances of that case the Court held that with regard to the book trade the obligations of the Member States under Article 5 of the EEC Treaty in conjunction with Articles 3 (f) and 85 were not specific enough, since the purely national systems and practices in the book trade had not yet been made subject to a Community competition policy with which the Member States were required to comply.

30. It is in reliance on that statement that the Belgian Government has argued that in the area of tour organization there is, similarly, not yet any Community policy; the obligations of the Member States under Article 5 of the EEC Treaty are thus not sufficiently specific.

31. That view cannot be upheld. Although the Court did not, in its judgment of 10 January 1985, expressly state it to be its own view — and in its remarks on Article 36 of the EEC Treaty it distances itself somewhat from that view — it is clear that that decision is coloured by a particular factor which makes it impossible to apply that rather cautious approach to other branches of the economy without further consideration: that is to say, the particular nature of books as a vehicle of culture. In his Opinion, Advocate General Darmon expressly emphasized that aspect which distinguishes books from other economic goods.[3]

32. It should be pointed out, moreover, that Article 5 of the EEC Treaty lays down various obligations for the Member States. According to the first paragraph of Article 5 the Member States must take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. They must facilitate the achievement of the Community's tasks. In so far as the Member States are thus required to assist the institutions of the Community in carrying out their tasks it is clearly necessary that those institutions should already have taken some action in that regard, since otherwise the obligations of the Member States would not be sufficiently certain — they would not know in what respect they were to provide assistance.

33. The second paragraph of Article 5, however, imposes on the Member States the

3 — Opinion delivered on 3 October 1984 in Case 229/83 [1985] ECR 1 at p. 15.

general obligation to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. Since under Article 3 (f) the institution of a system ensuring that competition in the common market is not distorted — a system defined in more detail in Article 85 *et seq.* — constitutes such an objective, the Member States are required to abstain from any measure which might jeopardize the institution of a system preventing distortion of competition.

34. In so far as the Community institutions have given concrete form to such objectives, the Member States must comply with them as so defined. Where, however, in specific sectors the Community institutions have not taken any steps to define these objectives, the Member States do not enjoy unrestricted freedom of action. They must at least observe the directly applicable provisions of Community law and are thus obliged to abstain from any measure which might interfere with the practical effect of the competition rules applicable to undertakings.

35. If, that is, the Member States were permitted to restrict the sphere of application of the competition provisions of the EEC Treaty by means of legislative measures, they would be able to determine unilaterally the scope of Community law. That, however, would put in question the uniform application of Community law throughout the Community. The Court declared that to be impermissible as early as its judgment of 13 February 1969 in Case 14/68, in which it held that it would be contrary to the nature of that system of law to allow Member States to introduce or to retain measures capable of prejudicing the practical effectiveness of the Treaty. The binding force of the Treaty and of measures taken in application of it must not differ from one State to another as a result of internal measures, lest the functioning of the Community system should be impeded and the achievement of the aims of the Treaty imperilled.

36. The Member States are thus obliged to observe Community competition law in the adoption of legislation, even in sectors of the economy with regard to which the Community institutions have not yet taken any action.

37. It must also be examined whether Article 85 of the EEC Treaty can be given full application with regard to legislative measures. If Article 85 of the EEC Treaty is applicable to legislative measures, Article 85 (3) must apply, and it must be possible, under certain conditions, for legislative measures to be exempted from the prohibition laid down in Article 85 (1). However, no procedure is provided for such exemption.

38. In this regard reference should be made to a decision of the Court from the early days of the application of Community law: the judgment of 6 April 1962 in Case 13/61.[4] In that judgment the Court held that in principle Article 85 of the EEC Treaty became applicable upon the entry into force of the Treaty, but stated at the same time that until the entry into force of a regulation or directive under Article 87 implementing Articles 85 and 86 the prohibition laid down in Article 85 (1)

4 — Judgment of 6 April 1962 in Case 13/61 *Kledingverkoopbedrijf de Geus en Uitdenbogerd* v *Robert Bosch GmbH and Others* [1962] ECR 45.

operated only with regard to agreements and decisions which the authorities of the Member States, on the basis of Article 88, had expressly held to fall under Article 85 (1) and not to qualify for exemption under Article 85 (3), or in respect of which the Commission had taken the decision envisaged by Article 89 (2).

