JUDGMENT OF THE COURT (Third Chamber)

13 July 2006 *

In Joined Cases C-295/04 to C-298/04,

REFERENCES for a preliminary ruling under Article 234 EC from the Giudice di Pace di Bitonto (Italy), made by decision of 30 June 2004, received at the Court on 13 July 2004, in the proceedings

Vincenzo Manfredi (C-295/04)

v

Lloyd Adriatico Assicurazioni SpA,

* Language of the case: Italian.

Antonio Cannito (C-296/04)

v

Fondiaria Sai SpA,

and

Nicolò Tricarico (C-297/04),

Pasqualina Murgolo (C-298/04)

v

Assitalia SpA,

THE COURT (Third Chamber),

composed of A. Rosas, President of Chamber, J. Malenovský, S. von Bahr (Rapporteur), A. Borg Barthet and A. Ó Caoimh, Judges,

Advocate General: L.A. Geelhoed,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 November 2005,

after considering the observations submitted on behalf of:

— Assitalia SpA (C-297/04 and C-298/04), by A. Pappalardo, M. Merola and D.P. Domenicucci, lawyers,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by M. Fiorilli, avvocato dello Stato,

— the German Government, by C. Schulze-Bahr, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by T. Christoforou and F. Amato, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2006,

gives the following

Judgment

1 The references for a preliminary ruling concern the interpretation of Article 81 EC.

2 The questions were raised in an action for damages brought by Vincenzo Manfredi against Lloyd Adriatico Assicurazioni SpA, by Antonio Cannito against Fondiaria Sai SpA and, respectively, by Nicolò Tricarico and Pasqualina Murgulo against Assitalia SpA ('Assitalia') in order to obtain an order against those insurance companies for repayment of the increase in the cost of premiums for compulsory civil liability insurance relating to accidents caused by motor vehicles, vessels and mopeds ('civil liability auto insurance') paid due to the increases implemented by those companies under an agreement declared unlawful by the national competition authority (Autorità garante per la concorrenza e del mercato; 'the AGCM').

Relevant national provisions

3 Article 2(2) of Law No 287 of 10 October 1990 on the rules for the protection of competition and markets (Legge 10 ottobre 1990 No 287, Norme per la tutela della concorrenza e del mercato, GURI No 240 of 13 October 1990, p. 3) ('Law No 287/90') prohibits arrangements between undertakings which have as their object or effect appreciably to prevent, restrict or distort competition in the national market or a substantial part of it.

4 Under Article 2(1) 'arrangements' include agreements and/or concerted practices between undertakings, and decisions, even those adopted on the basis of statute or regulation, of consortia, associations of undertakings and other similar entities.

5 Under Article 2(3) of Law No 287/90, prohibited agreements are null and void.

6 Article 33(2) of that law states that actions for annulment and damages and applications for interim measures in relation to infringements of the provisions referred to in Titles I to IV of that law, including Article 2, are to be brought before the Corte d'appello having territorial jurisdiction.

The main proceedings and the questions referred for a preliminary ruling

7 By decisions of 8 September 1999, 10 November 1999 and 3 February 2000, the AGCM initiated the procedure for infringement laid down in Article 2 of Law No 287/90 against various insurance companies, including the three defendant companies in the main proceedings. It was alleged that those companies had participated in an arrangement for the purpose of 'the tied selling of separate products and the exchange of information between competing undertakings'. As regards the present cases, only the arrangement for the exchange of information between competing undertakings is relevant.

8 The AGCM observed that in the period from 1994 to 1999, unlike what happened in the rest of Europe, Italy saw an unusual and sustained increase in the cost of premiums for civil liability auto insurance, which is compulsory.

9 The AGCM also observed that the market for civil liability auto insurance premiums is characterised by considerable barriers to entry, which have arisen primarily due to the need to set up an efficient distribution network and a network of centres for the settlement of accident claims throughout the country.

10 In the course of the procedure before it, the AGCM obtained documentation showing extensive and widespread exchange of information between various civil liability auto insurance companies relating to all aspects of insurance activities, such as, in particular, prices, discounts, receipts, costs of accidents and distribution costs.

11 In its final decision No 8546 (I377) of 28 July 2000 (Bolletino 30/2000 of 14 August 2000) the AGCM declared that the insurance companies involved had implemented an unlawful agreement for the purpose of exchanging information on the insurance sector. That agreement enabled those undertakings to coordinate and fix the prices of civil liability auto insurance premiums so as to charge users large increases in premiums which were not justified by market conditions and which they could not escape.

12 The AGCM's decision, which was challenged by the insurance companies, was essentially upheld by the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court of Latium) and by the Consiglio di Stato (Council of State).

