JUDGMENT OF THE COURT
17 May 1994 *

In Case C-18/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale di Genova (District Court, Genoa), Italy, for a preliminary ruling in the proceedings pending before that court between

Corsica Ferries Italia Srl

and

Corpo dei Piloti del Porto di Genova

on the interpretation of Articles 5, 7, 30, 59, 85, 86 and 90 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Díez de Velasco and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler (Rapporteur), G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

* Language of the case: Italian.

Advocate General: W. Van Gerven,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Corsica Ferries Italia SRL, by G. Conte and G. Giacomini, of the Genoa Bar,

— Corpo dei Piloti del Porto di Genova, by L. Acquarone and S. Carbone, of the Genoa Bar, A. Pappalardo, of the Trapani Bar, and A. Tizzano, of the Naples Bar,

— the Government of the French Republic, by P. Pouzoulet, Sous-directeur in the Directorate of Legal Affairs of the Ministry of Foreign Affairs, assisted by H. Renie, Secrétaire-adjoint Principal for Foreign Affairs in that Ministry, acting as Agents,

— the Government of the Italian Republic, by L. Ferrari Bravo, Head of the Department for Legal Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by I. M. Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by E. Traversa and V. Di Bucci, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Corsica Ferries Italia SRL, Corpo dei Piloti del Porto di Genova, the Italian Government, the French Government and the Commission at the hearing on 14 December 1993,

after hearing the Opinion of the Advocate General at the sitting on 9 February 1994,

gives the following

Judgment

1 By order of 14 December 1992, which was received at the Court on 19 January 1993, the Tribunale di Genova (District Court, Genoa) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on the interpretation of Articles 5, 7, 30, 59, 85, 86 and 90 of the Treaty.

2 Those questions arose in proceedings between Corsica Ferries Italia SRL (hereinafter 'Corsica Ferries') and Corpo dei Piloti del Porto di Genova (Corporation of Pilots of the Port of Genoa, hereinafter 'the corporation') on the repayment to Corsica Ferries of part of the tariffs paid by it for piloting services in the port of Genoa.

3 Piloting services in Italian seaports, governed by the Navigation Code and the implementing regulation, are provided, under the supervision and authority of the commander of the port, by corporations of pilots established by decree of the President of the Republic and endowed with legal personality.

4 Although optional in principle, piloting services have been made compulsory in almost all Italian ports, including Genoa, by decrees of the President of the Republic. Failure by the captain of a vessel to use the piloting service is a criminal offence.

5 Piloting tariffs are adopted by the corporation and approved by the Minister for Merchant Shipping after consulting the relevant trade associations, and are brought into force in each port by a decree of the appropriate maritime authority.

6 Pursuant to decrees of the maritime director of 1989, 1990 and 1991, various reductions of the basic tariff applied in the port of Genoa, namely a 30% reduction for vessels permitted to carry on maritime cabotage, in other words traffic between two Italian ports; a 50% reduction for vessels engaged in liner trading and permitted to engage in maritime cabotage, sailing regularly between Italian ports following a fixed route and calling at the port of Genoa at least once a week; and other reductions for vessels of over 2 000 tonnes gross tonnage, permitted to engage in maritime cabotage and using piloting services a certain number of times each month.

7 At the material time, only vessels flying the Italian flag could obtain permission to engage in maritime cabotage.

8 Corsica Ferries, a company established under Italian law, is a maritime transport undertaking which operates a liner service between the port of Genoa and various Corsican ports, using two ferries registered in Panama and flying the Panamanian flag.

9 Corsica Ferries considered that it was the victim of discrimination contrary to the Treaty provisions on competition and the freedom to provide services, and brought proceedings before the Tribunale di Genova, using the *ex parte* summary procedure provided for by Article 633 et seq. of the Italian Code of Civil Procedure, seeking reimbursement of the difference between the basic tariff it had paid and the reduced tariff for vessels permitted to engage in maritime cabotage.

10 In those proceedings the Tribunale di Genova referred the following questions to the Court for a preliminary ruling:

'(1) Are Articles 5 and 7 of the EEC Treaty compatible with provisions of national legislation which lay down, in respect of vessels providing a liner service between ports of two Member States, by way of charges for the compulsory piloting service for navigational safety, reduced tariffs which apply only to vessels authorized to engage in "cabotage" between domestic ports, where, in the present state of Community law, cabotage between domestic ports is reserved solely to vessels flying the Italian flag?

(2) Is Article 30 of the EEC Treaty compatible with national rules or practices which require compulsory recourse to the Piloting Service, even where the same operations can without endangering navigational safety be carried out in whole or in part, at a lower cost, with the men, equipment and technology with which the vessel is provided?

