

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Articles 10 to 13 of 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) — Contracts for the exclusive distribution of motor-vehicle and other fuels classified as agency or commission contracts but including certain particular features

Operative part of the judgment

1. Article 85 of the EEC Treaty (subsequently Article 85 of the EC Treaty and now Article 81 EC) applies to an agreement for the exclusive distribution of motor-vehicle and other fuels, such as that at issue in the main proceedings, concluded between a supplier and a service-station operator where that operator assumes, to a non-negligible extent, one or more financial and commercial risks linked to the sale to third parties.
2. Articles 10 to 13 of 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 must be interpreted as not covering such an agreement in so far as it requires the service-station operator to charge the final retail price stipulated by the supplier.

(¹) OJ C 193, 6.8.2005.

Judgment of the Court (Third Chamber) of 23 November 2006 (reference for a preliminary ruling from the Tribunal Supremo (Spain)) — Asnef-Equifax, Servicios de Información sobre Solvencia y Crédito, SL v Asociación de Usuarios de Servicios Bancarios (Ausbanc)

(Case C-238/05) (¹)

(Competition — Article 81 EC — System for the exchange between financial institutions of information on customer solvency — Reference for a preliminary ruling — Admissibility — Effect on trade between Member States — Restriction of competition — Benefit for consumers)

(2006/C 331/16)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: ASNEF-EQUIFAX, Servicios de Información sobre Solvencia y Crédito, SL

Defendant: Asociación de Usuarios de Servicios Bancarios (Ausbanc)

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 81 EC — Compatibility with the common market of an agreement setting up a system for the exchange between financial institutions of information on customer solvency — Beneficial effects for consumers and users of financial services — Possibility of Member States granting an exemption

Operative part of the judgment

- 1) Article 81(1) EC must be interpreted as meaning that a system for the exchange of information on credit between financial institutions, such as the register of information on customer solvency at issue in the main proceedings, does not, in principle, have as its effect the restriction of competition within the meaning of that provision, provided that the relevant market or markets are not highly concentrated, that that system does not permit lenders to be identified and that the conditions of access and use by financial institutions are not discriminatory, in law or in fact.
- 2) In the event that a system for the exchange of information on credit, such as that register, restricts competition within the meaning of Article 81(1) EC, the applicability of the exemption provided for in Article 81(3) EC is subject to the four cumulative conditions laid down in that provision. It is for the national court to determine whether those conditions are satisfied. In order for the condition that consumers be allowed a fair share of the benefit to be satisfied, it is not necessary, in principle, for each consumer individually to derive a benefit from an agreement, a decision or a concerted practice. However, the overall effect on consumers in the relevant markets must be favourable.

(¹) OJ C 205, 20.8.2005.