13 The applicants in the main proceedings brought their respective actions before the Giudice di pace di Bitonto to obtain damages against each insurance company concerned for the increase in the cost of premiums paid by reason of the agreement declared unlawful by the AGCM.

14 It is clear from Assitalia's observations that, according to the applicants in the main proceedings, the investigation carried out by the AGCM revealed that the average price of civil liability auto insurance premiums was 20% higher than would have been the case if the competitive conduct of the insurance companies had not been

distorted by the concerted practice. The infringement committed by the companies taking part in that practice thus resulted in harm to final consumers owing to the fact that the payment for a civil liability auto insurance premium was on average 20% higher than what they would have paid had there been no infringement of the competition rules.

15 The insurance companies in the main proceedings pleaded, inter alia, that the Giudice di pace di Bitonto did not have jurisdiction under Article 33 of Law No 287/90 and that the right to restitution and/or compensation in damages was out of time.

16 The national court takes the view that, in so far as insurance companies of other Member States also carrying on their activities in Italy also took part in an agreement ruled unlawful by the AGCM, the alleged agreement infringes not only Article 2 of Law No 287/90 but also Article 81 EC, paragraph 2 of which declares void all prohibited agreements, decisions and concerted practices.

17 It considers that any third party, including the consumer and end user of a service, may consider itself entitled to rely on the invalidity of an agreement prohibited under Article 81 EC and claim compensation in damages where there is a causal relationship between the harm suffered and the prohibited arrangement.

18 If that is the case, a provision such as that in Article 33 of Law No 287/90 could be regarded as contrary to Community law. The timescales are much longer and the costs much higher in proceedings before the Corte d'appello compared to those in proceedings before the Giudice di pace, which could compromise the effectiveness of Article 81 EC.

19 The national court is also uncertain whether the limitation period for bringing actions for damages, and the amount of damages to be paid, both of which are fixed by national law, are compatible with Article 81 EC.

20 It is in those circumstances that, in Joined Cases C-295/04 to C-297/04, the Giudice di pace di Bitonto decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 81 EC to be interpreted as meaning that it renders void an agreement or concerted practice between insurance companies consisting of a mutual exchange of information which makes it possible to increase civil liability auto insurance policy premiums which are not justified by market conditions, having regard, in particular, to the fact that undertakings from several Member States took part in the agreement or concerted practice?

(2) Is Article 81 EC to be interpreted as meaning that it entitles third parties who have a relevant legal interest to rely on the invalidity of an agreement or practice prohibited by that Community provision and claim damages for the harm suffered where there is a causal relationship between the agreement or concerted practice and the harm?

(3) Is Article 81 EC to be interpreted as meaning that for the purposes of the limitation period for bringing an action for damages based thereon, time begins to run from the day on which the agreement or concerted practice was adopted or the day on which the agreement or concerted practice came to an end?

(4) Is Article 81 EC to be interpreted as meaning that where the national court sees that the damages that can be awarded on the basis of national law are in any event lower than the economic advantage gained by the infringing party to the prohibited agreement or concerted practice, it should also award of its own motion punitive damages to the injured third party, making the compensable amount higher than the advantage gained by the infringing party in order to deter the adoption of agreements or concerted practices prohibited under Article 81 EC?'

21 In Case C-298/04, the Giudice di pace di Bitonto decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 81 EC to be interpreted as meaning that it renders void an agreement or concerted practice between insurance companies consisting of a mutual exchange of information which makes it possible to increase civil liability auto insurance policy premiums which are not justified by market conditions, having regard, in particular, to the fact that undertakings from several Member States took part in the agreement or concerted practice?

(2) Is Article 81 EC to be interpreted as meaning that it precludes the application of a national provision similar to that in Article 33 of Law [No 287/90] under which a claim for damages for infringement of Community and national provisions for anti-competitive arrangements must also be made by third parties before a court other than that which usually has jurisdiction for claims of similar value, thus involving a considerable increase in costs and time?

(3) Is Article 81 EC to be interpreted as meaning that it entitles third parties who have a relevant legal interest to rely on the invalidity of an agreement or practice

prohibited by that Community provision and claim damages for the harm suffered where there is a causal relationship between the agreement or concerted practice and the harm?

(4) Is Article 81 EC to be interpreted as meaning that for the purposes of the limitation period for bringing an action for damages based thereon, time begins to run from the day on which the agreement or concerted practice was adopted or the day on which the agreement or concerted practice came to an end?

