

Pleas in law and main arguments

The a nemzeti mobilfizetési rendszerről szóló, 2011. április 1-jei CC. törvény (Law CC of 1 April 2011 concerning the national mobile payment system; 'the Law') changed the legal framework for mobile payment services with effect from 1 April 2013, although it only became binding as from 2 July 2014. The Law defines centralised mobile commerce services in the following sectors: (a) public car park services; (b) granting access to use public roads; (c) transport of persons carried out by a State undertaking; (d) other services provided by State bodies. Of the services mentioned, in practice it has only been possible, up to the present, to make mobile payments in Hungary in the sector of public car park services and in the sector of granting access to use public roads (the 'e-matrica' electronic toll sticker and the 'HU-GO' system). Nevertheless, the present proceedings concern the four sectors governed by the Law.

According to the Commission, as regards public car park services, the Company Nemzeti Mobilfizetési Zrt. carries out essentially the same activity as that carried out by mobile payment service providers under the previous system, except that it enjoys an exclusive right to enter into contracts with car park operators and its fees are regulated. The same is true as regards the sector of granting access to use public roads, since Nemzeti Mobilfizetési Zrt. is the sole services provider which maintains a contractual relationship with the public services provider and may directly sell the authorisation to use the road. Accordingly, in those two sectors, the other providers of mobile services and mobile telephone services may only operate as resellers.

Consequently, the establishment of the national mobile payment system and the exclusive rights granted to Nemzeti Mobilfizetési Zrt. impede, both as regards Hungarian and foreign undertakings, entry into the wholesale mobile payment market — and, therefore, into the market of services offered, pursuant to contractual relationships with the provider of the public car park services or other public services, to other providers which resell mobile payment services — which was previously open to competition. Thus, according to the Commission, the rules in relation to the national mobile payment system, taken as a whole, give rise to discrimination and are contrary to the freedom of establishment (infringement of Article 15 of Directive 2006/123 and of Article 49 TFEU). In addition, those rules are also contrary to the freedom to provide services (infringement of Article 16 of Directive 2006/123 and of Article 56 TFEU), since the exclusive rights granted to Nemzeti Mobilfizetési Zrt. restrict the provision of cross border services. In relation to the other centralised mobile commerce services, in respect of which it is not yet possible to make mobile payments in Hungary, the Law establishes the same exclusive right in favour of Nemzeti Mobilfizetési Zrt. and the legal analysis above is therefore equally valid.

In accordance with the relevant provisions of the TFEU and Directive 2006/123, restrictions on the freedom of establishment and the freedom to provide services may be imposed only where they are not discriminatory and serve the public interest and moreover, where they fulfil the conditions of necessity and proportionality. In the Commission's view, the arguments put forward by Hungary are not capable of justifying the restrictions imposed by the Law, since they do not meet the requirements of necessity and proportionality.

(¹) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006, L 376, p. 36).

**Request for a preliminary ruling from the Juzgado de Primera Instancia No 1 de Barcelona (Spain)
lodged on 7 April 2017 — Bankia, S.A. v Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez
Ramírez**

(Case C-179/17)

(2017/C 231/08)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 1 de Barcelona

Parties to the main proceedings

Applicant: Bankia, S.A.

Defendants: Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez Ramírez

Questions referred

- 1) Is case-law incompatible with Articles 6 and 7 of Directive 93/13/EEC ⁽¹⁾ on unfair terms in consumer contracts when it (STS (Sentencia del Tribunal Supremo: judgment of the Supreme Court) of 18 February 2016) holds that, despite the unfairness of the early repayment term and even though the application for enforcement is based on that term, mortgage enforcement proceedings are not to be closed because their continuation is more favourable to the consumer, given that, in the event of any enforcement of a judgment given in declaratory proceedings brought under Article 1124 CC (Código Civil: Civil Code), a consumer would not enjoy the procedural privileges applicable in mortgage enforcement proceedings, and when that case-law does not take into account the settled case-law of the TS (Tribunal Supremo: Supreme Court) to the effect that Article 1124 CC (laid down for contracts creating reciprocal obligations) is not applicable to loan agreements, because such an agreement is a real, unilateral contract which does not become valid until the money is handed over and which, therefore, creates obligations for the borrower alone and not for the lender (creditor), so that, if that case-law of the TS were to be applied in declaratory proceedings, a consumer could obtain a ruling dismissing the claim for termination and compensation and it could no longer be argued that continuation of the mortgage enforcement proceedings was more favourable to him?
- 2) If the application of Article 1124 CC to loan agreements or in the case of all credit agreements should be accepted, is case-law like that referred to incompatible with Articles 6 and 7 of Directive 93/13/EEC on unfair terms in consumer contracts when that case-law does not take into account, for the purpose of assessing whether it is more favourable to the consumer for the mortgage enforcement proceedings to continue or more detrimental to hold declaratory proceedings under Article 1124 CC, the fact that, in declaratory proceedings, the claim for termination of the agreement and the claim for compensation may be dismissed if the court applies the stipulation in Article 1124 CC that 'the court shall order the termination requested, unless there are justified grounds allowing it to fix a period', bearing in mind that, precisely in the context of long-term (20 or 30 years) loans and mortgages for the purchase of dwellings, it is relatively likely that the courts will apply that ground for dismissal, particularly where the non-performance of the payment obligation has not been very serious?
- 3) If it were to be accepted that it is more favourable to the consumer to continue enforcement of the mortgage with the effects of early repayment, is case-law like that referred to incompatible with Articles 6 and 7 of Directive 93/13/EEC on unfair terms in consumer contracts when that case-law applies on a supplementary basis a statutory provision (Article 693(2) LEC (Ley de Enjuiciamiento Civil: Law on Civil Procedure), even though the contract is capable of continuing to exist without the early repayment term, and when that case-law gives effects to Article 693(2) LEC, even though the essential condition stipulated therein has not been met: that there should be in the contract a valid and effective agreement regarding early repayment, and the early repayment term has in fact been declared unfair, void and ineffective?

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 13 April 2017 — Cobra SpA v Ministero dello Sviluppo Economico

(Case C-192/17)

(2017/C 231/09)

Language of the case: Italian

Referring court

Consiglio di Stato