

IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Referral No RFOJ2026/001
High Court of Belize Claim No 592 of 2024

Referral for a determination pursuant to Article 214 of the Revised Treaty of
Chaguaramas from the High Court of Belize

Between

G Anwar Barrow	First Claimant
Acuity Holdings Limited	Second Claimant
Conservation Alliance Limited	Third Claimant
Ibid Limited	Fourth Claimant
Ohana Limited	Fifth Claimant
Paree Limited	Sixth Claimant
Proxie Limited	Seventh Claimant
Southern Renewable Energy Limited	Eighth Claimant

And

Financial Services Commission	First Respondent
The Attorney General of Belize	Second Respondent

And

Carissa Rodulfo	Amicus Curiae
------------------------	---------------

Caribbean Community law – Referral to the Caribbean Court of Justice – Community competition policy – Jurisdiction of the Caribbean Court of Justice to hear referrals – Whether requirements that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents constitute a breach of art 177 of the Revised Treaty of Chaguaramas – Revised Treaty of Chaguaramas, arts 7, 9, 168, 169, 170, 177.

SUMMARY

This matter arises from constitutional proceedings before the High Court of Justice of Belize ('the High Court'). The Claimants, a Belizean businessman and seven Belizean registered companies, challenged the application of statutory provisions which require companies, linked to other Member States in the Caribbean Community ('CARICOM'), to retain a

registered agent in Belize, to file documents only through that agent, and to pay the prescribed statutory fees in United States dollars. The Claimants sought a declaration that the requirements to retain and file documents through a local registered agent imposed unequal conditions relative to purely domestic companies engaged in equivalent transactions, thereby placing them at a competitive disadvantage, as prohibited by Article 177 of the Revised Treaty of Chaguaramas ('RTC').

An application was made to the High Court judge to refer a question to the Caribbean Court of Justice ('the Court' or 'this Court'). The judge stayed the proceedings and referred the following question to this Court:

Does the requirement that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents breach the Caribbean Community Act which incorporates the Treaty of Chaguaramas into Belize law in that the requirement amounts to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage as prohibited by Article 177 of the Treaty of Chaguaramas? ('the referred question')

The Claimants and Respondents to the domestic proceedings and the Amicus Curiae were asked to address the Court on two issues: (i) the Court's jurisdiction to entertain the referral request; and (ii) given the question referred, how, in the context of Chapter Eight of the RTC, should Article 177(2)(d) of the Treaty be interpreted.

On the jurisdiction issue, this Court held that, by virtue of Articles 211 and 214 of the RTC, and Article XII of the Agreement Establishing the Caribbean Court of Justice, incorporated by the relevant domestic statutes, (1) only the CCJ may give guidance on the interpretation and application of the provisions of the RTC, and (2) for the CCJ to have referral jurisdiction, the request must originate from a national court or tribunal of a Member State that is seised of an issue whose resolution involves a question concerning the interpretation or application of the RTC ('Article 214 conditions of jurisdiction').

The Court emphasised three benchmarks in establishing the CCJ's referral jurisdiction. First, the Court must be satisfied that the criteria outlined in Article 214 of the RTC are met. Second, the determination of whether a referral is necessary lies with the national court or tribunal seised of the dispute. Where a national court or tribunal determines that the referral is necessary to deliver judgment, the CCJ is, in principle, bound to provide the requested assistance in the spirit of judicial collaboration. Third, the CCJ retains a residual power, as guardian of its jurisdiction, to decline to answer a reference, even where the Article 214 conditions of jurisdiction are satisfied. That power is to be exercised only in the most exceptional of circumstances.

In applying the Article 214 conditions, the Court held that the referral was from a national court of a Member State that was seised of an issue whose resolution involved a question concerning the interpretation of Article 177 of the RTC. The Court found that the existence of overlapping RTC and constitutional issues in the domestic litigation did not vitiate its jurisdiction. The Court reiterated that domestic law, including constitutional provisions, cannot act as justification for the failure by a Member State to perform obligations under a treaty. The issues regarding the interpretation and application of the RTC would remain live irrespective of the outcome of the constitutional issues. Accordingly, the Court concluded that it had jurisdiction to answer the referred question.

Turning to the referred question, the Court clarified that while, in its original jurisdiction, it could not provide authoritative guidance on whether Belizean domestic legislation was breached, it was competent to interpret Article 177 of the RTC. The Court therefore considered whether the requirement for CARICOM-incorporated and linked companies to maintain and file documents through local registered agents amounted to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions, thereby causing a competitive disadvantage, as prohibited by Article 177 of the RTC.

The Court undertook a contextual interpretation of Article 177, within Chapter Eight of the RTC that establishes the Community Competition Policy, the goal of which is to prevent anti-competitive business conduct that would frustrate the benefits of the CARICOM Single

Market and Economy. It emphasised that the prohibition of anti-competitive business conduct under Article 177 is directed at ‘business conduct of enterprises’. In relation to Article 177(2)(d), which refers to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage, the Court held that this provision is concerned with discriminatory behaviour of an enterprise that distorts competition between its trade partners.

The Court held that Article 177 *per se* is concerned with the conduct of enterprises, not regulatory measures of the State. Applying this interpretation, the Court concluded that the requirements imposed in the instant matter are regulatory measures enacted by the State and do not arise from the business conduct of an enterprise. While acknowledging that State measures capable of distorting competition might be scrutinised under other provisions of the RTC, the Court emphasised that the referred question does not request interpretative assistance in relation to those other provisions.

In its ruling, the Court answered the question as follows:

Article 177 of the RTC does not prohibit a regulatory requirement that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents. Article 177 is concerned *per se* with the anti-competitive business conduct of enterprises and not with the regulatory measures of a Member State.

