

2. In the event that Regulation No 1984/83 is applicable, where it prohibits exclusive vertical agreements relating to service stations for an indefinite duration or for a period of more than 10 years, subject to the derogation laid down in Article 12(2) which provides that 'where the agreement relates to a service station which the supplier lets to the reseller, or allows the reseller to occupy on some other basis, in law or in facts, exclusive purchasing obligations or prohibitions of competition indicated in this title may ... be imposed on the reseller for the whole period for which the reseller in fact operates the premises', does that derogation cover a case such as the one in issue where, pursuant to the private contract of 27 July 1990 and the public deed dated 10 October 1995, Lubricarga, the owner of a plot of land, granted Galp surface rights for a period of 25 years and the latter undertook to build the service station, on the condition that, once the construction had been completed, the facilities would be assigned to Lubricarga which would operate them for the same period of time, subject to the obligation to purchase all motor-vehicle and other fuel exclusively from the oil company?

3. In the event that Regulation No 2790/1999 is applicable, where it provides in Article 5 that 'the time limitation of five years shall not apply where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete clause does not exceed the period of occupancy of the premises and land by the buyer', does that exemption include a case such as the one in issue where, pursuant to the private contract of 27 July 1990 and the public deed dated 10 October 1995, Lubricarga, the owner of a plot of land, granted Galp surface rights for a period of 25 years and the latter undertook to build the service station, on the condition that, once the construction had been completed, the facilities would be assigned to Lubricarga which would operate them for the same period of time, subject to the obligation to purchase all motor-vehicle and other fuel exclusively from the oil company?

4. Having regard to the fact that Article [81](1)(a) of the EEC Treaty refers to the prohibition of the indirect fixing of purchase or selling prices, and recital 8 in the preamble to Regulation No 1984/83 states that 'further restrictive obligations and in particular those which limit the reseller's choice of customers or his freedom to determine his prices and conditions of sale cannot be exempted under this regulation', does that prohibition apply to a contract such as the one in issue, clause 10 and annex I of which refer to the obtaining of competitive prices and state that 'the discounts awarded to the proprietor shall not be lower than the average commissions received by the operators of the three [leading] undertakings (in terms of turnover) operating in the geographical area in which the Service Station is situated', on the grounds that the contract may restrict, in any event, the right of the purchaser to determine the selling price?

5. Having regard to the fact that Article [81](1)(a) of the EEC Treaty refers to the prohibition of the indirect fixing of purchase or selling prices, and Regulation No 2790/99 provides that retention of the resale price is a particularly

serious restriction of competition, does that prohibition apply to a contract such as the one in issue, clause 10 and annex I of which refer to the obtaining of competitive prices and state that 'the discounts awarded to the proprietor shall not be lower than the average commissions received by the operators of the three [leading] undertakings (in terms of turnover) operating in the geographical area in which the Service Station is situated', on the grounds that the contract may restrict, in any event, the right of the purchaser to determine the selling price?

(¹) Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85 (3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5).

(²) Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21).

Reference for a preliminary ruling from the Tribunale di Bergamo (Italy) lodged on 21 November 2007 — Luigi Scarpelli v NEOS Banca SpA

(Case C-509/07)

(2008/C 37/08)

Language of the case: Italian

Referring court

Tribunale di Bergamo

Parties to the main proceedings

Applicant: Luigi Scarpelli

Defendant: NEOS Banca SpA

Question referred

'Is Article 11(2) of Council Directive 102/87/EEC (¹) to be interpreted as meaning that an agreement between a supplier and a grantor of credit whereunder credit is made available exclusively by that grantor of credit to customers of that supplier is a necessary condition for the consumer's right to pursue remedies against the grantor of credit — where the supplier is in breach of contract — even where that right is (a) only to termination of the credit agreement; or (b) to termination of the agreement and consequently to reimbursement of the sums paid to the grantor of credit?'

(¹) OJ L 42, p. 48.