39. That argument, to the effect that, in the absence of any exemption procedure in application of Article 85 (3), Article 85 of the EEC Treaty is not fully applicable, cannot stand in the way of the conclusion that legislative measures of general application restrictive of competition may be judged in the light of Article 5 in conjunction with Articles 3 (f) and 85 of the EEC Treaty.

40. That is to say, a national regulation of general application to an entire sector of the economy which excludes competition in a particular sector could not in any event be exempted under Article 85 (3) from the general prohibition laid down in Article 85 (1). Such a regulation completely eliminates competition in those goods or services. Exemption under Article 85 (3) of the EEC Treaty, on the other hand, is possible only where the undertakings concerned are not placed in such a position that they are able to eliminate competition in respect of a substantial part of the goods or services in question. Yet that is precisely the result of a legal provision of general application restricting competition.

(ii) *Compatibility of the legislation in question with Article 5 in conjunction with Article 3 (f) and Article 85 of the EEC Treaty*

41. As is frequently the case in preliminary reference proceedings involving competition law, in these proceedings the Court can deal only with particular aspects of the overall problem. The Court is restricted to providing the national court with assistance in arriving at its decision, without however encroaching on that court's function of determining the relevant facts on its own account.

42. In replying to the question whether a legislative measure is compatible with Article 5 in conjunction with Articles 3 (f) and 85 of the EEC Treaty, all the elements of Article 85 must be examined, with the sole exception that a provision of law takes the place of the elements 'agreements, decisions and concerted practices' and thus renders them nugatory.

43. The proceedings before the Court have made it clear that Article 22 of the Royal Decree of 30 June 1966 constitutes a legal provision which prevents travel agents from competing on prices. The prohibition on price discounts at least prevents competition on prices between travel agents and thus permits only competition in other areas, such as the quality of service.

44. That conclusion is further confirmed by the fact that the regulation in question took as its model Article 22 of the BBR Code of Conduct, which may certainly be regarded as a decision by an association of undertakings.

45. There was some dispute during the proceedings before the Court as to whether travel agents are independent undertakings for the purposes of Article 85 of the EEC Treaty, since the service provided by them, that is to say travel, is not arranged by the

travel agents themselves; they act only in the name and on behalf of tour operators.

46. The question whether travel agents are independent undertakings must be examined by the national court as a question of fact. It may, however, be observed at this stage that travel agents are not incorporated in the organization of a single tour operator, but, as independent businesses, act as intermediaries for travel offered by several tour operators. It should also be pointed out that it must have been possible for travel agents to dispose of their commission or part of it, since otherwise neither Article 22 of the BBR Code of Conduct or Article 22 of the Royal Decree of 30 June 1966 would have been necessary. Travel agents are therefore probably to be regarded as independent undertakings for the purposes of Article 85 of the EEC Treaty; it is however for the national court to make a final decision on that point.

47. In ascertaining the facts of the case the really critical problem is whether Article 22 of the Royal Decree is likely to affect trade between Member States and has as its object or effect the distortion of competition within the common market.

48. As the Court has consistently held, in order that an agreement, decision or concerted practice may affect trade between Member States it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the agreement, decision or concerted practice in question may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. The influence thus foreseeable must give rise to a fear that the realization of a single market between Member States might be impeded. [5]

49. Thus a restrictive agreement extending over the whole of the territory of a Member State is by its very nature liable to have the effect of reinforcing the compartmentalization of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about and protecting domestic businesses. [6] Furthermore, in the judgment of 29 October 1980 in Joined Cases 209 to 215 and 218/78, referred to above, the Court held that restrictions on competition in relation to trade margins are likely to divert trade patterns from the course which they would otherwise have followed. [7]

50. In that regard it will be necessary for the national court to ascertain in particular whether the supply of or demand for foreign services would have been different had travel agents been able to dispose of their commission as they saw fit and perhaps grant rebates of varying amounts.