Cases referred to:

Amministrazione delle finanze dello Stato v Denavit italiana Srl (Case 61/79) EU:C:1980:100, [1980] ECR 1205; *Attanasio Group Srl v Comune di Carbognano* (Case C-384/08) EU:C:2010:133, [2010] ECR I-2055; *British Airways plc v European Commission* (Case C-95/04) EU:C:2007:166, [2007] ECR I-2331; *Centro Europa 7 Srl v Ministero delle Comunicazioni e Autorità per le garanzie nelle comunicazioni* (Case C-380/05) EU:C:2008:59, [2008] ECR I-00349; *Eli Lilly and Co v Genentech Inc* (Case C-239/19) EU:C:2019:687; *Foglia v Novello (No 2)* (Case 244/80) EU:C:1981:302, [1981] ECR 3045; *HP Bulmer Ltd v J Bollinger SA* [1974] Ch 401; *Hummingbird Rice Mills Ltd v Suriname* [2012] CCJ 1 (OJ), (2012) 79 WIR 448; *London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain* [2022] 4 WLR 39; *Lourenço Dias v Director*

da Alfândega do Porto (Case C-343/90) EU:C:1992:327, [1992] ECR I-4673; *Mau v Bundesanstalt für Arbeit* (Case C-160/01) EU:C:2003:280, [2003] ECR I-4791; *Meilicke v ADV/ORGA F A Meyer AG* (Case C-83/91) EU:C:1992:332, [1992] ECR I-4871; *MEO-Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência* (Case C-525/16) EU:C:2018:270, [2018] 4 CMLR 1589; *NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* (Case 26/62) EU:C:1963:1, [1963] ECR 1; *PreussenElektra AG v Schleswag AG* (Case C-379/98) EU:C:2001:160, [2001] ECR I-2099; *Ramsamoj v State of Suriname* [2026] CCJ 2 (OJ); *Rock Hard Distribution Ltd v State of Trinidad and Tobago* [2022] CCJ 2 (OJ); *State of Belize v State of Trinidad and Tobago* [2022] CCJ 1 (OJ); *Stoilov i Ko EOOD v Nachalnik na Mitnitsa Stolichna* (C-180/12) EU:C:2013:693; *Trinidad Cement Ltd v Co-operative Republic of Guyana* [2009] CCJ 1 (OJ), (2009) 74 WIR 302; *Union Royale Belge des Societes de Football Association ASBL v Bosman* (Case C-415/93) EU:C:1995:463, [1995] ECR I-4921; *Van Eycke v ASPA NV* (Case 267/86) EU:C:1988:427, [1988] ECR 4769.

Legislation referred to:

Belize – Belize Companies Act 2022, Act No 11 of 2022, Belize Companies Regulations 2022, SI 2022/152, Belize Constitution Act, CAP 4, Caribbean Community Act, CAP 17, Caribbean Court of Justice Act, CAP 92, Senior Courts Act 2022, Act No 72 of 2022.

Treaties and International Materials referred to:

Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319; Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C 115/47; Consolidated Version of Treaty Establishing the European Community [2002] OJ C325/33; Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 1 January 2006) 2259 UNTS 293; Treaty Establishing the European Economic Community (adopted 25 March 1957, entered into force 1 January 1958) 4300 UNTS 298; Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

Other sources referred to:

Caribbean Court of Justice (Original Jurisdiction) Rules 2024; Fenger N and Broberg M, *Preliminary References to the European Court of Justice* (2nd edn, OUP 2014).

THE COURT,

composed of W Anderson, President and P Jamadar, C Ononaiwu, C Eboe-Osuji and A Bulkan, Judges

having regard to the referral form filed at the Court on 3 March 2026, together with the written submissions of the Claimants and Respondents filed on 21 April 2026, the written submissions in reply of the Claimants and Respondents filed on 28 April 2026 and the written submissions of the Amicus Curiae filed on 15 May 2026 and to the public hearing held on 19 May 2026

and after considering the notes and oral observations of:

- **the Claimants**, by Mr Godfrey P Smith SC, appearing with Mr Hector D Guerra and Mr Edgar G Lord, Attorneys-at-Law
- **Financial Services Commission**, by Mr Eamon H Courtenay SC, appearing with Ms Pricilla J Banner SC and Ms Stacey Castillo Ysaguirre, Attorneys-at-Law
- **the Attorney General of Belize**, by Ms Samantha Matute, Deputy Solicitor General, appearing with Ms Alea Gomez, Crown Counsel, Attorneys-at-Law
- **Amicus Curiae**, Ms Carissa Rodulfo appearing with Mr Mikhail Charles, Attorneys-at-Law

issues on **3 July 2026**, the following:

REFERRAL RULING

Introduction

[1] This is a referral by the High Court of Belize of a question concerning the interpretation of Article 177 of the Revised Treaty of Chaguaramas ('RTC' or 'the Treaty')¹ for the determination of the Caribbean Court of Justice ('CCJ' or 'this Court'). It is the first occasion on which a national court or tribunal has used the referral procedure under Article 214 of the Treaty, which enables collaboration

¹ Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 1 January 2006) 2259 UNTS 293.

between the CCJ and national courts and tribunals towards achieving uniformity in the interpretation and application of Caribbean Community ('CARICOM') law.

Background

[2] The referred question arises out of proceedings instituted by the Claimants against the Financial Services Commission ('the First Respondent'), a public body charged with managing the operation of the Belize Companies and Corporate Affairs Registry ('the Registry'), and the Attorney General of Belize ('the Second Respondent'). The First Claimant is a Belizean businessman who owns and operates businesses in Belize and in other CARICOM Member States. The Second Claimant, a Belize-registered company, is the surviving company following a merger transaction involving 13 constituent companies and is beneficially owned by the First Claimant. The Third to Eighth Claimants are Belize-registered companies which are primarily engaged in general corporate services save for the Eighth Claimant which is engaged primarily in the business of research and investment in renewable energy.

