companies with an establishment there the final decision as to the payment of damages to victims of accidents caused in the territory of that State by vehicles normally based in another Member State are not discriminatory within the meaning of Articles 52 and 59 of the Treaty.

Kutscher Donner Mertens de Wilmars

Sørensen Mackenzie Stuart O'Keeffe Bosco

Delivered in open court in Luxembourg on 9 June 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 11 MAY 1977 [1]

Mr President
Members of the Court,

I — 1. By an order of 29 April 1976 a Civil Chamber of the Tribunale Civile e Penale di Milano referred to the Court of Justice several questions which were raised in the context of a case between a company with limited liability under Italian law — Ufficio Henry Van Ameyde — and the Italian Clearing Office for International Motor Vehicle Insurance (Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale) hereinafter referred to as 'the UCI'.

The plaintiff is a subsidiary of the Dutch company with limited liability H. Van Ameyde BV of The Hague, a company which does not belong to the Netherlands Motor Insurers' Bureau and which controls other companies in the Common Market and in Spain. The Italian subsidiary company was formed on 24 January 1963 and, on behalf of insurance companies, is concerned with the handling and settlement of claims in respect of accidents which are covered by insurance.

The business which it carries on is generally described by the English term 'loss-adjuster'. The work is done by independent assistants to the insurance companies as experts who ascertain the circumstances of an accident or other incident and the extent of the damage and *settle* the compensation on behalf of an insurance company. The business of

1 — Translated from the German.

offices of this kind is frequently of an international nature; their principals are insurance companies from various countries which are faced with problems in settling claims in respect of accidents which have occurred abroad where a person insured with them is involved.

Under Italian law, in spite of its close links with insurance business, the business of loss-adjuster is clearly distinguished from insurance business. For assistance in the handling and settlement by a company such as the plaintiff in the main action of accident claims the obligation to obtain authorization from the government which is imposed on insurance companies does not apply.

The defendant in the main action, the UCI, was formed on 23 April 1963 as a company with limited liability under Italian law by authorized insurers dealing in insurance for civil liability for motor vehicles in order to introduce into Italy the 'green card' system set up by the insurers of various countries in 1952 consequent on the Recommendation of the Road Transport Subcommittee of the United Nations Economic Commission for Europe of 25 January 1949; by means of this system it was intended to ensure that insurance against civil liability in respect of motor vehicles would, by means of an international insurance certificate, the so-called 'green card', retain its validity in the countries, and under the legal provisions of the countries, through which the vehicles concerned travelled as international road traffic.

As the carrying on of insurance business is prohibited by Italian law *inter alia* to companies with limited liability the UCI cannot itself be classed as an insurance company. It does not conclude any contracts of insurance and also does not undertake to guarantee cover for risks arising from traffic accidents in consideration of the payment of a premium.

2. The compulsory insurance against civil liability in respect of motor vehicles which already existed in all the other Member States was introduced into Italy by the Law of 24 December 1969, No 990, which was to enter into force six months after the publication of the implementing provisions. Those provisions were issued by the President of the Republic by Decree of 24 November 1970 which was published on 14 December 1970; accordingly compulsory insurance of motor vehicles has existed in Italy since 12 June 1971.

Article 6 of the Law of 24 December 1969 provides that

'motor vehicles ... which at the material time are being driven in the territory ... of the Republic, shall, for the period of stay in Italy, be covered by an insurance policy within the meaning of the present law ...

The obligation to be insured shall, nevertheless, be deemed to have been discharged if the driver is in possession of an international certificate of insurance issued by the appropriate body constituted abroad which testifies to the existence of an insurance for civil liability for damage caused by the motor vehicle ..., provided that the certificate is recognized by a corresponding body constituted in Italy which the insured uses as his address for service and which, under the terms and conditions laid down by the present Law, assumes responsibility for settling claims in respect of damage caused in the territory ... of the Republic, guarantees payment thereof to those entitled, and is *recognized* for this purpose by the Ministry for Industry, Trade and Craft Trades ...'