(5) Is Article 81 EC to be interpreted as meaning that where the national court sees that the damages that can be awarded on the basis of national law are in any event lower than the economic advantage gained by the infringing party to the prohibited agreement or concerted practice, it should also award of its own motion punitive damages to the injured third party, making the compensable amount higher than the advantage gained by the infringing party in order to deter the adoption of agreements or concerted practices prohibited under Article 81 EC?'

22 By order of the President of the Court of 28 September 2004, Cases C-295/04 to C-298/04 were joined for the purposes of the written and oral procedure and the judgment.

Admissibility of the questions referred for a preliminary ruling

Observations submitted to the Court

23 Assitalia submits, first of all, that the summary of the factual and legal context underlying the questions referred for a preliminary ruling is so inadequate and

ambiguous that it does not enable all the parties potentially affected to set out sufficiently their observations in that regard, or the Court to provide a useful answer to those questions.

24 Secondly, Assitalia submits that the questions raised by the Giudice di pace di Bitonto are inadmissible in so far as they relate to the interpretation of a provision of the EC Treaty which is manifestly inapplicable to the cases in the main proceedings.

25 The agreement at issue in the main proceedings produced effects limited to Italy and did not therefore appreciably affect trade between Member States within the meaning of Article 81 EC (see, in particular, Joined Cases C-215/96 and C-216/96 *Bagnasco and Others* [1999] ECR I-135). Further, the non-application of Article 81 EC was not challenged before the national courts and the AGCM's decision, based on Article 2 of Law No 287/90, has become final. In addition, Article 1(1) of Law No 287/90 states that its provisions 'shall apply to agreements, abuses of a dominant position and concentrations of undertakings which do not come within the scope of application ... of Articles [81 EC] and/or [82 EC], Regulations ... or Community acts having a comparable legislative effect.'

Findings of the Court

26 In accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for by Article 234 EC it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted for a preliminary ruling

concern the interpretation of Community law, the Court is, in principle, bound to give a ruling (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-316/04 *Stichting Zuid-Hollandse Milieufederatie* [2005] ECR I-9759, paragraph 29).

27 However, the Court has also stated that, in exceptional circumstances, it is for the Court to examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, *Bosman*, cited above, paragraph 61, and *Stichting Zuid-Hollandse Milieufederatie*, cited above, paragraph 30).

28 None of those situations are present in this case.

29 In that respect, the order for reference and the written and oral observations have given the Court sufficient information to enable it to interpret the rules of Community law in relation to the situation which is the subject of the main proceedings (see, in particular, Case C-316/93 *Vaneetveld* [1994] ECR I-763, paragraph 14, and Case C-378/97 *Wijsenbeek* [1999] ECR I-6207, paragraph 21).

30 Contrary to the claims of Assitalia, it is not obvious that interpretation of Article 81 EC bears no relation to the facts of the main action or its purpose. Consequently, the objection raised by Assitalia alleging the inapplicability of that article to the cases in the main action does not relate to the admissibility of these proceedings but concerns the substance of the first question.

31 Moreover, it should be recalled that Articles 81 EC and 82 EC are a matter of public policy which must be automatically applied by national courts (see, to that effect, Case C-126/97 *Eco Swiss* [1999] ECR I-3055, paragraphs 39 and 40).

32 It follows that the questions referred for a preliminary ruling are admissible.

The first question in Cases C-295/04 to C-298/04

33 By its first question, the national court asks, in essence, whether an agreement or concerted practice, such as that at issue in the main proceedings, between insurance companies, consisting of a mutual exchange of information that makes possible an increase in civil liability auto insurance premiums not justified by market conditions, which infringes national rules on the protection of competition, may also constitute an infringement of Article 81 EC in view, in particular, of the fact that undertakings from several Member States took part in the agreement or concerted practice.

Observations submitted to the Court

34 Assitalia proposes that the Court answer that, in the light of the purely general and contrived nature of the question, it is impossible to provide a useful answer concerning the application of Article 81 EC.

35 The Italian Government submits that Article 81 EC does not apply to an agreement such as that at issue in the main proceedings. In order for anti-competitive conduct to fall within Community rules, a series of criteria which go beyond the mere participation of undertakings from different Member States must be fulfilled.

36 The Commission of the European Communities submits that Article 81 EC must be interpreted as prohibiting an agreement or concerted practice between undertakings which restricts competition where, on the basis of a set of factors of law or of fact, it is possible to foresee with a sufficient degree of probability that the agreement or concerted practice in question has an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. The fact that certain undertakings from other Member States took part in that agreement or concerted practice is not, in itself, sufficient to conclude that that agreement or concerted practice has such an effect on trade between Member States.

Findings of the Court

37 It should be stated from the outset that, contrary to Assitalia's claims, the question is sufficiently precise to enable the Court to provide a useful answer to the national court.