(3) Is Article 59 of the EEC Treaty compatible, in the case of vessels operating a liner service between two Member States, with provisions of national law which allow reductions of the compulsory tariffs applied to piloting services in domestic ports exclusively for vessels flying the national flag?

(4) Does the approval by the public authorities of a compulsory tariff resulting from agreement and/or concertation between the trade associations of the sector concerned constitute "endorsement" of an agreement prohibited by Article 85(1) of the EEC Treaty, and if so, can such endorsement be compatible with the provisions of Article 90(1) in conjunction with Articles 5 and 85 of the EEC Treaty?

(5) Is Article 90(1) in conjunction with Article 86 of the EEC Treaty compatible with provisions of national law which authorize a dominant undertaking

which has been granted exclusive rights over a substantial part of the common market:

(a) to apply different conditions for equivalent services in respect of vessels operating liner services between two Member States, where the tariff system in force provides reduced tariffs for the same services which in practice apply only to vessels flying the national flag;

(b) to apply, on the basis of the foregoing, to vessels flying foreign flags tariffs which provide for charges of an amount "three times" higher than those laid down for domestic vessels;

(c) not to reduce the costs of a compulsory service, such as that under consideration, where — while complying with the requirements of navigational safety at all times and in every respect — the vessels are capable of operating autonomously, at least in part?'

The Court's jurisdiction to answer the questions

11 The defendant in the main proceedings, the French and Italian Governments and the Commission challenge, for various reasons, the Court's jurisdiction to reply to all the questions referred by the national court. They argue that the Tribunale did not take into account the fact that the vessels are registered in Panama, which could be explained by the lack of an *inter partes* hearing in the summary procedure, and that some or all of the questions referred are not relevant to the application before the national court.

12 With respect to the nature of the proceedings in the national court, the Court has already held that the President of an Italian district court, adjudicating on an application in *ex parte* summary proceedings for which provision is made in the Italian Code of Civil Procedure, performs a judicial function within the meaning of Article 177 of the Treaty and that that article does not make the reference to the Court subject to there having been an *inter partes* hearing in the proceedings in the course of which the national court refers the questions for a preliminary ruling, although it may be in the interests of the proper administration of justice that there has been such a hearing (see the judgments in Case 43/71 *Politi* v *Italy* [1971] ECR 1039; Case 162/73 *Birra Dreher* v *Amministrazione delle Finanze dello Stato* [1974] ECR 201; Case 70/77 *Simmenthal* v *Amministrazione delle Finanze dello Stato* [1978] ECR 1453; Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595; Joined Cases C-277/91, C-318/91 and C-319/91 *Ligur Carni* v *Unità Sanitaria Locale* [1993] ECRI-6621; and Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia* v *Ente Nazionale Risi* [1994] ECRI-711).

13 As to the incompleteness of the statement of facts, it is sufficient to note that the written and oral observations submitted to the Court contain enough information on the registration of the vessels to enable the Court to give the Tribunale a helpful answer, taking that information into account.

14 Finally, as to the relevance of the questions, the Court has held that it has no jurisdiction to rule on questions submitted by a national court if those questions bear no relation to the facts or the subject-matter of the main action and hence are not objectively required in order to settle the dispute in that action (see the judgments in Case 126/80 *Salonia* v *Poidomani and Giglio* [1981] ECR 1563; Case C-368/89 *Crispoltoni* v *Fattoria Autonoma Tabacchi di Città di Castello* [1991] ECR I-3695; Case C-186/90 *Durighello* v *Istituto Nazionale della Previdenza Sociale* [1991] ECR I-5773; Case C-343/90 *Lourenço Dias* v *Director da Alfândega do Porto* [1992] ECR I-4673; Case C-67/91 *Dirección General de Defensa de la Competencia* v *Asociación Española de Banca Privada and Others* [1992] ECR I-4785; and *Eurico Italia*, cited above; and the order in Case C-286/88 *Falciola* v *Comune di Pavia* [1990] ECR I-191).

15 In this respect, as the Commission submitted, the application before the national court relates only to the allegedly discriminatory tariff paid by the applicant in the main proceedings, and not to the compulsory nature of the piloting service, the

fact that the tariff does not vary whatever the ship's technical equipment, or the method by which the tariff is determined.

16 In those circumstances, the only questions which the Court need answer are questions 1 and 3 on whether the application of the tariffs complies with the principle of non-discrimination, and questions 5(a) and (b) relating to the prohibition of abusive practices by public undertakings.