The 'corresponding body constituted in Italy' is the UCI, which, having received the authorization of the Minister on 27 June 1957 became a Member of the Council of Bureaux in London — that is the organization which groups together

all the national bureaux — on the basis of recognition by Ministerial Decree of 26 May 1971. Membership of the UCI is compulsory for all Italian undertakings which are entitled, within the meaning of Article 10 of the Law of 24 December 1969, to carry on the business of insurance of motor vehicles, including Italian agencies of foreign insurance companies.

3. As before a check on the green card was carried out at the frontiers with all the delays that such a check entails.

In order to obviate this formality the Council adopted Directive No 72/166/EEC of 24 April 1972. By means of that directive machinery at two levels, and based on agreement, was introduced:

— With the support of the Council of Bureaux in London the national bureaux concluded an agreement solely under private law in order to guarantee the settlement of accident claims independently of the existence of a contract of insurance;
— In addition the Directive presupposed the conclusion of an agreement between the individual national bureaux and their respective administrations.

The removal of the check of the green card at the Italian frontiers was made possible by the fact that by Ministerial Decree of 12 October 1972 the UCI was authorized to undertake the settlement of claims for damage which had been caused by motor vehicles from the remaining five Member States (since the Decree of 11 December 1973 motor vehicles from the new Member States are included) and also by the fact that on 16 October 1972 in Brussels the UCI concluded the agreement provided for in Article 2 (2) of the Council Directive of 24 April 1972 with the bureaux of the other five original Member States of the EEC and on 12 December 1973 in Paris with the bureaux of the three new Member States.

Under that agreement the settlement of claims for compensation made by persons suffering loss by reason of accidents is to be carried out in accordance with the legal provisions of the individual Member States concerning compulsory insurance by the appropriate national bureau in the territory of which the accident occurred but the costs of that bureau are to be refunded by the bureau of the State to which the person who caused the accident belongs. Article 4 of the Agreement contains provisions concerning the relations between the Paying Bureau and the Handling Bureau and the relations between the members of these bureaux and their correspondents appointed to handle and settle claims. Article 4 (a) provides that:

'If a member of the Paying Bureau has an organization situated in the country of the Handling Bureau and established there for the purpose of transacting Motor Insurance, the Handling Bureau will, if so requested, leave the handling and settlement of claims to the Member.'

The Italian bureau only recognized the following provision from the Optional Clauses set out in Article 4 (b):

'(b) A Member of the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims to a nominated correspondent, who may be one of the following:
(i) A Member of the Handling Bureau'.

On the other hand it did not recognize the optional provisions whereby the correspondent may be:

'(ii) an organization established in the country of the Handling Bureau for the purpose of transacting insurance, whether motor insurance or some other class of insurance;
(iii) an organization established in the country of the Handling Bureau and specializing in the handling of claims on behalf of Insurers'.

The abolition of the check on the green card, provided for between the original Member States by Commission *Recommendation* No 73/185/EEC of 15 May 1973 (OJ L 194 of 16. 7. 1973, p. 13) from 1 July 1973, finally came into effect by means of Commission *Decision* No 74/166/EEC of 6 February 1974 (OJ L 87 of 30. 3. 1974, p. 13) as from 15 May 1974 for the nine Member States.

From this arose a noticeable change in the role of the national bureaux and the scope which the latter allowed to the bureau responsible for settlement in particular in Italy. Before the introduction of compulsory insurance in Italy the third party injured by a foreign motor vehicle had to make a claim directly to the foreign insurer. The Italian bureau acted in this respect solely as '*servicing* bureau' but not as 'Handling Bureau': acting upon a request sent to the Italian bureau or one of its agencies by an insured who was in possession of a green card the Italian bureau investigated any claim made against that insured person. To this end it immediately made contact either directly or through the Paying Bureau with the member of the Paying Bureau which had issued the green card in order to regulate the handling or investigation of the claim on behalf of the member of the Paying Bureau as the settlement of the claim required the agreement of that member.