38 Next, in accordance with settled case-law, Community competition law and national competition law apply in parallel, since they consider restrictive practices from different points of view. Whereas Articles 81 EC and 82 EC regard them in the light of the obstacles which may result for trade between Member States, national law proceeds on the basis of considerations peculiar to it and considers restrictive

practices only in that context (see, inter alia, Case 14/68 *Wilhelm and Others* [1969] ECR 1, paragraph 3, Joined Cases 253/78 and 1/79 to 3/79 *Giry and Guerlain and Others* [1980] ECR 2327, paragraph 15, and Case C-137/00 *Milk Marque and National Farmers' Union* [2003] ECR I-7975, paragraph 61).

39 It should also be borne in mind that Articles 81(1) EC and 82 EC produce direct effects in relations between individuals and create rights for the individuals concerned which the national courts must safeguard (see Case 127/73 *BRT and SABAM* [1974] ECR 51, paragraph 16 *('BRT I')*, Case C-282/95 P *Guérin Automobiles* v *Commission* [1997] ECR I-1503, paragraph 39, and Case C-453/99 *Courage and Crehan* [2001) ECR I-6297, paragraph 23) and that the primacy of Community law requires any provision of national law which contravenes a Community rule to be disapplied, regardless of whether it was adopted before or after that rule (see, inter alia, Case C-198/01 *CIF* [2003] ECR I-8055, paragraph 48).

40 However, as is already clear from the wording of Articles 81 EC and 82 EC, in order for the Community competition rules to apply to an arrangement or abusive practice it is necessary for it to be capable of affecting trade between Member States.

41 The interpretation and application of that condition relating to effects on trade between Member States must take as its starting-point the fact that its purpose is to define, in the context of the law governing competition, the boundary between the areas respectively covered by Community law and the law of the Member States. Thus, Community law covers any agreement or any practice which is capable of affecting trade between Member States in a manner which might harm the attainment of the objectives of a single market between the Member States, in particular by sealing off national markets or by affecting the structure of competition within the common market (see, to that effect, Case 22/78 *Hugin* v *Commission* [1979] ECR 1869, paragraph 17, and Case C-475/99 *Ambulanz Glöckner* [2001] ECR I-8089, paragraph 47).

42 For an agreement, decision or practice to be capable of affecting trade between Member States, it must be possible to foresee with a sufficient degree of probability, on the basis of a set of objective factors of law or of fact, that they may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in such a way as to cause concern that they might hinder the attainment of a single market between Member States (see Case 42/84 *Remia and Others* v *Commission* [1985] ECR 2545, paragraph 22, and *Ambulanz Glöckner*, cited above, paragraph 48). Moreover, that influence must not be insignificant (Case C-306/96 *Javico* [1998] ECR I-1983, paragraph 16).

43 Thus, an effect on intra-Community trade is normally the result of a combination of several factors which, taken separately, are not necessarily decisive (see *Bagnasco and Others*, cited above, paragraph 47, and Case C-359/01 P *British Sugar* v *Commission* [2004] ECR I-4933, paragraph 27).

44 In that regard it should be stated, as the Advocate General rightly pointed out in paragraph 37 of his Opinion, that the mere fact that the participants in a national arrangement also include undertakings from other Member States is an important element in the assessment, but, taken alone, it is not so decisive as to permit the conclusion that the criterion of trade between Member States being affected has been satisfied.

45 On the other hand, the fact that an agreement, decision or concerted practice relates only to the marketing of products in a single Member State is not sufficient to exclude the possibility that trade between Member States might be affected (see Case 246/86 *Belasco and Others* v *Commission* [1989] ECR 2117, paragraph 33). An agreement, decision or concerted practice extending over the whole of the territory of a Member State has, by its very nature, the effect of reinforcing the partitioning of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about (Case 8/72 *Vereeniging van Cementhandelaren* v *Commission* [1972] ECR 977, paragraph 29, *Remia and Others*

v *Commission*, cited above, paragraph 22, and Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851, paragraph 48).

46 Further, in the case of services, the Court has already held that an influence on the pattern of trade between Member States may consist in the activities in question being conducted in such a way that their effect is to partition the common market and thereby restrict freedom to provide services, which constitutes one of the objectives of the Treaty (see Case 30/87 *Bodson* [1988] ECR 2479, paragraph 24, and *Ambulanz Glöckner*, cited above, paragraph 49).

47 It is for the national court to determine whether, in the light of the characteristics of the national market at issue, there is a sufficient degree of probability that the agreement or concerted practice at issue in the main proceedings may have an influence, direct or indirect, actual or potential, on the sale of civil liability auto insurance policies in the relevant Member State by operators from other Member States and that that influence is not insignificant.

