JUDGMENT OF THE COURT (Grand Chamber)

11 December 2007 *

In Case C-280/06,

REFERENCE for a preliminary ruling under Article 234 EC, by the Consiglio di Stato (Italy), made by decision of 8 November 2005, received at the Court on 27 June 2006, in the proceedings

Autorità Garante della Concorrenza e del Mercato

v

Ente tabacchi italiani — ETI SpA,

Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc., Philip Morris International Management SA,

and

Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc., Philip Morris International Management SA,

* Language of the case: Italian.

v

Autorità Garante della Concorrenza e del Mercato,

Ente tabacchi italiani — ETI SpA,

and

Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc., Philip Morris International Management SA,

v

Autorità Garante della Concorrenza e del Mercato,

Amministrazione autonoma dei monopoli di Stato,

Ente tabacchi italiani — ETI SpA,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts, G. Arestis and U. Lõhmus, Presidents of Chambers, E. Juhász, A. Borg Barthet, M. Ilešič (Rapporteur), J. Klučka, E. Levits and A. Ó Caoimh, Judges,

Advocate General: J. Kokott,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2007,

after considering the observations submitted on behalf of:

— Ente tabacchi italiani — ETI SpA, by S. D'Alberti, A. Clarizia and L. D'Amario, avvocati,

— Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA, by L. Di Via, C. Tesauro and P. Leone, avvocati,

— the Italian Government, by I.M. Bragulia and F. Arena, acting as Agents, assisted by D. Del Gaizo, avvocato dello Stato,

— the Commission of the European Communities, by F. Castillo de la Torre and V. Di Bucci, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2007,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 81 et seq. EC and the general principles of Community law.

2 The reference has been made in the course of proceedings between Autorità Garante della Concorrenza e del Mercato (national competition authority, 'the Authority'), Ente tabacchi italiani — ETI SpA, Philip Morris Products SA, Philip Morris Holland BV, Philip Morris GmbH, Philip Morris Products Inc. and Philip Morris International Management SA (the last five companies together, 'the companies in the Philip Morris group') and the Amministrazione autonoma dei monopoli di Stato (the autonomous body administering State monopolies, 'the AAMS'), relating to a cartel on the sale price of cigarettes.

Legal context

3 In Italian law, Law No 287 of 10 October 1990 adopting provisions for the protection of competition and the market (norme per la tutela della concorrenza e del mercato) (GURI No 240 of 13 October 1990, p. 3; 'Law No 287/90'), contains in its Title I the following provisions in particular:

'*Article 1*

...

1. The provisions of this Law, which is enacted under Article 41 of the Constitution for the purposes of protecting and guaranteeing the right to economic initiative, shall apply to cartels, abuses of a dominant position and concentrations of undertakings which do not come within the scope of application of Article 65 and/or Article 66 of the Treaty establishing the European Coal and Steel Community, Article 85 and/or Article 86 of the Treaty establishing the European Economic Community (EEC), Regulations of the EEC, or Community acts having the same legal effect.

...

4. The provisions in this Title shall be interpreted in accordance with the principles laid down in the competition law of the European Communities.

Article 2

...

1. "Cartels" means agreements and/or concerted practices of undertakings as well as decisions of consortia, associations of undertakings and similar organisations, even where made on the basis of their statutes or administrative rules.

2. Cartels between undertakings which have as their object or effect the material prevention, restriction or distortion of competition within the national market or a substantial part of that market are prohibited, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, access to the market, investment, technical development, or technological advancement;

(c) share markets or sources of supply;

(d) apply objectively dissimilar conditions to equivalent transactions with other trading parties, thereby unjustifiably placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

3. Prohibited cartels shall be void for all purposes.'

4 Title II of Law No 287/90 deals entirely with the Authority, created on the basis of Article 10(1). Article 15(1) of the Law, which appears in that Title II, provides:

'If ... the Authority establishes the existence of infringements of Article 2 or 3, it shall lay down a time-limit for the undertakings and operations concerned to cease the infringements. In case of serious breaches, it may also impose, having regard to their gravity and duration, an administrative fine of up to 10% of the turnover which the undertaking or establishment in question achieved in the last accounting year prior to the issue of the notice, and shall fix the time-limits within which the undertaking must pay the fine.'

5 Article 31, which appears in Title VI of Law No 287/90, provides:

'So far as applicable, the provisions of Chapter I, Sections I and II, of Law No 689 of 24 November 1981 apply in relation to administrative fines for breaches of this Law.'