During that period the UCI recognized in this connexion the instructions issued by the members of foreign bureaux to the Van Ameyde office to act as their agents and permitted the cooperation of this bureau in the handling and settling of such accident claims in which foreign motor vehicles insured with members of the foreign bureaux were involved. However the UCI expressly reserved the right to re-examine its position if compulsory insurance was introduced in Italy.

Since the introduction of compulsory insurance for motor vehicles in Italy persons injured by a foreign motor vehicle can and must apply directly to the UCI in respect of all damage caused in Italian territory irrespective of the nationality and the residence of the insurer and of the insured as the Italian legislature sought to ensure public safety in its territory by granting the *legal monopoly for handling and settling* international accident claims to the UCI.

The activities of the UCI are no longer restricted to *investigating* the case in collaboration with the original insurer; it has rather become the *Handling* Bureau and is thereby entitled to investigate accident claims and to settle them as though it had issued the policy itself. The UCI also remains directly liable to the injured person if it assigns the settlement of accident claims to insurance companies operating in Italy as the correspondents of foreign insurance companies with whom the insurance policy was effected and which issued the green card. It is further authorized to grant compensation for damages directly if the accident was caused by a motor vehicle which was not insured within the meaning of the Law of 24 December 1969 but if necessary it can have recourse against the owner and the driver of the motor vehicle.

From this time onwards the Italian bureau itself specified the Italian correspondent for the foreign insurers against civil liability of foreign nationals who were involved in a traffic accident in Italy: it sent letters to this effect both to the other foreign bureaux and to their members stating that in future it would only recognize the nominations of the locally competent member of the Italian bureau as the correspondent insurance company and would only forward cases for investigation to that Italian company; it further informed them that in future foreign insurers had to apply directly to the Italian insurer so nominated and *could* no longer apply to the bureau.

The Lloyd's 'Service Motor Policies' which had referred accident claims to the

Italian office of Van Ameyde informed that office of this position and added that it had no option but to accept this state of affairs and therefore requested the office to cease investigating the cases referred to it and to transfer them to the Italian bureau.

Furthermore the Italian bureau complained about a French company which continued to refer accident claims to the Van Ameyde office 'although since June 1971 it is no longer authorized to investigate cases' (letter of the French bureau of 9 September 1975).

The other national bureaux called on their members in the form of an ultimatum to accord with this practice 'in conformity with the Uniform Agreement between Bureaux' (letter of the Belgian bureau of 5 September 1975).

In these circumstances and in compliance with the precise instructions given to it by its principals — the foreign companies — the Italian office of Van Ameyde ceased investigating the documents referred to it and transferred them to the Italian bureau. However, as it regarded itself as the victim of a virtual boycott — not on the grounds of its nationality as it was an Italian company but because of its nature as a 'private' office — it initiated proceedings before the Tribunale di Milano in order to obtain a declaration that the claim made by the UCI that the *investigation and settlement* of accident claims should be referred only to insurance companies which were members of the UCI was unlawful.

By order of 29 April 1976 the Tribunale di Milano stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