51. Should the national court find as a fact that a regulation such as the Royal Decree in question does not comply with Community competition law and thus is not applicable, a 'breach' of such a regulation may not be regarded as unfair competition at the national level. For that reason the question to what extent a breach of

5 — See the judgment of the Court of 30 June 1966 in Case 56/65 *Société technique minière* v *Maschinenbau Ulm GmbH* [1966] ECR 235; and the judgment of 29 October 1980 in Joined Cases 209 to 215 and 218/78 *Van Landewyck* v *Commission* [1980] ECR 3125 at p. 3274.

6 — See judgment of 26 November 1975 in Case 73/74 *Groupement des fabricants de papiers peints de Belgique and Others* v *Commission* [1975] ECR 1491 at p. 1513.

7 — *Loc. cit.*, at p. 3275.

customary commercial practice is relevant to the question raised by the national court need not be considered further.

Question B

52. In this question the Rechtbank van Koophandel, Brussels, seeks to know whether agreements arrived at by travel agencies on the basis of the provision referred to are compatible with Article 85 (1) of the EEC Treaty.

53. The parties to the main proceedings have denied the existence of agreements restricting competition. Nor, unfortunately, did the Rechtbank van Koophandel indicate which agreements it had in mind in raising that question. It might refer to agreements among travel agents or agreements between travel agents and tour operators; the Court can only speculate.

54. Since the Court has thus not been informed of the subject-matter of the question, I do not think it justifiable to give an express answer. It would of course be possible for the Court, by examining the written submissions, and in the light of what might be said during the oral procedure, to reconstruct the subject-matter of the question and give a corresponding answer; such a procedure would however conflict with the rights of the potential parties referred to in Article 20 of the Protocol on the Statute of the Court, since because of the extremely concise wording of the national court's order they would probably not have been in a position to know its exact subject-matter and thus submit observations to the Court. [8]

8 — I refer in that regard to the statements of the Danish Government in Joined Cases 141 to 143/81 *Holdijk* [1982] ECR 1299 at p. 1307 *et seq.*, in which it complained that the excessive succinctness of the judgment of the national court made it impossible for the Government to make observations in accordance with Article 20 of the Statute.

55. I therefore propose that in its judgment the Court should simply give some indications on the issues which might be raised by Question B, but refrain from giving an express answer to that question.

56. In so far as the agreements in question are likely to affect trade between Member States and have the object or effect of distorting competition within the common market (in paragraphs 45 *et seq.*, above, I have already discussed that point), the following remarks may be made:

(a) Agreements among travel agents

57. If agreements are still entered into between travel agents at all — the existence of Article 22 of the Royal Decree of 30 June 1966 would seem to make them superfluous — in the circumstances of this case they could take two different forms: that of individual agreements between travel agents or the kind contained in Article 22 of the BBR Code of Conduct. In both cases they would, subject to the conditions set out above, fall under the prohibition laid down in Article 85 of the EEC Treaty, either as an individual agreement or as a decision of an association of undertakings.

(b) Agreements between travel agents and tour operators

58. According to the parties in the main proceedings the 'conditions of cooperation' include no agreement prohibiting the sharing of commissions. The Belgian Government, on the other hand, is of the view that such agreements do exist, either in

the yearly framework agreements adopted by the parties or on the basis of the legal relations between the parties, that is to say the legal relationship of agency under Belgian law.

59. If an individual contract between a tour operator and a travel agent contains a prohibition on the granting of rebates, that agreement does not as such fall under the prohibition laid down in Article 85 of the EEC Treaty. That prohibition does apply to individual agreements where they are entered into in identical terms between one or several tour operators and a large number of travel agents, since price competition between travel agents is then eliminated.