6 On 8 December 1927, Royal Legislative Decree No 2258 was promulgated, which provides for the creation of AAMS (istitutivo dell'Amministrazione autonoma dei monopoli di Stato, GURI No 288 of 14 December 1927). This organ of the State administration, which answered to the Ministry of the Economy and Finance, was entrusted, until February 1999, with managing the tobacco monopoly. Subsequently, AAMS continued to carry out public functions in the tobacco sector. In addition,

AAMS pursues a commercial activity in the gambling sector, in particular lotteries. As regards both its administration and its finance and accounting functions, it is autonomous, although it does not have its own legal personality.

7 As from 1 March 1999, all manufacturing and sales activities in the tobacco sector that had been assigned, until then, to AAMS were transferred to another public body created by Decree-Law No 283 of 9 July 1998 setting up the Italian tobacco office (istituzione dell'Ente tabacchi italiani) (GURI No 190 of 17 August 1998, p. 3; 'Decree-Law No 283/98'). That body received the assets and liabilities of AAMS relating to the branches of activity which had been assigned to it. By decision of its administrative board of 23 June 2000, it was transformed into a public limited company, becoming Ente tabacchi italiani — ETI SpA ('ETI'). Initially, 100% of its shares were owned by the Ministry of the Economy and Finance. Following a call for tenders which that Ministry launched in 2003, ETI was privatised and came under the sole control of British American Tobacco plc ('BAT'), a holding company established under English law, which belongs to the BAT-British American Tobacco group.

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

8 Following an investigation commenced in June 2001, the Authority found by decision of 13 March 2003 that the companies in the Philip Morris group had — with AAMS, then with Ente tabacchi italiani and finally with ETI — formed and implemented a cartel which had as its object and effect the distortion of competition as regards the sale price of cigarettes on the national market between 1993 and 2001, in breach of Article 2(2)(a) and (b) of Law No 287/90. The Authority imposed administrative fines totalling EUR 50 million on the companies in the Philip Morris group and EUR 20 million on ETI.

9 In its decision, the Authority attributed the conduct adopted by AAMS prior to 1 March 1999 to ETI, on the ground that AAMS ceased its manufacturing and sales activities in the tobacco sector once Ente tabacchi italiani — which became ETI — became operational. In those circumstances, even though AAMS did not cease to exist, ETI was AAMS' successor in accordance with the principle of economic continuity.

10 All the companies concerned challenged that decision before the Tribunale amministrativo regionale del Lazio (Regional Administrative Court for Lazio). It dismissed the action brought by the companies in the Philip Morris group and in part upheld the action brought by ETI, annulling the decision in so far as it attributed responsibility to ETI for acts committed by AAMS. The Tribunale amministrativo regionale del Lazio based its assessment on the criterion of personal responsibility.

11 Appeals against the judgments of the Tribunale amministrativo regionale del Lazio were brought before the Consiglio di Stato (Council of State), which, by a first decision of 8 November 2005, dismissed the appeals brought by ETI and the companies in the Philip Morris group in so far as they contested the existence of a breach of the rules in the sphere of competition. As regards the question of attributing AAMS' conduct to ETI, the Consiglio di Stato points out, in the order for reference, that the transfer of AAMS' activities to Ente tabacchi italiani marked a clear break of continuity with the previous model of organisational management. That model — before the relevant activities were transferred to Ente tabacchi italiani, which became ETI — was characterised by the attribution to AAMS, in its role as an autonomous State administration, of a mass of economic tasks and administrative duties of a public nature such as to create a dependence on the political powers. That connection can no longer be found in relation to the new entity, whose functions are purely commercial. In addition, the Consiglio di Stato states that, even though AAMS no longer carries out any commercial activities in the tobacco sector, it still carries on an economic activity that is subject to competition law. According to the Consiglio di Stato, those particular circumstances argue against application of the criterion of economic continuity.

12 The Consiglio di Stato nevertheless considered it appropriate to ask the Court about the criteria to be applied under Community competition law, to which Article 1(4) of Law No 287/90 refers. It thus decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) What, in accordance with Article 81 et seq. [EC] and with the general principles of Community law, is the criterion to be adopted in determining the undertaking on which a penalty is to be imposed for contravention of the rules in the sphere of competition when, in connection with conduct penalised as a whole, the last part of those actions was carried out by an undertaking having succeeded the original undertaking in the economic sphere concerned[, and when] the original body, while still in existence, no longer operates as a commercial undertaking, or at least not in the economic sector affected by the penalty?

(2) Does it fall to the national authority responsible for the application of "antitrust" rules, when determining the person to be penalised, to assess at its own discretion whether circumstances exist which warrant the attribution to the economic successor of responsibility for contraventions of the competition rules committed by the legal person which it has succeeded, even when that latter has not ceased to exist at the date of the decision, so that the effectiveness of the competition rules is not compromised by alterations made to the legal form of the undertakings?'