[3] The Claimants challenge, *inter alia*, the First Respondent's application to them of ss 80(2), 82(4) and 294 of the Belize Companies Act 2022 and reg 53 and sch III to the Companies Regulations. They contend that, as applied, these provisions require domestic companies with shareholders and directors from CARICOM jurisdictions, and companies incorporated in CARICOM countries, to (i) maintain a registered agent in Belize, (ii) file documents only through that agent, and (iii) pay prescribed statutory fees in United States dollars rather than in Belize dollars. The Claimants maintain that the combined effect of these measures is to compel CARICOM-incorporated and linked companies to retain Belize-based registered agent services and pay fees in United States dollars as a condition of transacting with the Registry. They maintain that the measures thereby impose unequal and competitively disadvantageous conditions on CARICOM-incorporated and linked companies relative to purely domestic companies engaged in equivalent economic activity.

[4] Among the relief sought by the Claimants is a declaration that the requirement that, (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents is in breach of the Caribbean Community Act which incorporates the RTC into Belize law, in that the requirement amounts to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions, thereby causing a competitive disadvantage as prohibited by Article 177 of the Treaty.

Referral to the Caribbean Court of Justice

[5] On 30 January 2026, the First Respondent filed in the High Court an Application for Referral of a Question to the CCJ, arising from the Claimants' allegation of breach of Article 177 of the Treaty. The High Court considered s 96(3) of the Belize Constitution which domesticates the obligation arising from Articles 211 and 214 of the RTC and found that the effect of those provisions is that the court 'is obliged to refer Treaty issues to the CCJ for resolution before entering a judgment in a case in which a genuine Treaty issue is live'.² Given that the Claimants alleged a breach of the Treaty and the fact that the referral obligation is mandatory, the High Court decided to refer a question to the CCJ for determination.

[6] By order dated 26 February 2026, and filed on 3 March 2026, the High Court referred the following question to the Court:

Does the requirement that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents breach of [sic] the Caribbean Community Act which incorporates the Treaty of Chaguaramas into Belize law in that the requirement amounts to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing engagements in commercial transactions [sic] thereby causing a competitive disadvantage as prohibited by Article 177 of the Treaty of Chaguaramas?

² Record of Appeal, 'Referral form' [19].

- [7] The High Court suspended the pending proceedings to await the CCJ's determination.
- [8] On 27 April 2026, the Court received an application, pursuant to r 18.1 of the Caribbean Court of Justice Original Jurisdiction Rules 2024 ('the Rules'), from Ms Carissa Rodulfo, an Attorney-at-Law and academic researcher in competition law, for leave to assist the Court as Amicus Curiae. Further to an order of the Court dated 14 May 2026, Ms Rodulfo filed an application on 15 May 2026 for an extension of time, pursuant to r 6.4 of the Rules, to file the application for leave to assist the Court as Amicus Curiae. Having considered both applications and heard the parties thereon, the Court, by order dated 15 May 2026, granted Ms Rodulfo the extension of time and leave to assist the Court as Amicus Curiae.
- [9] At the direction of the Court, the parties and Amicus Curiae filed written submissions on two issues, namely: (i) the Court's jurisdiction to entertain the referral request; and (ii) given the question referred, how, in the context of Chapter Eight of the RTC, should Article 177(2)(d) of the Treaty be interpreted.
- [10] The hearing of the matter was held on 19 May 2026.

Jurisdiction to Entertain the Referral Request

- [11] The jurisdiction of this Court to hear referrals from national courts or tribunals is grounded in Articles 211 and 214 of the RTC. These Articles provide as follows:

Article 211 Jurisdiction of the Court in Contentious Proceedings

1. Subject to this Treaty, the Court shall have compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty, including:

- (a) disputes between the Member States parties to the Agreement;
- (b) disputes between the Member States parties to the Agreement and the Community;
- (c) *referrals from national courts of the Member States parties to the Agreement;*
- (d) applications by persons in accordance with Article 222, concerning the interpretation and application of this Treaty.

2. For the purpose of this Chapter, “national courts” includes the Eastern Caribbean Supreme Court (emphasis added).

Article 214 Referral to the Court

Where a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.

[12] The Agreement Establishing the Caribbean Court of Justice³ (‘CCJ Agreement’), in Article XII, also grants the CCJ jurisdiction over matters in contentious proceedings, similar to Article 211 of the RTC; and Article XIV grants jurisdiction to hear referrals with language similar to that used in Article 214 of the RTC. The only obvious difference is the substitution of ‘Member States’ and ‘Member State’ in the RTC with ‘Contracting Parties’ and ‘Contracting Party’ in the CCJ Agreement. These two treaty jurisdictional regimes are reinforced by Part 10 of the Rules, which provide details on how to commence referral proceedings before the Court.

[13] In Belize, the RTC is incorporated into domestic law by virtue of the Caribbean Community Act⁴ and the CCJ Agreement is incorporated by virtue of the Caribbean

³ Agreement Establishing the Caribbean Court of Justice (adopted 14 February 2001, entered into force 23 July 2002) 2255 UNTS 319.

⁴ CAP 17.

Court of Justice Act.⁵ Further, s 96(3) of the Constitution of Belize provides for the referral of questions from the High Court (which by virtue of the Senior Courts Act 2022 replaced the Supreme Court) or the Court of Appeal to the CCJ, as follows:

3. Where the Supreme Court or the Court of Appeal is seised of an issue the resolution of which involves a question concerning the interpretation or application of the Treaty, the Supreme Court or the Court of Appeal, as the case may be, shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Caribbean Court of Justice for determination before delivering judgment.