The freedom to provide maritime transport services

17 In questions 1 and 3 the Tribunale essentially wishes to know whether Community law precludes the application in a Member State, for identical piloting services, of different tariffs depending on whether or not the undertaking which provides shipping services between two Member States operates a vessel which is authorized for maritime cabotage, that being reserved to vessels flying the flag of that State.

18 The Court notes to begin with that Article 5 of the Treaty, referred to in question 1, which provides that Member States must ensure fulfilment of their obligations arising out of the Treaty, is worded so generally that there can be no question of applying it autonomously when the situation concerned is governed by a specific provision of the Treaty (see the judgment in Joined Cases C-78/90 to C-83/90 *Compagnie Commerciale de l'Ouest and Others* v *Receveur Principal des Douanes de La Pallice Port* [1992] ECR I-1847, paragraph 19).

19 Secondly, the Court has consistently held that Article 7 of the EEC Treaty (Article 6 of the EC Treaty), which lays down the general principle of the prohibition of discrimination on grounds of nationality, applies independently only to situa-

tions governed by Community law in respect of which the Treaty lays down no specific prohibition of discrimination (see the judgment in Case C-179/90 *Merci Convenzionali Porto di Genova* v *Siderurgica Gabrielli* [1991] ECR I-5889, paragraph 11).

20 In the field of freedom to provide services, the principle of the prohibition of discrimination is given specific expression in Article 59 of the Treaty.

21 As regards the determination of the services to which Article 59 of the Treaty is to be applied, it should be noted that a system of differential tariffs for piloting services affects a transport undertaking such as Corsica Ferries in two ways. Piloting services are services provided for consideration to the shipping undertakings by the corporation, and differences in tariffs affect those undertakings as recipients of the services. However, the differences in tariffs affect the undertakings primarily in their capacity as providers of maritime transport services, in so far as they have an effect on the cost of those services and thus place them at a disadvantage in comparison with economic operators who benefit from the preferential tariffs.

22 In assessing the tariff system at issue before the national court from the point of view of the freedom to provide maritime transport services, the Court must consider, firstly, to what extent the principle of non-discrimination laid down in Article 59 of the Treaty applies in the maritime transport sector and, secondly, whether such a system causes discrimination on the grounds of nationality.

23 Article 61(1) of the Treaty provides that freedom to provide services in the field of transport is to be governed by the provisions of the title of the Treaty relating to transport (see in particular the judgments in Case 13/83 *Parliament* v *Council* [1985] ECR 1513, paragraph 62, and Case C-49/89 *Corsica Ferries France* v *Direction Générale des Douanes Françaises* [1989] ECR 4441, paragraph 10).

24 It follows that, as the Court held in its judgments in *Corsica Ferries France*, cited above, paragraph 11, and in Joined Cases 209 to 213/84 *Ministère Public* v *Asjes* [1986] ECR 1425, paragraph 37, in the transport sector the objective laid down in Article 59 of the Treaty of abolishing during the transitional period restrictions on freedom to provide services should have been attained in the framework of the common policy provided for in Articles 74 and 75 of the Treaty.

25 With regard in particular to maritime transport, Article 84(2) of the Treaty provides that the Council may decide whether, to what extent and by what procedure appropriate provisions may be laid down for that kind of transport.

26 Thus the Council, on the basis of those provisions, adopted Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), which entered into force on 1 January 1987.

27 Article 1(1) of that regulation provides that:

' Freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. '

28 As regards the substantive scope of Regulation No 4055/86, the wording of Article 1 makes it clear that the regulation applies to maritime transport services between Member States of the kind at issue in the main proceedings.

29 As to the persons covered by Regulation No 4055/86, Article 1 refers to nationals of Member States who are established in a Member State other than that of the person for whom the services are intended, and does not mention the registration of or the flag flown by the vessels operated by the transport undertakings.

30 Moreover, the freedom to provide maritime transport services between Member States, and in particular the prohibition of discrimination on grounds of nationality, may be relied on by an undertaking as against the State in which it is established, if the services are provided for persons established in another Member State. In a case such as that in point in the main proceedings, an undertaking established in one Member State and operating a liner service, covered by Regulation No 4055/86, to another State, provides those services, by reason of their very nature, *inter alia* for persons established in the latter State.

31 Consequently, the situation at issue in the main proceedings is not a purely national matter, and the Italian Government's argument on this point must be rejected.

32 In considering next whether the tariff system at issue in the main proceedings is compatible with Regulation No 4055/86, it should be noted that paragraphs 6 and 7 of this judgment show that the system gives preferential treatment to vessels permitted to engage in maritime cabotage, in other words, those flying the Italian flag.