1. Are Council Directive No 72/166/EEC (OJ, English Special Edition 1972 (II), p. 360), Commission Recommendation No 73/185/EEC (OJ L 194, p. 13) and Commission Decision No 74/166/EEC (OJ L 87, p. 13) to be interpreted as authorizing provisions of national law, agreements, decisions and practices agreed between the national insurers' bureaux, or action by an individual national bureau or of the undertakings affiliated thereto which have as their object or effect the restriction or elimination of competition from undertakings whose business is confined to the settlement of claims in respect of accidents caused by vehicles from another country, such business being wholly reserved to insurance undertakings which are members of the said national bureau?
2. Whatever the answer to Question 1, do Articles 85, 86 and 90 of the EEC Treaty prohibit any provision of national law, any agreement between bureaux or any decision, concerted practice or action which tends to reserve exclusively to the insurance undertakings which belong to the national bureau the settlement of claims in respect of damage arising out of the use of foreign vehicles, to the exclusion of undertakings engaged solely in the business of settlement and which are not members of the bureau, even though they may have been nominated by the insurers of the vehicle causing the damage who are based in its country of origin?
3. Whatever the answer to Question 1, do the principle of non-discrimination (Article 7 of the Treaty), the provisions concerning the right of establishment (Article 52 *et seq.* of the Treaty) and the freedom to provide services (Article 59 of the Treaty) prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a Member State the effective exercise and the carrying on of the business of the settlement of claims by an undertaking established in the territory of the said Member State, even if the provision or the action is the work of a national insurers' bureau within the meaning of the definition given in Directive No 72/166/EEC?

4. If the answer to Question 1 is in the affirmative, are the Community measures therein mentioned to be regarded as lawful when considered from the standpoint of conformity with Articles 7, 52, 59, 85, 86 and 90 of the EEC Treaty and of any other consideration which might vitiate them, including want of a statement of reasons and of observance of essential procedural requirements?

II — My view on these questions is as follows.

1. The first question is intended to determine whether the relevant Community measures, namely Council Directive No 72/166/EEC of 24 April 1972 (OJ, English Special Edition 1972 (II), p. 360), Commission Recommendation No 73/185/EEC of 15 May 1973 (OJ L 194 of 16. 7. 1973, p. 13) and First Commission Decision No 74/166/EEC of 6 February 1974 (OJ L 87 of 30. 3. 1974, p. 13) are to be interpreted as containing an authorization of measures by individual States, agreements, decisions and concerted practices which have the effect of restricting the activities of loss-adjusters or of excluding them from the settlement of claims in respect of accidents caused by foreign motor vehicles. To anticipate matters I may say at once that in accordance with all the views put forward in the proceedings I would answer this question in the negative.

Council Directive No 72/166/EEC on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability contains — apart from the question of the territorial extent of the guarantee arising from contracts relating to civil liability insurance for motor vehicles — no measures at all on the coordination or approximation of national legal provisions. On the contrary it presupposes the conclusion of an agreement between national bureaux which is intended to make it possible to remove the checks on the green card at frontiers within the Community. In particular Article 2 (2) of the Directive provides that:

'As regards vehicles normally based in the territory of a Member State, the provisions of this Directive, with the exception of Articles 3 and 4, shall take effect:

— after an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured;
— from the date fixed by the Commission, upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded;
— for the duration of that agreement.'

Commission Recommendation No 73/185/EEC and Commission Decision No 74/166/EEC merely confirm the conclusion of the agreements provided for in the Council Directive between the national bureaux of the original Member States on 16 October 1972 and between the national bureaux of all Member States on 12 December 1973 and derive from this the conclusion in accordance with the directive that from that time the checks on the green card at frontiers within the Community be abolished. Thus neither the text nor the sense and purpose of the Community provisions referred to support the view that they should authorize any restrictions on the activity of loss-adjusters.

However, as the Italian Government correctly pointed out, the provisions of

the Council Directive could only take effect after the agreements between the national bureaux of the Member States had been concluded; its effectiveness is also restricted to the duration of those agreements. In the context of the first question therefore we must also examine the Agreement between Bureaux in order to determine the scope of the provisions of Community law which are complemented by the Agreement and the interpretation of which must accord with the interpretation of the Agreement.