[14] From these treaty and legislative provisions, the following first principle emerges: only the CCJ may give guidance on the interpretation and application of the provisions of the RTC. This exclusivity of interpretative power does not, by itself, grant the Court jurisdiction to hear referrals pursuant to Article 214 of the RTC. Jurisdiction over referrals obtains only where (i) a national court or tribunal (ii) of a Member State (iii) is seised of an issue whose resolution involves a question concerning the interpretation or application of the RTC, and (iv) refers the issue to the Court. Satisfaction of these four conditions under Article 214 is necessary for the CCJ's jurisdiction over referrals.

[15] The only party to object to the CCJ's jurisdiction to decide upon the question referred in this case is the First Respondent. The First Respondent argues that the CCJ lacks jurisdiction because the referral request is premature and not necessary at this stage for the High Court to deliver judgment in the main proceedings. Relying on jurisprudence from the Court of Justice of the European Union ('CJEU') and the United Kingdom,⁶ the First Respondent submits that when a question is referred to the CCJ, the Court will (i) review the question in the context of the facts and issues to be determined by the national court, (ii) identify the provisions of the RTC said

⁵ CAP 92.

⁶ Case C-384/08 *Attanasio Group Srl v Comune di Carbognano* EU:C:2010:133, [2010] ECR I-2055; Case C-239/19 *Eli Lilly and Co v Genentech Inc* EU:C:2019:687; Case C-380/05 *Centro Europa 7 Srl v Ministero delle Comunicazioni e Autorità per le garanzie nelle comunicazioni* EU:C:2008:59, [2008] ECR I-00349; *HP Bulmer Ltd v J Bollinger SA* [1974] Ch 401; *London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain* [2022] 4 WLR 39.

to be engaged, (iii) ensure the question referred concerns only the interpretation of the identified provisions and not the local law from the Member State, (iv) determine whether the answer to the question is necessary for delivery of judgment in the main proceedings, and (v) ensure that the main proceedings are at a stage where the CCJ's ruling is required and is not hypothetical or academic.

The 'Necessity' Question

[16] Article 214 requires that a determination be made on whether there exists an issue whose resolution involves a question concerning the interpretation or application of the RTC. That determination must be made by the CCJ pursuant to the clear wording of the provision and to the Court's exclusive jurisdiction to decide on the interpretation and application of the RTC. Article 214 specifically denotes that it is for the *national court or tribunal* to decide whether referral of the issue is necessary to the resolution of the case before it. This is inevitably a limited competence of the national court or tribunal. If the national court or tribunal considers referral necessary, then it must make the referral and await the interpretative guidance before giving judgment. There is no discretion as exists in the lower courts in the European Union where a referral might be appropriate but need not be made;⁷ in CARICOM, where the interpretation of an issue is necessary to the resolution of the proceedings, the national court or tribunal is obliged to refer the issue. There is only a limited discretion in the national courts and tribunals in CARICOM as was explained *obiter dicta* in *Hummingbird Rice Mills Ltd v Suriname*⁸ at [26]:⁹

[...] the court wishes to use this opportunity to remind national courts and tribunals of their obligations under art 214 of the Revised Treaty which states that where resolution of an issue involves a question concerning the interpretation or application of the Treaty, that court or tribunal hearing the matter must refer the question to this court for determination before delivering judgment, if such a court or tribunal 'considers that a decision on the question is necessary to enable it to deliver judgment'. A national court

⁷ *HP Bulmer Ltd v J Bollinger SA* [1974] Ch 401 at 420. See '7. The discretion to refer or not to refer'.

⁸ [2012] CCJ 1 (OJ), (2012) 79 WIR 448.

⁹ See also *State of Belize v State of Trinidad and Tobago* [2022] CCJ 1 (OJ) at [41], [126].

or tribunal has, of course, a measure of discretion in considering the necessity of a referral but that discretion is a limited one.

[17] Returning to the text of Article 214, it will be recalled that the requirement is that the resolution of an issue in the national court or tribunal ‘involves a question concerning the interpretation or application’ of the RTC. That wording requires an assessment by the CCJ as to whether the resolution of the question referred ‘involves’ the interpretation or application of the RTC. There is no express requirement for the CCJ to decide whether a referral is ‘necessary’ for the resolution of the dispute before the national court or tribunal.

[18] In this way, Article 214 of the RTC largely adopts the approach in Article 267 of Treaty on the Functioning of the European Union (‘TFEU’). Article 267 provides as follows:

Article 267
(ex Article 234 TEC)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of the acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.¹⁰

¹⁰ Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C 115/47 (emphasis added).

[19] Article 267¹¹ has produced over 60 years of jurisprudence which is of persuasive value to the CCJ given the similarity of treaty and legislative framework. There are some differences, notably: (i) Article 214 of the RTC gives the CCJ jurisdiction over questions concerning the interpretation or application of the Treaty whereas Article 267 of the TFEU grants jurisdiction only in relation to interpretation of the Treaties; (ii) Article 214 does not expressly grant the CCJ referral jurisdiction over questions on the validity and interpretation of acts of the Community whereas Article 267 of the TFEU expressly grants such jurisdiction to the CJEU; (iii) Article 214 of the RTC requires all national courts and tribunals to make the referrals where the conditions in the provision are fulfilled whereas Article 267 of the TFEU makes that requirement only in respect of those courts ‘against whose decisions there is no judicial remedy under national law’.¹² These are potentially important distinctions, but they are not immediately relevant to the present case.

[20] What is presently relevant is the similarity between the CARICOM and EU regimes on the question of the treatment of the ‘necessity’ criterion mentioned, respectively, in Articles 214 and 267 of the regional treaties. Applying the rules of treaty interpretation, informed, as appropriate, by established CJEU jurisprudence, the following three benchmarks in establishing the CCJ referral jurisdiction may be identified.