33 Such a system indirectly discriminates between economic operators according to their nationality, since vessels flying the national flag are generally operated by

national economic operators, whereas transport undertakings from other Member States as a rule do not operate ships registered in the State applying that system.

34 That finding is not affected by the fact that the class of less favourably treated economic operators may also include national transport undertakings which operate vessels not registered in their State, or by the fact that the class of operators given favourable treatment may include transport undertakings from other Member States which operate vessels registered in the aforesaid State, since the class receiving favourable treatment consists essentially of nationals of that State.

35 It follows that Article 1(1) of Regulation No 4055/86 prohibits a Member State from applying different tariffs for identical piloting services, depending on whether or not an undertaking, even one from that Member State, which provides maritime transport services between that Member State and another Member State operates a vessel authorized to engage in maritime cabotage, which is reserved to vessels flying the flag of that State.

36 The corporation and the Italian Government are wrong in attempting to justify the different tariffs on grounds of navigational safety, national transport policy or protection of the environment. Even if those objectives were capable of justifying intervention by the public authorities in the transport sector, a discriminatory tariff system such as that at issue before the national court does not appear necessary for attaining those objectives.

37 The answer to questions 1 and 3 must therefore be that Article 1(1) of Regulation No 4055/86, which gives effect to the principle of freedom to provide services, and

in particular to the prohibition of discrimination, in the field of maritime transport between Member States, precludes the application in a Member State of different tariffs for identical piloting services, depending on whether or not the undertaking which provides maritime transport services between two Member States operates a vessel authorized to engage in maritime cabotage, which is reserved to vessels flying the flag of that State.

The rules on competition

38 By question 5(1) and (2) the national court essentially wishes to know whether Articles 90(1) and 86 of the Treaty prohibit a national authority from enabling an undertaking which has the exclusive right of providing compulsory piloting services in a substantial part of the common market to apply different tariffs to maritime transport undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory.

39 It should be noted that the corporation, the defendant in the main proceedings, has received from the public authorities the exclusive right to provide compulsory piloting services in the port of Genoa.

40 An undertaking which has a legal monopoly in a substantial part of the common market may be regarded as occupying a dominant position within the meaning of Article 86 of the Treaty (see the judgments in Case C-41/90 *Höfner and Elser* v *Macrotron* [1991] ECR I-1979, paragraph 28; Case C-260/89 *ERT* v *DEP and Kouvelas* [1991] ECR I-2925, paragraph 31; and *Merci Convenzionali Porto di Genova*, cited above, paragraph 14).

41 The market in question is that of piloting services in the port of Genoa. Having regard in particular to the volume of traffic in that port and its importance in rela-

tion to maritime import and export operations as a whole in the Member State concerned, that market may be regarded as constituting a substantial part of the common market (see the judgment in *Merci Convenzionali Porto di Genova*, cited above, paragraph 15).

42 The mere fact of creating a dominant position by granting exclusive rights within the meaning of Article 90(1) is not in itself incompatible with Article 86 of the Treaty.

43 However, a Member State infringes the prohibitions in those two articles if, by approving the tariffs adopted by the undertaking, it induces it to abuse its dominant position *inter alia* by applying dissimilar conditions to equivalent transactions with its trading partners, within the meaning of Article 86(c) of the Treaty.

44 Inasmuch as the discriminatory practices referred to in the order for reference affect undertakings providing transport services between two Member States, they may affect trade between Member States.

45 The answer to question 5(1) and (2) must therefore be that Article 90(1) and Article 86 of the Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply different tariffs to maritime transport undertakings, depending on

whether they operate transport services between Member States or between ports situated on national territory, in so far as trade between Member States is affected.

Costs

46 The costs incurred by the French and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunale di Genova by order of 14 December 1992, hereby rules:

1. Article 1(1) of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries precludes the application in a Member State of different tariffs for identical piloting services, depending on whether or not the undertaking which provides maritime transport services between two Member States operates a vessel authorized to engage in maritime cabotage, which is reserved to vessels flying the flag of that State.

2. **Article 90(1) and Article 86 of the EEC Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply different tariffs to maritime transport undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory, in so far as trade between Member States is affected.**

Due Mancini Moitinho de Almeida

Díez de Velasco Edward Kakouris

Joliet Schockweiler Rodríguez Iglesias

Grévisse Zuleeg Kapteyn

Murray

Delivered in open court in Luxembourg on 17 May 1994.

R. Grass
Registrar

O. Due
President