In the view of the plaintiff in the main action Articles 4 (b), 6 and 7 of the Agreement between Bureaux contain inadmissible restrictions on competition. In my view this is certainly not the case. The fact that Article 4 (b) allows the choice of an agent other than a member of the national bureau by a foreign insurer only in the terms of an optional clause which the national bureau concerned may or may not accept on concluding the agreement takes account of the fact that the law and organization of compulsory insurance against civil liability in respect of motor vehicles in the individual Member States is entirely different. For that reason each national bureau must accept the agreement in a form which is compatible with national law. Under Italian law a person can only act as an insurer if he is authorized for that purpose by the State, if he complies with certain requirements in respect of assets, lodges certain securities, sets up certain reserves and is subject to control by the State. In addition the Italian law reserves a decision as to the compensation of the victim of an accident exclusively to an insurer who is resident in Italy or a foreign insurer who has a branch office in Italy. In view of these rules the Italian bureau could only adopt optional subclause (i). In addition the fact that the UCI has freedom of choice of insurance correspondents and can revoke an appointment at any time is a logical consequence of the liability of the UCI to the victim of an accident. The same applies to the rules contained in Articles 6 and 7 of the Agreement between Bureaux.

The plaintiff in the main action argues that the Agreement between Bureaux improperly restricts the foreign insurer who has no branch office in Italy in the choice of his assistants in that he cannot instruct a loss-adjuster in whom he has confidence with the settlement of an accident claim. In reality, however, the Agreement between Bureaux does not exclude the possibility of entrusting to a loss-adjuster his normal business of handling the accident claim and preparing the settlement by collecting all documents which are relevant in determining the amounts of compensation. A foreign insurer with no branch office in Italy is in fact not prevented by the Agreement between Bureaux from requesting the Italian insurer whom he has selected as correspondent or who was appointed as his correspondent by the UCI to avail himself of the services of a particular loss-adjuster in settling the accident claim. The whole business of settling cannot in any case be undertaken by a loss-adjuster as he cannot pay the compensation on his own authority and under Italian law has no power so to do.

In conclusion it can therefore be stated that the Agreement between Bureaux which in a way is a component of Community rules does not authorize any measures restricting competition.

2. The second question seeks to determine whether the provisions of Articles 85, 86 and 90 of the EEC Treaty on the law relating to competition prohibit measures adopted by individual Member States, agreements between bureaux, decisions or concerted practices which exclude loss-adjusters from the settlement of claims in respect of damage caused by foreign motor vehicles even if they have been expressly nominated by the insurers of the person causing the damage operating in the country of origin.

(a) In so far as this question concerns the *Agreement between Bureaux* I have already answered it in my remarks concerning provisions of Community law to the effect that the Agreement between Bureaux contains no provision which prevents loss-adjusters from cooperating in settling in the course of their normal auxiliary activities claims in respect of accidents which have been caused by foreign motor vehicles. From this standpoint therefore the agreement infringes neither Article 85 nor Article 86 of the EEC Treaty.

(b) *Italian law* requires that the settlement of claims in respect of damage caused by foreign motor vehicles in Italian territory shall be carried out solely on the responsibility of the UCI. This responsibility and the liability towards the victim of the accident continue to exist if the UCI transfers the settlement of the claim for damage to an insurer established in Italy or the branch office in Italy of the foreign insurer concerned as is expressly permitted by Italian law. On the other hand Italian law does not allow the UCI on application by a foreign insurer who has no branch office in Italy to employ a loss-adjuster as direct assistant. Under Italian law only insurers who are resident in Italy or have a branch office there are entitled to make a final decision as to the settlement of claims for damage by determining the amount of the compensation and to pay it. In agreement with the Commission I regard this rule as justified because it serves to protect the victim of an accident. If it were permissible for a foreign insurer directly or by the intermediary of a loss-adjuster, who certainly cannot make the final decision as to the payment of compensation, to settle an accident claim in the event of any dispute the victim of the accident would have to seek to enforce his rights outside Italy. It would thus make it very difficult for him to ensure compliance with the conditions and guarantees applicable to damages. However, if it were permissible for the loss-adjuster to take the final decision as to compensation on behalf of the foreign insurer this would amount to an evasion of the Italian law quite apart from the fact that the loss-adjuster would be exceeding his powers and *de facto* would be operating as an insurer in evasion of the legal provisions relating to insurers. In so far as the Italian law excludes loss-adjusters as direct correspondents of a foreign insurer who has no branch office in Italy the law relating to competition remains unaffected as a loss-adjuster is something quite distinct from an insurer and consequently can certainly not be in competition with him. The typical business of a loss-adjuster consists in particular in auxiliary services on behalf of an insurer but he cannot himself act as an insurer.