1) ***The Preliminary Jurisdiction Question under Article 214***

[21] The Court must be satisfied that it has jurisdiction under the terms of Article 214, namely, that: (a) the issue referred was from a national court or tribunal (b) the referring forum was of a Member State; and (c) the issue’s resolution involves a question of the interpretation or application of the RTC (‘the three requirements of referral jurisdiction’). Most essentially, to confer jurisdiction on the CCJ to give a determination pursuant to a referral, it is necessary only that the question raised

¹¹ Formerly Consolidated Version of Treaty Establishing the European Community [2002] OJ C325/1, art 234.

¹² *HP Bulmer* (n 7) at 420 (Lord Denning).

should clearly involve the interpretation or application of the RTC. In *Van Gend & Loos*,¹³ one of the first preliminary reference cases to come before the CJEU, that court said as follows:¹⁴

The Belgian Government further argues that the Court has no jurisdiction on the ground that no answer which the Court could give to the first question of the Tariefcommissie would have any bearing on the result of the proceedings brought in that court. However, in order to confer jurisdiction on the Court in the present case *it is necessary **only** that the question raised should clearly be concerned with the interpretation of the Treaty*. The considerations which may have led a national court or tribunal to its choice of questions as well as the relevance which it attributes to such questions in the context of a case before it are excluded from review by the Court of Justice. It appears from the wording of the questions referred that they relate to the interpretation of the Treaty. The Court therefore has jurisdiction to answer them.

2) ***The Test of Necessity: A Question Primarily for the National Court or Tribunal***

[22] It is for the national court or tribunal to determine whether a referral is ‘necessary’ for it to deliver judgment. The landmark English Court of Appeal decision in *HP Bulmer Ltd v J Bollinger SA*¹⁵ was among the earliest cases to canvas the issue of when a referral to the Court of Justice is necessary. That case made abundantly clear that the matter of necessity was for the national court. It is well quoting from Lord Denning in full:¹⁶

An English judge can say either “I consider it necessary,” or “I do not consider it necessary.” His discretion in that respect is final. Let me take the two in order.

(i) If the English judge considers it necessary to refer the matter, no one can gainsay it save the Court of Appeal. The European court will accept his opinion. It will not go into the grounds on which he based it ... It will accept the question as he formulates it It will not alter it or send it back. Even if it is a faulty question, it will do the best it can with it ... The European court treats it as a matter between the English courts and themselves—to be dealt

¹³ Case 26/62 *NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* EU:C:1963:1, [1963] ECR I. Reference for a preliminary ruling: Tariefcommissie - Netherlands.

¹⁴ *ibid* at 11 (emphasis added).

¹⁵ *HP Bulmer* (n 7).

¹⁶ *ibid* at 421–422 (citations omitted).

with in a spirit of co-operation - in which the parties have no place save that they are invited to be heard...

(ii) If the English judge considers it “not necessary” to refer a question of interpretation to the European court—but instead decides it itself—that is the end of the matter. It is no good a party going off to the European court. They would not listen to him. They are conscious that the Treaty gives the final word in this respect to the English courts. From all I have read of their cases, they are very careful not to exceed their jurisdiction. They never do anything to trespass on any ground which is properly the province of the national courts.

[23] Lord Denning then formulated guidelines for the national court as to whether a decision was necessary for resolution of the domestic dispute.¹⁷ These include (i) the issue must be conclusive such that the interpretation of the treaty will decide whether judgment is given for one side or the other; (ii) it may not be necessary to refer an issue which had been previously decided by the Court unless the domestic court considers that the European Court may revise its opinion on the issue; (iii) *acte claire* applies so that it may not be necessary for the domestic court to refer an issue that is reasonably clear and free from doubt; (iv) the facts should generally be decided first since as a rule it may not be possible to tell whether it is necessary to decide a point until all the facts are ascertained.

[24] The guidelines given in *HP Bulmer* are to be applied with circumspection. For example, although the correct interpretation of a treaty provision may be clear to a national court, it may not be as clear to all the other national courts comprising the Community. The referral procedure enables uniformity of judicial decision-making that is essential for the smooth functioning of the Community and in case of doubt, the national court or tribunal should err on the side of caution by referring. It is also the case that in the contemporary era, the Community court may take a more active role in reformulating and reframing questions referred to it than in previous eras.¹⁸

¹⁷ *ibid* at 422–423.

¹⁸ Case C-384/08 *Attanasio Group Srl v Comune di Carbognano* EU:C:2010:133, [2010] ECR I-2055, paras 18–25; Case C-160/01 *Mau v Bundesanstalt für Arbeit* EU:C:2003:280, [2003] ECR I-4791, paras 18–20. See also Niels Fenger and Morten Broberg, *Preliminary References to the European Court of Justice* (2nd edn, OUP 2014) 414.

[25] Be that as it may, the central proposition in *HP Bulmer* that it is for the national court to determine whether it is necessary to refer has not been seriously doubted. In addition to the authorities cited in that case, the following sample is instructive.

[26] In *Meilicke v ADV/ORGA F A Meyer AG*¹⁹, the Court of Justice said the following:

22. It has consistently been held ... that the procedure provided for by Article 177 is an instrument for cooperation between the Court of Justice and the national courts.
23. It is also settled law ... that, in the context of such cooperation, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment.
24. Consequently, since the questions submitted by the national court concern the interpretation of a provision of Community law, the Court is, in principle, bound to give a ruling ...

[27] Shortly afterwards, in *Lourenço Dias*,²⁰ the court reaffirmed as follows:

14. The Court has consistently held ... that the procedure provided for in Article 177 of the Treaty is an instrument for cooperation between the Court of Justice and the national courts.
15. It is also settled law ... that in the context of that cooperation, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment.
16. Consequently, since the questions submitted by the national court concern the interpretation of a provision of Community law, the Court is, in principle, bound to give a ruling....

¹⁹ Case C-83/91 *Meilicke v ADV/ORGA F A Meyer AG* EU:C:1992:332, [1992] ECR I-4871, paras 22–24 (citations omitted).