60. In certain circumstances, however, even an individual agreement between one tour operator and one travel agent may fall under the prohibition laid down in Article 85: that is to say, when its content is similar to that of the agreements submitted to the Court by the Belgian Government.

61. Although we do not know whether the Rechtbank van Koophandel in fact had these contracts in mind and whether these contracts are typical for contractual relations between travel agents and tour operators, the following remarks are appropriate.

62. Under the title 'General Conditions of Cooperation' they contain a reference to the travel agents' Code of Conduct. If a travel agent fails to comply with the Code of Conduct the tour operator may break off business relations with him.

63. The reference to the travel agents' Code of Conduct naturally entails reference to Article 22 of the Royal Decree of 30 June 1966 and its prohibition on the payment of rebates. Since under the conditions set out above (paragraphs 41 *et seq.*) that regulation must be regarded as incompatible with Article 5 in conjunction with Articles 3 (f) and 85 of the EEC Treaty, an individual agreement which refers to that legislation and incorporates its content must also be considered incompatible with Article 85.

64. In contractual arrangements which permit a tour operator to break off business relations with a travel agent who fails to comply with the Code of Conduct it is easy to detect a tendency to affect trade between Member States and distort competition within the Community: for instance, a Belgian tour operator might threaten to break off business relations with a Belgian travel agent which offered price rebates only on the services of tour operators from other Member States. In such circumstances there can be little doubt of the tendency of such an agreement to influence the supply of and demand for foreign services.

(c) Conclusion with regard to Question B

65. As I stated above, I am of the view that in the light of the uncertainty concerning the subject-matter of Question B of the Rechtbank van Koophandel, no express answer should be given to that question in the operative part of the judgment. It could however be pointed out that in any event the fact that agreements of the kind in question are or may be entered into by travel agents on the basis of legislative provisions does not exempt them from the application of Article 85 of the EEC Treaty.

Question C

66. In this question the Rechtbank van Koophandel raises the issue whether the Belgian regulation in question is compatible with the principles of free movement of goods, in particular Articles 30 and 34 of the EEC Treaty.

67. It is unnecessary to answer that question since in this case the free movement of goods is not affected.

68. The Belgian Government has proposed that the question should be reinterpreted as asking whether there is any interference with the freedom to provide services, but there is no sufficient basis in the judgment of the national court for such a reinterpretation. Furthermore, it should be pointed out that in so far as the regulation in question may affect freedom to provide services I have already stated my position in the context of the examination of Question A.

(i) *The submission of the Irish Government with regard to airline tariffs*

69. On the basis of the judgment and documents provided by the national court it cannot be determined whether and to what extent price discounting by travel agents might have an effect on air fares. It is not even clear whether scheduled flights are included in tour packages.

70. Consequently, I can see no possibility of examining more closely the remarks of the Irish Government, since it is not apparent in what way these reference proceedings might be relevant to air fare policy.

71. It may however be pointed out to the Irish Government that it might wish to submit its observations in the oral procedure in Case 66/86,[9] in which the question of air fares will again be raised.

C — Conclusion

I therefore propose that the Court give the following answer to the questions raised by the Rechtbank van Koophandel, Brussels:

72. 'Article 5 in conjunction with Articles 3 (f) and 85 of the EEC Treaty are to be interpreted as meaning that national legislation prohibiting travel agents from sharing their commission or granting their clients rebates on the price set by a tour operator is incompatible with those provisions where the conduct of undertakings on the basis of such a regulation is likely to affect trade between Member States and has the object or effect of preventing, restricting or distorting competition within the common market, and it is not necessary that there should be agreements between undertakings, decisions by associations of undertakings or concerted practices independent of that regulation.'

9 — Case 66/86 *Ahmed Saeed and Another* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs eV* [1989] ECR, part 4.