The jurisdiction of the Court

13 Given that the Commission of the European Communities has expressed doubts as to the jurisdiction of the Court, that must be examined first.

Observations submitted to the Court

14 The Commission submits that the main proceedings concern the validity of a decision of a national competition authority which, prior to the entry into force of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1), exclusively applied national provisions prohibiting cartels, and not Article 81 EC.

15 The Commission submits that Article 1(4) of Law No 287/90, according to which the provisions of Title I of that Law are to be interpreted on the basis of the principles of Community competition law, is irrelevant in this respect. The issue in the main proceedings is to identify 'the undertakings and operations concerned' within the meaning of Articles 15 and 31 of Law No 287/90, which fall under Titles II and VI thereof, respectively. Article 1(4) could be taken into consideration if it were a question of interpreting the concept of an undertaking, which appears both in Article 81 EC and in Article 2 of Law No 287/90, but not in order to determine which undertakings are to be penalised.

16 The Commission adds that, even if it were accepted that the reference, in Law No 287/90, to the principles of Community law is applicable in the main proceedings, the case-law of the Court would nevertheless lead to the conclusion that the questions referred for a preliminary ruling are inadmissible. In this respect, the Commission cites the judgment in Case C-346/93 *Kleinwort Benson* [1995] ECR I-615 and points out that Law No 287/90 does not specify that national courts must apply interpretations provided by the Court absolutely and unconditionally.

17 On this last point, the Commission notes that the Tribunale amministrativo regionale del Lazio based its judgment on Italian provisions concerning administrative fines, to which Article 31 of Law No 287/90 refers. Likewise, the Consiglio di

Stato relied on arguments which the Authority has taken from the Italian law on responsibility. This shows that, for Italian courts and lawyers, Community law constitutes merely one of a number of elements for the purposes of interpreting the relevant provisions of national law.

18 ETI and the companies in the Philip Morris group submit on the contrary that the Court has jurisdiction to adjudicate on the reference for a preliminary ruling. Without taking a position on the jurisdiction of the Court, the Italian Government points out that an answer from the Court would be useful for the Consiglio di Stato, taking into consideration the reference to Community law in Article 1(4) of Law No 287/90.

The Court's assessment

19 Article 234 EC is an instrument of judicial cooperation, by means of which the Court provides national courts with the points of interpretation of Community law which may be helpful to them in assessing the effects of a provision of national law at issue in the disputes before them (Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraph 28 and the case-law cited, and Case C-448/01 *EVN and Wienstrom* [2003] ECR I-14527, paragraph 77).

20 When the reference for a preliminary ruling concerns the interpretation of Community law, the Court is as a rule bound to give a ruling (*Salzmann*, paragraph 29, and Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43).

21 In adjudicating on references for a preliminary ruling in which the rules of Community law whose interpretation was requested were applicable only because of a reference made to them by national law, the Court has held consistently that, where, in regulating purely internal situations, domestic legislation provides the same solutions as those adopted in Community law, it is clearly in the Community interest that, in order to avoid future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, in particular, Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 37; Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 32; Case C-1/99 *Kofisa Italia* [2001] ECR I-207, paragraph 32; Case C-222/01 *British American Tobacco* [2004] ECR I-4683, paragraph 40; and Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 16).

22 Neither the wording of Article 234 EC nor the aim of the procedure established by that article indicates that the EC Treaty makers intended to exclude from the jurisdiction of the Court requests for a preliminary ruling on a Community provision in the specific case where the domestic law of a Member State refers to that Community provision in order to determine the rules applicable to a situation which is purely internal to that State (*Dzodzi*, paragraph 36; *Leur-Bloem*, paragraph 25, and Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 19).

23 As regards the application of the abovementioned case-law to the present reference for a preliminary ruling, the fact remains that, in regulating purely internal situations, the provisions of Title I of Law No 287/90 provide the same solutions as those adopted in Community law.

24 Article 1(4) of Law No 287/90 provides that the provisions in Title I of that Law are to be interpreted in accordance with the principles laid down in Community competition law. Articles 2 and 3 of Law No 287/90, which fall under the same Title, reproduce *mutatis mutandis* the wording of Articles 81 EC and 82 EC.

25 Furthermore, there is no suggestion in the wording of Article 1(4) of Law No 287/90, the order for reference, or the other documents before the Court that the reference to Community law in that provision is subject to any condition whatsoever.