²⁰ Case C-343/90 *Lourenço Dias v Director da Alfândega do Porto* EU:C:1992:327, [1992] ECR I-4673, paras 14–16 (citations omitted).

[28] And more recently, in *Stoilov i Ko EOOD v Nachalnik na Mitnitsa Stolichna*,²¹ the Court of Justice stated:

36. It is settled case-law that the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of EU law which they need in order to decide the disputes before them ...
37. In the context of that cooperation, the national court seised of the dispute is in the best position to assess, having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment and the relevance of the questions which it refers to the Court ...
38. That does not alter the fact that it is for the Court, where appropriate, to examine the circumstances in which the case was referred to it by a national court in order to assess whether it has jurisdiction and, in particular, determine *whether the interpretation of EU law that is sought bears any relation to the facts of the main action or its purpose, so that the Court is not led to deliver advisory opinions on general or hypothetical questions ... If it appears that the question raised is manifestly irrelevant for the purposes of deciding the case, the Court must declare that there is no need to proceed to judgment* ...

[29] The CCJ accepts this long line of CJEU cases as highly persuasive authority in the interpretation of the term ‘necessary’ used in Article 214 of the RTC. It is for the national court or tribunal of the CARICOM Member State to determine whether a referral to the CCJ is ‘necessary’ for the resolution of the dispute before that court or tribunal. As explained below, where the national court or tribunal has determined that referral is necessary, the CCJ, subject to its residual discretion, is in principle bound, in the spirit of judicial collaboration, to provide the interpretative assistance.

²¹ C-180/12 *Stoilov i Ko EOOD v Nachalnik na Mitnitsa Stolichna* EU:C:2013:693, paras 36–38 (citations omitted) (emphasis added).

3) *The CCJ's Residual Discretion as Guardian of its Jurisdiction*

- [30] The CCJ is and must remain the guardian of its jurisdiction. It therefore retains the residual power not to provide a determination on the question referred. However, a request for interpretative assistance from a national court or tribunal which considers such assistance to be necessary for it to give judgment, should not be lightly refused. Such refusal could quite possibly lead to uncertainty and even dysfunction in the requesting court and would not be consistent with the spirit of collaboration intended by the referral procedure.
- [31] The CJEU has consistently held that it is for the national court to determine the relevance of the questions referred and that such questions enjoy a 'presumption of relevance'. The Court of Justice will only refuse to provide a preliminary ruling where it is 'quite obvious' that the interpretation sought bears no relation to the actual facts or purpose of the main proceedings;²² or the request is 'manifestly irrelevant';²³ or where the questions are hypothetical;²⁴ or where the reference did not concern a genuine dispute.²⁵
- [32] Where the four conditions under Article 214 for the CCJ's jurisdiction are satisfied, and the national court or tribunal considers that the referral is necessary to resolve the dispute before it, it is only in the most exceptional circumstances that this Court could properly exercise its residual discretion not to provide the interpretative assistance requested. The imperatives of the smooth functioning of the RTC recommend extreme circumspection in the Court's exercise of that residual discretion.

²² Case C-379/98 *PreussenElektra AG v Schleswag AG* EU:C:2001:160, [2001] ECR I-2099, para 38.

²³ Case C-415/93 *Union Royale Belge des Societes de Football Association ASBL v Bosman* EU:C:1995:463, [1995] ECR I-4921, paras 59–61.

²⁴ Case 61/79 *Amministrazione delle finanze dello Stato v Denkavit italiana Srl* EU:C:1980:100, [1980] ECR 1205.

²⁵ Case 244/80 *Foglia v Novello (No 2)* EU:C:1981:302, [1981] ECR 3045.

4) *Determination of Jurisdiction as Regards ‘Necessity’*

[33] In the present case, the referral is from a national court of a Member State that is seised of an issue whose resolution involves a question concerning the interpretation of Article 177 of the RTC. The First Respondent argues that if the Claimants succeed on the constitutional issues that are before the High Court, the alleged breach of the RTC would be rendered academic, and that it was therefore not necessary to answer the referral. These concerns do not come close to vitiating the CCJ’s jurisdiction. The existence of concurrent constitutional issues before the High Court is not sufficient to overcome the extremely strong presumption in favour of acceding to the request for interpretative assistance from the referring court. Nor is it appropriate for this Court to investigate the internal case management arrangements or the sequencing of the litigation of a particular issue in the national court. As a rule, it is sufficient for jurisdiction that the resolution of the national litigation involves a question concerning the interpretation or application of the RTC.

[34] Furthermore, it must be remembered that a Member State cannot invoke the provisions of its domestic law, including of its Constitution, as justification for its failure to perform a treaty.²⁶ It follows that the determination of the constitutional issue may not necessarily decide the dispute as to how the RTC is to be interpreted and applied. The constitutional ruling cannot override applicability of the RTC provisions. In relation to a similar concern raised in the early case of *Van Gend & Loos*,²⁷ the CJEU pointed out that it was not being asked to adjudicate upon the application of the treaty according to the principles of national law ‘which remains the concerns of the national courts’ but only to interpret the scope of the EU treaty ‘within the context of community law and with reference to its effect on individuals’.

²⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 27.

²⁷ *Van Gend & Loos* (n 13) 11.

[35] In the premises, this Court has jurisdiction to entertain the referral request. Accordingly, the Court will now consider the referred question.

Consideration of the Referred Question

[36] The referring court asks whether the requirement that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents breaches the Caribbean Community Act which incorporates the Treaty of Chaguaramas into Belize law, in that the requirement amounts to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage, as prohibited by Article 177 of the Treaty. The question, as framed by the national court, is directed at whether the requirement breaches the legislation that gives domestic effect to the RTC. In its original jurisdiction, the Court is competent to interpret and apply the RTC and not to provide authoritative guidance on whether domestic law has been breached.