On the other hand no provision of Italian law prevents the employment of a loss-adjuster by an insurer in connexion with the settlement of motor accident claims whether a foreign motor vehicle is involved or not, for the assistance which lies within the scope of a business of this kind. The fact that a foreign insurer who has no branch office in Italy can only appoint the loss-adjuster in whom he has confidence through the intermediary of an Italian correspondent in my opinion does not detrimentally affect his competitive position to an unjustified extent because this indirect method is an appropriate and reasonable consequence of the system necessary to protect the victim of an accident.

In conclusion it can therefore be stated that in respect of the green card system Italian law does not give rise to any unauthorized restriction on competition.

(c) The plaintiff in the main action alleges that the UCI and its member companies had shown signs of *conduct* prohibited by the law on competition contained in the EEC Treaty in their implementation of the green card system. The conduct consisted on the one hand in the fact that the UCI did not adopt

the optional clause of Article 4 (b) (iii) of the Uniform Agreement between Bureaux. Further the UCI took the decision not to admit loss-adjusters as assistants to insurers in settling claims in respect of accidents in which foreign motor vehicles were involved. In addition the members of the UCI, apparently on the basis of a recommendation from the UCI or by mutual agreement, had to a considerable extent refused to employ loss-adjusters as assistants at the request of foreign insurers.

I have already pointed out above that the failure to adopt the optional clause in Article 4 (b) (iii) of the Uniform Agreement between Bureaux arose out of the requirements of Italian law and had no detrimental effects on competition.

It is for the national court hearing the main action to clarify to what extent there exist decisions by the UCI or courses of conduct agreed by its member companies which have the effect of completely excluding loss-adjusters from collaboration in the settlement of claims in respect of accidents involving foreign motor vehicles which forms part of their normal business, since such conduct is denied by the UCI. However if such conduct is proved it would for several reasons infringe the provisions on competition contained in the EEC Treaty. Such an exclusion of loss-adjusters from the auxiliary work appropriate to them which does fall within their sphere of competence would in certain insurance cases preclude any competition with insurers from loss-adjusters in offering their auxiliary services. Further it would make it impossible for foreign insurers in settling an accident claim to rely at least directly on the services of a loss-adjuster in whom they have confidence and it would thereby deprive them of an important factor in their competition with other insurers. Such detrimental effects to the competitiveness of foreign insurers are not brought about by the green card system and do not therefore call for consideration. The alleged conduct of the UCI and its member companies would also detrimentally affect the provision of services between the Member States of the EEC in that it would prevent undertakings of one Member State from offering their services to undertakings of another Member State and would hinder the latter undertakings in making use of the services of the former. Consequently it would infringe Article 85 (1) of the EEC Treaty. The same conduct would in view of the legal monopoly of the UCI and thus of its member companies constitute an abuse of a dominant position within the meaning of Article 86 of the EEC Treaty. On the other hand the provisions of Italian law which, as we have seen, do not produce any effects detrimental to competition, can also not be regarded as measures adopted by a State which fall under the prohibition contained in Article 90 (1) of the EEC Treaty.

3. The third question asks whether Articles 7, 52 and 59 of the EEC Treaty prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a Member State the carrying out of the business of the settlement of claims by a loss-adjuster established in the territory of the said Member State, even if the provision relates to a national insurers' bureau or the action is to be attributed to that bureau. My answer to this question may be put very briefly.