26 Therefore, pursuant to the abovementioned case-law, it is clearly in the Community interest that the rules of Community law can — where doubts arise in the context of applying the reference made to them by national law — be interpreted uniformly by means of Court judgments given on references for a preliminary ruling.

27 As regards the Commission's argument that the disputes in the main proceedings are governed exclusively by Titles II and VI of Law No 287/90, so that Article 1(4) of the same Law, which falls under Title I thereof, is not relevant, the fact remains that that assessment is not shared by the Consiglio di Stato, which expressly referred to Article 1(4) as a ground for its reference for a preliminary ruling. In this respect, it should be recalled that it is not for the Court to determine the accuracy of the legislative context which the national court is responsible for defining (*Salzmann*, paragraph 31; Case C-213/04 *Burtscher* [2005] ECR I-10309, paragraph 35; and Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22).

28 Lastly, as to the Commission's argument that Community law is merely one of a number of factors for the purposes of interpreting the provisions of Title I of Law No 287/90, and that Italian courts are not required to apply interpretations provided by the Court absolutely and unconditionally, it suffices to note that the Authority and the Tribunale amministrativo regionale del Lazio based their decision and judgment on Community rules and case-law, and that the Consiglio di Stato made its reference for a preliminary ruling on the ground that it considered it necessary

for the purposes of knowing the criterion to be taken into consideration in accordance with the principles of Community competition law, to which Article 1(4) of Law No 287/90 refers.

29 In the light of all the foregoing, the Court has jurisdiction to adjudicate on the reference for a preliminary ruling.

The questions referred for a preliminary ruling

30 By the two questions, which should be examined together, the Consiglio di Stato asks, essentially, what, in accordance with Article 81 et seq. EC and, where appropriate, with any other relevant rule of Community law, are the criteria to be adopted in determining the undertaking to be penalised for breach of the competition rules where undertakings have succeeded each other, more specifically where the last part of an infringement of the competition rules was carried out by the economic successor of the entity that commenced the infringement and the latter entity, while no longer operating in the economic sector concerned by the penalty, is still in existence.

Observations submitted to the Court

31 According to ETI, the relevant criterion is that of personal responsibility. It is not possible to derogate from that criterion other than in exceptional cases, in order to

protect the effectiveness of the rules in the sphere of competition. In such exceptional cases, responsibility for the infringement can be attributed to a person other than the one that controlled the undertaking at the time of the infringement, even where the latter undertaking is still in existence.

32 However, such exceptional circumstances do not exist where, as in the main proceedings, it is possible to attribute responsibility for the infringement to the person who operated the undertaking at the time when the infringement was committed.

33 The companies in the Philip Morris group submit that the criterion of personal responsibility applies in all cases in which the person that factually committed the infringing act is still in existence, carries out commercial activities and is in a position to comply with the decision of the competition authority that imposes the penalty.

34 Those companies submit that, apart from a situation in which the legal entity has disappeared, making it impossible for it to be the subject of penalties, the Community legal order does not allow derogation from the criterion of personal responsibility. Reliance on the criterion of economic continuity is only justified where it is necessary to ensure effective application of the competition rules.

35 According to the Italian Government, the criterion of economic continuity means that — whenever the undertaking concerned by the infringement and transferred from one person to another is identical from an economic, structural and functional point of view —, responsibility lies with the person who continued and brought to completion the conduct that is contrary to the competition rules and was

commenced by another person. In this respect, it is irrelevant whether the person who has sold the undertaking is still formally in existence and whether or not that person carries on other activities.

36 In the present case, it follows from Decree-Law No 283/98 that the undertaking managed by AAMS and the undertaking managed by Ente tabacchi italiani, which became ETI, are effectively the same. In addition, AAMS and ETI have structural links, given that both are emanations of the Ministry of the Economy and Finance.

37 According to the Commission, where the infringement was committed by an undertaking managed by a body of a Member State endowed with its own decision-making powers, and the relevant economic activity was transferred to another legal entity, penalties relating to that conduct must be imposed on the State body if, following the transfer, that body continues to carry on commercial activity, even if it is in sectors other than the one affected by the said conduct. By contrast, the penalties ought to be imposed on the legal entity that has acquired the economic activity in question if, following the transfer, the State body ceases commercial activity.

The Court's response

38 It is apparent from the case-law that Community competition law refers to the activities of undertakings (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 59) and that the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed (see, in particular, Joined Cases C-189/02 P, C-202/02 P,

C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 112; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 107; and Case C-205/03 P *FENIN* v *Commission* [2006] ECR I-6295, paragraph 25).

39 When such an entity infringes competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement (see, to that effect, Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 145, and Case C-279/98 P *Cascades* v *Commission* [2000] ECR I-9693, paragraph 78).