[37] Nevertheless, as the Court has already found, the question referred clearly involves the interpretation of Article 177 of the Treaty. In order to provide the assistance requested by the referring court with respect to the interpretation of the RTC, the Court will consider whether the requirement for CARICOM-incorporated and linked companies to maintain and file documents through local registered agents amounts to the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions, thereby causing a competitive disadvantage, as prohibited by Article 177 of the Treaty.

[38] This Court has affirmed that, consistent with Article 31(1) of the Vienna Convention on the Law of Treaties, the RTC must 'be interpreted in good faith in accordance

with the ordinary meaning to be given to the terms of the [T]reaty in their context and in the light of their object and purpose'.²⁸

[39] Article 177 is situated in Chapter Eight on Competition Policy and Consumer Protection, and specifically within Part One of the Chapter on Rules of Competition. The goal of the Community Competition Policy, as stated in Article 169(1), is 'to ensure that the benefits expected from the establishment of the CSME [CARICOM Single Market and Economy] are not frustrated by anti-competitive business conduct'. This goal also finds expression in the Preamble to the Treaty.²⁹ In furtherance of this goal, one of the objectives of the Community Competition Policy, set out in Article 169(2)(b), is the 'prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market'.³⁰

[40] In order to achieve the objective of the prohibition of anti-competitive business conduct within the CSME, the Treaty places responsibilities on both the Community and Member States for implementation of the rules of competition. The CARICOM Competition Commission ('the Commission'), established under the Treaty, is charged with applying the rules of competition in respect of anti-competitive cross-border business conduct.³¹ Member States are required, under Article 170(1)(b), to 'take the necessary legislative measures to ensure consistency and compliance with the rules of competition and provide penalties for anti-competitive business conduct', as well as to 'establish and maintain institutional arrangements and administrative procedures to enforce competition laws'. To implement the rules of competition, every Member State must have in place national competition authorities, which shall cooperate with the Commission and other national

²⁸ See for eg, *Ramsamooj v State of Suriname* [2026] CCJ 2 (OJ) at [113]. See also *Rock Hard Distribution Ltd v State of Trinidad and Tobago* [2022] CCJ 2 (OJ) at [23]; *Trinidad Cement Ltd v Co-operative Republic of Guyana* [2009] CCJ 1 (OJ), (2009) 74 WIR 302 at [10]–[11].

²⁹ RTC (n 1). A recital in the Preamble reads as follows: '**Mindful further** that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct whose object or effect is to prevent, restrict, or distort competition'.

³⁰ *ibid* art 169(2)(b).

³¹ *ibid* arts 171, 173(1)(a).

competition authorities.³² Member States were required, by Article 170(5), to notify the Council for Trade and Economic Development (COTED), within 24 months of entry into force of the Treaty, of existing legislation, agreements and administrative practices inconsistent with Chapter Eight, with a view to their termination in accordance with a programme established by the COTED.

[41] Article 177 addresses the obligation of Member States to prohibit anti-competitive business conduct. The material parts of this provision, for present purposes, are set out below:

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:

- (a) *agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises* which have as their object or effect the prevention, restriction or distortion of competition within the Community;
- (b) *actions by which an enterprise* abuses its dominant position within the Community; or
- (c) *any other like conduct by enterprises* whose object or effect is to frustrate the benefits expected from the establishment of the CSME.

2. Anti-competitive business conduct within the meaning of paragraph 1 includes the following:

...

- (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;

...

3. Subject to Article 168, a Member State shall ensure all agreements and decisions within the meaning of paragraph 1 of this Article shall be null and void within its jurisdiction.

4. *An enterprise shall not be treated as engaging in anti-competitive business conduct* if it establishes that the activity complained of:

³² *ibid* art 170(2)–(3).

- (a) contributes to:
 - (i) the improvement of production or distribution of goods and services; or
 - (ii) the promotion of technical or economic progress;while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in subparagraph (a); or
- (c) does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.³³

[42] Under Article 177(1), a Member State is mandated, within its jurisdiction, to prohibit certain forms of *conduct by enterprises* as being anti-competitive business conduct. Specifically, the prohibition is directed at certain conduct of enterprises that has the object or effect of preventing, restricting or distorting competition within the Community, constitutes an abuse of a dominant position within the Community, or has the object or effect of frustrating the expected benefits from the CSME.

[43] Illustrations of anti-competitive business conduct within the meaning of paragraph 1 are set out in paragraph 2. The referred question makes specific mention of the conduct identified in Article 177(2)(d) namely, ‘the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage’. Since the conduct specified under Article 177(2) is that of enterprises, the proscribed conduct under subparagraph (d) of that paragraph is the application *by an enterprise* of unequal conditions to parties undertaking equivalent engagements in commercial transactions, which causes a competitive disadvantage. This prohibition targets

³³ *ibid* (emphasis added).

discriminatory behaviour of an enterprise that distorts competition between its trade partners. The CJEU has adopted a similar understanding of the comparable treaty provision – Article 102(c) of the TFEU – which prohibits abuse by an undertaking of a dominant position in the internal market by ‘applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage’.³⁴ The Court of Justice has found that this provision precludes commercial behaviour of an undertaking in a dominant position that distorts competition on an upstream or a downstream market, that is, between suppliers or customers of the undertaking.³⁵ For the conduct of the undertaking to be abusive, there must be a finding not only that its behaviour is discriminatory but also that it tends to hinder the competitive position of some of the business partners of that undertaking in relation to others.³⁶

- [44] A Member State is required, by Article 177(3) of the RTC, to ensure that agreements between enterprises and decisions by associations of enterprises with anti-competitive objects or effects are null and void in its jurisdiction. This obligation does not apply to such agreements or decisions which, by Article 168, are excluded from the scope of the rules of competition.
- [45] By virtue of Article 177(4), the activity of an enterprise shall not be treated as anti-competitive business conduct if it furthers the objectives identified in that paragraph. An example is where the activity in question imposes on the enterprises affected only such restrictions as are indispensable to the improvement of production or distribution of goods or services, or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit.
- [46] It is evident from the terms of the Treaty that the prohibition of anti-competitive business conduct under the rules of competition is directed at enterprises engaged in

³⁴ Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ C 115/47.