48 However, when giving a preliminary ruling the Court may, where appropriate, provide clarification designed to give the national court guidance in its interpretation (see, inter alia, Case C-79/01 *Payroll and Others* [2002] ECR I-8923, paragraph 29).

49 In that regard, according to the case-law of the Court, since the market concerned is susceptible to the provision of services by operators from other Member States, the members of a national price cartel can retain their market share only if they defend themselves against foreign competition (see, as regards imports, *Belasco and Others* v *Commission*, paragraph 34, and *British Sugar* v *Commission*, paragraph 28, both cited above).

50 The national court's decision indicates that the AGCM observed that the market for civil liability auto insurance premiums has considerable barriers to entry which have arisen primarily due to the need to set up an efficient distribution network and a network of centres for the settlement of accident claims throughout Italy. However, the national court also points out that insurance companies from other Member States but with activities in Italy also took part in the agreement ruled unlawful by the AGCM. It therefore appears that the market concerned is susceptible to the provision of services by insurance companies from other Member States, although such barriers make the provision of those services more difficult.

51 In such circumstances, it is a matter, in particular, for the national court to examine whether the mere existence of the agreement or concerted practice was capable of having a deterrent effect on insurance companies from other Member States without activities in Italy, in particular by enabling the coordination and fixing of civil liability auto insurance premiums at a level at which the sale of such insurance by those companies would not be profitable (see, to that effect, *British Sugar*, cited above, paragraphs 29 and 30).

52 The answer to the first question in Joined Cases C-295/04 to C-298/04 must therefore be that an agreement or concerted practice, such as that at issue in the main proceedings, between insurance companies, consisting of a mutual exchange of information that makes possible an increase in civil liability auto insurance premiums not justified by market conditions, which infringes national rules on the protection of competition, may also constitute an infringement of Article 81 EC if, in the light of the characteristics of the national market at issue, there is a sufficient degree of probability that the agreement or concerted practice at issue may have an influence, direct or indirect, actual or potential, on the sale of those insurance policies in the relevant Member State by operators established in other Member States and that that influence is not insignificant.

The second question in Cases C-295/04 to C-297/04 and the third question in Case C-298/04

53 By this question, which should be examined before the second question in Case C-298/04, the national court asks, essentially, whether Article 81 EC is to be interpreted as entitling any individual to rely on the invalidity of an agreement or practice prohibited under that article and, where there is a causal relationship between that agreement or practice and the harm suffered, to claim damages for that harm.

Observations submitted to the Court

54 Assitalia proposes that the Court answer in the affirmative, noting, however, that in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules observe the principles of equivalence and effectiveness (see *Courage and Crehan*, cited above, paragraph 29).

55 According to the German Government and the Commission, Article 81 EC should be interpreted as entitling third parties who have a relevant legal interest to rely on the invalidity of an agreement or practice prohibited under that Community provision and claim damages for the harm suffered where there is a causal relationship between the agreement or concerted practice and the harm.

Findings of the Court

56 First, it should be noted that Article 81(2) EC provides that any agreements or decisions prohibited pursuant to Article 81 EC are void.

57 According to settled case-law, that principle of invalidity can be relied on by anyone, and the courts are bound by it once the conditions for the application of Article 81(1) EC are met and so long as the agreement concerned does not justify the grant of an exemption under Article 81(3) EC (see on the latter point, inter alia, Case 10/69 *Portelange* [1969] ECR 309, paragraph 10). Since the invalidity referred to in Article 81(2) EC is absolute, an agreement which is null and void by virtue of this provision has no effect as between the contracting parties and cannot be invoked against third parties (Case 22/71 *Béguelin* [1971] ECR 949, paragraph 29). Moreover, it is capable of having a bearing on all the effects, either past or future, of the agreement or decision concerned (see Case 48/72 *Brasserie de Haecht* [1973] ECR 77, paragraph 26, and *Courage and Crehan*, cited above, paragraph 22).

58 Further, as was noted in paragraph 39 of this judgment, Article 81(1) EC produces direct effects in relations between individuals and creates rights for the individuals concerned which the national courts must safeguard.

59 It follows that any individual can rely on a breach of Article 81 EC before a national court (see *Courage and Crehan*, cited above, paragraph 24) and therefore rely on the invalidity of an agreement or practice prohibited under that article.

60 Next, as regards the possibility of seeking compensation for loss caused by a contract or by conduct liable to restrict or distort competition, it should be recalled that the

full effectiveness of Article 81 EC and, in particular, the practical effect of the prohibition laid down in Article 81(1) EC would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition (*Courage and Crehan*, cited above, paragraph 26).