Article 7 of the EEC Treaty is a general provision which prohibits all discrimination on the grounds of nationality. With regard to freedom of establishment and the freedom to provide services there exist the specific provisions of Articles 52 and 59 of the EEC Treaty which guarantee the application of the principle set out in Article 7 in their respective spheres. Thus if a rule is compatible with Articles 52 and 59 it is also compatible with the principle of Article 7.

The plaintiff in the main action is a company incorporated under Italian law. In so far as Italian law and the consequent course of conduct of the UCI exclude loss-adjusters as *direct* assistants to foreign insurers who do not have a branch office in Italy in settling insurance claims in which foreign motor vehicles are involved the exclusion relates to all loss-adjusters without regard to their nationality. It is therefore not evident in what way this can constitute an infringement of Article 52 or Article 59 of the EEC Treaty. However there does not appear to exist an indirect infringement of the right to freedom of establishment and to freedom to provide services as is alleged by the plaintiff in the main action. There exists no provision of Italian law whereby loss-adjusters are to be excluded irrespective of their nationality from cooperating in settling insurance claims in which only Italian motor vehicles are involved. There further does not appear to exist any evidence for a practice to this effect by the UCI or the Italian insurers. Finally I have already shown in detail that the fact that foreign insurers who have no branch office in Italy can only entrust a loss-adjuster in whom they have confidence with the settlement of claims in respect of accidents in which foreign motor vehicles were involved by acting through the intermediary of an Italian insurer does not constitute disproportionate discrimination against the foreign insurer. For this reason Article 62 of the EEC Treaty is also not applicable as there only exists an insignificant alteration of the legal position of the abovementioned foreign insurers which moreover was caused by the introduction of compulsory insurance for motor vehicles in Italy.

In conclusion therefore it may be stated that neither the freedom of establishment nor the freedom to provide services has been detrimentally affected by the green card system and its implementation in Italy.

4. The fourth question was only asked in the event of the first question being answered in the affirmative. As stated above that question should in my opinion be answered in the negative and it is therefore no longer necessary to answer the fourth question.

III – I suggest that the following answers should be given to the questions referred by the Tribunale Civile e Penale di Milano:

1. Neither Council Directive No 72/166/EEC nor Commission Recommendation No 73/185/EEC nor Commission Decision No 74/166/EEC are to be interpreted as authorizing provisions of national law, agreements, decisions, concerted practices or conduct which have as their object or effect the restriction or exclusion of undertakings in their activities where such activities consist solely in the settlement of claims in respect of damage caused by foreign motor vehicles on behalf of insurers on whom the final decision rests.

2. (a) A provision of national law or an agreement between bureaux which transfers exclusive responsibility to the victim of an accident for the settlement of claims in respect of damage caused by foreign motor vehicles in the territory of that Member State but which does not exclude the possibility that undertakings whose activities consist solely

in the settlement of accident claims on behalf of insurers may be used to collaborate in this settlement does not infringe Articles 85 and 86 of the EEC Treaty.

(b) A decision or conduct of a national bureau or concerted practice by its members which is intended to exclude or is likely to exclude undertakings whose activities consist solely in the settlement of accident claims on behalf of insurers from the cooperation in the settlement of claims in respect of accidents caused by foreign motor vehicles which is characteristic of their activities does fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, of Article 86 of the EEC Treaty.

3. Rules or conduct which reserve to the national bureau of a Member State or to insurance companies which are resident in the territory of the Member State concerned or have a branch office there the settlement of insurance claims in respect of accidents which are caused in the territory of the Member State by motor vehicles based in another Member State are not discriminatory within the meaning of Articles 52 and 59 of the EEC Treaty as they exclude undertakings which are not insurers from the settlement of such insurance claims irrespective of their nationality.