³⁵ Case C-525/16 *MEO-Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência* EU:C:2018:270, [2018] 4 CMLR 1589, para 24.

³⁶ *ibid* para 25; Case C-95/04 *British Airways plc v European Commission* EU:C:2007:166, [2007] ECR I-2331, para 144.

business conduct. This is demonstrated not only by the express references to the conduct of enterprises in Article 177, but also by numerous references to the business conduct of enterprises in other provisions in Part One of Chapter Eight. These other provisions include the rules concerning abuse by an enterprise of a dominant position in the market³⁷ and provisions addressing the role of the Commission with respect to monitoring, investigation and taking action to penalise anti-competitive business conduct of enterprises.³⁸

- [47] The definitions of the terms ‘enterprise’ and ‘business’ in Article 1 clarify the meaning of business conduct of an enterprise for the purpose of Chapter Eight. The term ‘enterprise’ is defined as ‘any person or type of organisation, other than a non-profit organisation, involved in the production of or the trade in goods, or the provision of services’. The definition of the term ‘business’ is ‘any activity carried on for gain or reward or in the course of which goods or services are produced, manufactured or supplied as the case may be’. Accordingly, business conduct of enterprises broadly captures economic or commercial activity engaged in by entities.
- [48] The First and Second Respondents, as well as the Amicus Curiae, submitted that the requirements mentioned in the referred question do not engage Article 177 because they arise from the State’s performance of regulatory functions, and not the business conduct of an enterprise. The Claimants, however, contend that the aims of Chapter Eight would be undermined if the distortion of competition imposed through legislation or administrative machinery were placed outside the Treaty’s scrutiny. They maintain that, read with Articles 169 and 170, Chapter Eight is directed to the legislative and administrative framework through which Member States secure or frustrate the Treaty competition regime. The Claimants submit that, when construed contextually alongside Articles 7, 9, 169 and 170, Article 177(2)(d) is engaged where regulatory conditions which are applied unequally to entities engaged in equivalent economic activity are capable, by their nature, of placing CARICOM-incorporated or CARICOM-linked entities at a competitive disadvantage.

³⁷ RTC (n 1) arts 178, 179.

³⁸ *ibid* arts 173–176.

[49] The Court determines that, based on a proper interpretation of Article 177 in accordance with the ordinary meaning to be given to its terms, in its context and in light of the object and purpose of the Community's Competition Policy, the prohibition under Article 177 is directed at business conduct of enterprises that prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market. Article 177 is not concerned *per se* with regulatory measures of the State. As the submissions of the Amicus Curiae acknowledged, regulatory measures of Member States that distort or are capable of distorting the conditions of competition in the Single Market could be subject to scrutiny and discipline under provisions of the Treaty outside of Chapter Eight. However, the referral by the High Court of Belize did not request the Court's interpretive assistance with respect to those provisions.

[50] The Court's interpretation that the prohibition under Article 177 applies to the conduct of enterprises is consistent with a contextual reading of that provision alongside the stated objective of the Community Competition Policy, under Article 169, to prohibit anti-competitive business conduct, as well as the obligations of Member States under Article 170 to implement the rules of competition. The Court's interpretation that Article 177 *per se* is concerned with enterprise conduct and not regulatory measures of the State is also consistent with a reading of that provision in conjunction with Article 9. The latter provision requires Member States to take all appropriate measures to ensure the carrying out of their obligations arising out of the Treaty, as well as to abstain from measures that could jeopardise the attainment of the objectives of the Treaty. A reading of Article 177 alongside Article 9 would not change the focus of the former provision on enterprise conduct but rather point to the need for Member States to avoid measures that would render ineffective the prohibition of anti-competitive business conduct by enterprises. In this regard, the Court notes that the Court of Justice of the European Community consistently held that Articles 85 and 86 of the Treaty establishing the European Economic

Community³⁹ (which respectively prohibit anti-competitive agreements and concerted practices and abuse of a dominant market position), in conjunction with Article 5 (which is similar to Article 9 of the RTC), require Member States not to take measures which may render ineffective the competition rules applicable to undertakings.⁴⁰ The Court of Justice has held, for example, that this would be the case if a Member State were to require or favour the adoption of agreements, decisions or concerted practices contrary to Article 85 or to reinforce their effects.⁴¹

[51] In light of the foregoing, the Court determines that Article 177 of the Revised Treaty of Chaguaramas does not prohibit a regulatory requirement that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents. Such a requirement is a regulatory measure of the State and does not arise from the business conduct of an enterprise.

Costs

[52] 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 question referred to it by the High Court of Belize, on 3 March 2026, hereby rules:

Article 177 of the Revised Treaty of Chaguaramas does not prohibit a regulatory requirement that (a) local companies with shareholders or directors from CARICOM jurisdictions and (b) companies incorporated within CARICOM countries maintain and file documents through local registered agents. Article 177 is concerned *per se* with

³⁹ Treaty Establishing the European Economic Community (adopted 25 March 1957, entered into force 1 January 1958) 4300 UNTS 298.

⁴⁰ Case 267/86 *Van Eycke v ASPA NV* EU:C:1988:427, [1988] ECR 4769 para 16.

⁴¹ *ibid.*

the anti-competitive business conduct of enterprises and not with the regulatory measures of a Member State.

/s/ W Anderson

Mr Justice Anderson (President)

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji

/s/ A Bulkan

Mr Justice Bulkan