40 As to the circumstances in which an entity that is not responsible for the infringement can nevertheless be penalised for that infringement, it must be held first that this situation arises if the entity that has committed the infringement has ceased to exist, either in law (see, to that effect, *Commission* v *Anic Partecipazioni*, paragraph 145) or economically. With regard to the latter, it is worth noting that a penalty imposed on an undertaking that continues to exist in law, but has ceased economic activity, is likely to have no deterrent effect.

41 Next, it must be noted that if no possibility of imposing a penalty on an entity other than the one which committed the infringement were foreseen, undertakings could escape penalties by simply changing their identity through restructurings, sales or other legal or organisational changes. This would jeopardise the objective of suppressing conduct that infringes the competition rules and preventing its reoccurrence by means of deterrent penalties (Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraph 173; Case C-289/04 P *Showa Denko* v *Commission* [2006] ECR I-5859, paragraph 61; and Case C-76/06 P *Britannia Alloys & Chemicals* v *Commission* [2007] ECR I-4405, paragraph 22).

42 Consequently, as the Court has already held, when an entity that has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor that infringed the competition rules, when, from an economic point of view, the two are identical (see, to that effect, Joined Cases 29/83 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraph 9, and *Aalborg Portland and Others* v *Commission*, paragraph 59).

43 In accordance with that case-law, the legal forms of the entity that committed the infringement and the entity that succeeded it are irrelevant. Imposing a penalty for the infringement on the successor can therefore not be excluded simply because, as in the main proceedings, the successor has a different legal status and is operated differently from the entity that it succeeded.

44 The fact that the decision to transfer an activity is taken not by individuals, but by the legislature in view of a privatisation, is equally irrelevant. Measures to restructure or reorganise undertakings adopted by the authorities of a Member State cannot have the effect, lawfully, of compromising the effectiveness of Community competition law (see, to that effect, Case C-415/03 *Commission* v *Greece* [2005] ECR I-3875, paragraphs 33 and 34).

45 In the main proceedings, it is apparent from the order for reference and the documents before the Court that ETI continued AAMS' economic activities on the market affected by the cartel. In those circumstances, even though AAMS continued to exist as an economic operator on other markets, ETI could be regarded — for the

purposes of the procedure relating to the cartel on the sale price of cigarettes — as the economic successor of AAMS.

46 As to whether a case such as that in the main proceedings corresponds to circumstances in which an economic entity can be penalised for an infringement committed by another entity, it must be held, first, that the fact that AAMS does not have legal personality (see paragraph 6 of this judgment) is not a factor that can justify imposing on its successor a penalty for the infringement committed by AAMS.

47 By contrast, imposing on ETI the penalty for the infringement committed by AAMS could be justified by the fact that ETI and AAMS answer to the same public authority.

48 In this respect, it must be recalled that, where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred (see, to that effect, *Aalborg Portland and Others* v *Commission*, paragraphs 355 to 358).

49 In particular, applying penalties in this way is permissible where those entities have been subject to control by the same person within the group and have therefore, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions (see, by analogy, Case C-294/98 P *Metsä-Serla and Others* v *Commission* [2000] ECR I-10065, paragraphs 26 and 27, and *Dansk Rørindustri and Others* v *Commission*, paragraph 117).

50 In the main proceedings, it is not disputed that at the time of their infringing conduct, AAMS and ETI were owned by the same public entity, namely the Ministry of the Economy and Finance.

51 It is for the Consiglio di Stato to determine whether, by participating in the cartel on the sale price of cigarettes, AAMS and ETI were subject to the control of that public entity. If that were the case, it would have to be concluded that the principle of personal responsibility does not preclude the penalty for the infringement commenced by AAMS and continued by ETI from being imposed in its entirety on ETI.

52 In the light of all the preceding considerations, the answer to the questions referred must be that Article 81 EC et seq. must be interpreted as meaning that, in the case of entities answering to the same public authority, where conduct amounting to one and the same infringement of the competition rules was adopted by one entity and subsequently continued until it ceased by another entity which succeeded the first, which has not ceased to exist, that second entity may be penalised for the infringement in its entirety if it is established that those two entities were subject to the control of the said authority.

Costs

53 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 81 EC et seq. must be interpreted as meaning that, in the case of entities answering to the same public authority, where conduct amounting to one and the same infringement of the competition rules was adopted by one entity and subsequently continued until it ceased by another entity which succeeded the first, which has not ceased to exist, that second entity may be penalised for that infringement in its entirety if it is established that those two entities were subject to the control of the said authority.

[Signatures]