61 It follows that any individual can claim compensation for the harm suffered where there is a causal relationship between that harm and an agreement or practice prohibited under Article 81 EC.

62 In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 27, and *Courage and Crehan*, cited above, paragraph 29).

63 Accordingly, the answer to the second question in Cases C-295/04 to C-297/04 and the third question in Case C-298/04 must be that Article 81 EC must be interpreted as meaning that any individual can rely on the invalidity of an agreement or practice prohibited under that article and, where there is a causal relationship between the latter and the harm suffered, claim compensation for that harm.

64 In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the detailed rules governing the exercise

of that right, including those on the application of the concept of 'causal relationship', provided that the principles of equivalence and effectiveness are observed.

The second question in Case C-298/04

65 By this question, the national court asks, essentially, whether Article 81 EC must be interpreted as precluding a national provision such as Article 33(2) of Law No 287/90 under which third parties must bring their actions for damages for infringement of Community and national competition rules before a court other than that which usually has jurisdiction in actions for damages of similar value, thereby involving a considerable increase in costs and time.

Observations submitted to the Court

66 Assitalia observes that Article 33(2) of Law No 287/90 applies only to actions for damages based on infringement of national provisions protecting competition and that, conversely, actions for damages based on infringement of Articles 81 EC and 82 EC fall, in the absence of express legal provisions, within the competence of the ordinary courts.

67 Accordingly, in the light of the principle of the procedural authority of the Member States, if the national court were called upon to review observance of the principles of equivalence and effectiveness in relation to Article 33 of Law No 287/90, it could not fail to observe that the legal position based on Community law is better

protected, having regard to the guarantee of two levels of jurisdiction, than that based on national law.

68 The Italian Government submits that it is exclusively a matter for the administration of justice in each of the Member States to confer jurisdiction to hear the disputes at issue, subject to the principles of equivalence and effectiveness.

69 The Commission argues that a national provision laying down rules on competence for civil actions based on infringement of Community competition rules different from those applicable to similar domestic actions is compatible with Community law where the former are not less favourable than the latter and do not render practically impossible or excessively difficult the exercise of rights conferred on individuals by Community law.

Findings of the Court

70 First, as for whether Article 33(2) of Law No 287/90 applies only to actions for damages based on infringement of national competition rules or also to actions for damages based on infringement of Articles 81 EC and 82 EC, it is not for the Court to interpret national law or to assess its application in the present case (see, inter alia, Case C-435/93 *Dietz* [1996] ECR I-5223, paragraph 39, and Case C-265/04 *Bouanich* [2006] ECR I-923, paragraph 51).

71 Secondly, as follows from paragraph 62 of this judgment, in the absence of Community rules governing the matter, it is for the domestic legal system of each

Member State to designate the courts and tribunals having jurisdiction and to prescribe the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).

72 The answer to the second question in Case C-298/04 must therefore be that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction to hear actions for damages based on an infringement of the Community competition rules and to prescribe the detailed procedural rules governing those actions, provided that the provisions concerned are not less favourable than those governing actions for damages based on an infringement of national competition rules and that those national provisions do not render practically impossible or excessively difficult the exercise of the right to seek compensation for the harm caused by an agreement or practice prohibited under Article 81 EC.

The third question in Cases C-295/04 to C-297/04 and the fourth question in Case C-298/04

73 By this question, the national court asks, in essence, whether Article 81 EC must be interpreted as precluding a national rule which provides that the limitation period for seeking compensation for harm caused by an agreement or practice prohibited under Article 81 EC begins to run from the day on which that prohibited agreement or practice was adopted.

Observations submitted to the Court

74 Assitalia argues that, in accordance with the principle of the procedural authority of the Member States, it is for the national courts to specify limitation periods and detailed rules for their application, in the light of their own legal systems, in conformity with the principles of equivalence and effectiveness (see Case C-312/93 *Peterbroeck* [1995] ECR I-4599).

75 The Italian Government submits that it is from the day on which the agreement, decision or concerted practice was adopted that protection against its negative effects is effective. It is therefore from that time that the limitation period for the claim for damages based on Article 81 EC begins to run.

76 The Commission argues that, in the absence of Community provisions governing the matter, it is the legal system of each Member State which governs questions such as the expiry of the limitation period for bringing actions based on infringement of Community competition rules, provided that that period is not less favourable than that applicable to similar domestic actions and that it does not render practically impossible or excessively difficult the exercise of rights conferred by Community law.

Findings of the Court

77 As was pointed out in paragraph 62 of this judgment, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State

to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules observe the principles of equivalence and effectiveness.

78 A national rule under which the limitation period begins to run from the day on which the agreement or concerted practice was adopted could make it practically impossible to exercise the right to seek compensation for the harm caused by that prohibited agreement or practice, particularly if that national rule also imposes a short limitation period which is not capable of being suspended.

79 In such a situation, where there are continuous or repeated infringements, it is possible that the limitation period expires even before the infringement is brought to an end, in which case it would be impossible for any individual who has suffered harm after the expiry of the limitation period to bring an action.

80 It is for the national court to determine whether such is the case with regard to the national rule at issue in the main proceedings.

81 The answer to the third question in Cases C-295/04 to C-297/04 and the fourth question in Case C-298/04 must therefore be that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the limitation period for seeking compensation for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed.

82 In that regard, it is for the national court to determine whether a national rule which provides that the limitation period for seeking compensation for harm caused by an

agreement or practice prohibited under Article 81 EC begins to run from the day on which that prohibited agreement or practice was adopted, particularly where it also imposes a short limitation period that cannot be suspended, renders it practically impossible or excessively difficult to exercise the right to seek compensation for the harm suffered.

The fourth question in Cases C-295/04 to C-297/04 and the fifth question in Case C-298/04

83 By this question, the national court asks, in essence, whether Article 81 EC must be interpreted as requiring national courts to award punitive damages, greater than the advantage obtained by the offending operator, thereby deterring the adoption of agreements or concerted practices prohibited under that article.

Observations submitted to the Court

84 Assitalia submits that the question regarding recognition of punitive damages to third parties adversely affected by anti-competitive behaviour falls once again within the scope of the principle of the procedural authority of the Member States. In so far as there are no Community provisions on punitive damages, it is for the legal system of each Member State to set the criteria for determining the extent of the damages,

provided that the principles of equivalence and effectiveness are observed (see to that effect, inter alia, Joined Cases C-46/93 and C-48/93 *Brasserie du pêcheur and Factortame* [1996] ECR I-1029, paragraphs 89 and 90).

85 The Italian Government submits that punitive damages are foreign to the Italian legal system and to the rationale of compensation. The latter is designed to make good proven harm suffered by the victim. In no circumstances can it have a punitive or repressive function, since that function falls within the scope of statute.

86 The German Government considers that that question must be answered in the negative.

87 In the opinion of the Austrian Government, in order to guarantee application of Article 81 EC it is not necessary to award punitive damages automatically to injured third parties since the enrichment of the injured person is neither contemplated nor necessary. The majority of the legal systems of the Member States do not attach legal consequences of that type to an infringement of Article 81(1) EC. They provide instead for rights to damages and prohibition, which suffice for the effective application of Article 81 EC.

88 The Commission takes the view that, in the absence of Community provisions governing the matter, it is the legal system of each Member State which governs questions such as that of the award for harm flowing from infringement of the Community competition rules, provided that the compensation for the harm in such a case is not less favourable for the injured person than the compensation which he could have obtained by similar domestic actions.

Findings of the Court

89 In accordance with settled case-law, the national courts whose task it is to apply the provisions of Community law in areas within their jurisdiction must ensure that those rules take full effect and must protect the rights which they confer on individuals (see, inter alia, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 16, Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 19, and *Courage and Crehan*, cited above, paragraph 25).

90 As was pointed out in paragraph 60 of this judgment, the full effectiveness of Article 81 EC and, in particular, the practical effect of the prohibition laid down in Article 81(1) EC would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition.

91 Indeed, the existence of such a right strengthens the working of the Community competition rules and discourages agreements or practices, frequently covert, which are liable to restrict or distort competition. From that point of view, actions for damages before the national courts can make a significant contribution to the maintenance of effective competition in the Community (*Courage and Crehan*, cited above, paragraph 27).

92 As to the award of damages and the possibility of an award of punitive damages, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to set the criteria for determining the extent of the damages, provided that the principles of equivalence and effectiveness are observed.

93 In that respect, first, in accordance with the principle of equivalence, it must be possible to award particular damages, such as exemplary or punitive damages, pursuant to actions founded on the Community competition rules, if such damages may be awarded pursuant to similar actions founded on domestic law (see, to that effect, *Brasserie du pêcheur and Factortame*, cited above, paragraph 90).

94 However, it is settled case-law that Community law does not prevent national courts from taking steps to ensure that the protection of the rights guaranteed by Community law does not entail the unjust enrichment of those who enjoy them (see, in particular, Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 14, Joined Cases C-441/98 and C-442/98 *Michaïlidis* [2000] ECR I-7145, paragraph 31, and *Courage and Crehan*, cited above, paragraph 30).

95 Secondly, it follows from the principle of effectiveness and the right of any individual to seek compensation for loss caused by a contract or by conduct liable to restrict or distort competition that injured persons must be able to seek compensation not only for actual loss (*damnum emergens*) but also for loss of profit (*lucrum cessans*) plus interest.

96 Total exclusion of loss of profit as a head of damage for which compensation may be awarded cannot be accepted in the case of a breach of Community law since, especially in the context of economic or commercial litigation, such a total exclusion of loss of profit would be such as to make reparation of damage practically impossible (see *Brasserie du pêcheur and Factortame*, cited above, paragraph 87, and Joined Cases C-397/98 and C-410/98 *Metallgesellschaft and Others* [2001] ECR I-1727, paragraph 91).

97 As to the payment of interest, the Court pointed out in paragraph 31 of Case C-271/91 *Marshall* [1993] ECR I-4367 that an award made in accordance with the applicable national rules constitutes an essential component of compensation.

98 It follows that the answer to the fourth question in Cases C-295/04 to C-297/04 and the fifth question in Case C-298/04 must be that, in the absence of Community rules governing that field, it is for the domestic legal system of each Member State to set the criteria for determining the extent of the damages for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed.

99 Therefore, first, in accordance with the principle of equivalence, if it is possible to award specific damages, such as exemplary or punitive damages, in domestic actions similar to actions founded on the Community competition rules, it must also be possible to award such damages in actions founded on Community rules. However, Community law does not prevent national courts from taking steps to ensure that the protection of the rights guaranteed by Community law does not entail the unjust enrichment of those who enjoy them.

100 Secondly, it follows from the principle of effectiveness and the right of individuals to seek compensation for loss caused by a contract or by conduct liable to restrict or distort competition that injured persons must be able to seek compensation not only for actual loss (*damnum emergens*) but also for loss of profit (*lucrum cessans*) plus interest.

Costs

101 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 (Third Chamber) hereby rules:

1. **An agreement or concerted practice, such as that at issue in the main proceedings, between insurance companies, consisting of a mutual exchange of information that makes possible an increase in premiums for compulsory civil liability insurance relating to accidents caused by motor vehicles, vessels and mopeds, not justified by market conditions, which infringes national rules on the protection of competition, may also constitute an infringement of Article 81 EC if, in the light of the characteristics of the national market at issue, there is a sufficient degree of probability that the agreement or concerted practice at issue may have an influence, direct or indirect, actual or potential, on the sale of those insurance policies in the relevant Member State by operators established in other Member States and that that influence is not insignificant.**

2. **Article 81 EC must be interpreted as meaning that any individual can rely on the invalidity of an agreement or practice prohibited under that article and, where there is a causal relationship between the latter and the harm suffered, claim compensation for that harm.**

In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the detailed rules

governing the exercise of that right, including those on the application of the concept of 'causal relationship', provided that the principles of equivalence and effectiveness are observed.

3. **In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction to hear actions for damages based on an infringement of the Community competition rules and to prescribe the detailed procedural rules governing those actions, provided that the provisions concerned are not less favourable than those governing actions for damages based on an infringement of national competition rules and that those national provisions do not render practically impossible or excessively difficult the exercise of the right to seek compensation for the harm caused by an agreement or practice prohibited under Article 81 EC.**

4. **In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to prescribe the limitation period for seeking compensation for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed.**

In that regard, it is for the national court to determine whether a national rule which provides that the limitation period for seeking compensation for harm caused by an agreement or practice prohibited under Article 81 EC begins to run from the day on which that prohibited agreement or practice was adopted, particularly where it also imposes a short limitation period that cannot be suspended, renders it practically impossible or excessively difficult to exercise the right to seek compensation for the harm suffered.

5. **In the absence of Community rules governing that field, it is for the domestic legal system of each Member State to set the criteria for determining the extent of the damages for harm caused by an agreement or practice prohibited under Article 81 EC, provided that the principles of equivalence and effectiveness are observed.**

Therefore, first, in accordance with the principle of equivalence, if it is possible to award particular damages, such as exemplary or punitive damages, in domestic actions similar to actions founded on the Community competition rules, it must also be possible to award such damages in actions founded on Community rules. However, Community law does not prevent national courts from taking steps to ensure that the protection of the rights guaranteed by Community law does not entail the unjust enrichment of those who enjoy them.

Secondly, it follows from the principle of effectiveness and the right of individuals to seek compensation for loss caused by a contract or by conduct liable to restrict or distort competition that injured persons must be able to seek compensation not only for actual loss (*damnum emergens*) but also for loss of profit (*lucrum cessans*) plus interest.

[Signatures]