Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 3 June 2021[1]

Case C-90/20

Apcoa Parking Danmark A/S
v
Skatteministeriet

(Request for a preliminary ruling from the Højesteret (Supreme Court, Denmark))

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Taxable transactions – Supply of services for consideration – Fees charged for infringement of regulations on parking on private property – Characterisation)

I. Introduction

1. The request for a preliminary ruling concerns the interpretation of Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.[2]

2. The request was made in proceedings between Apcoa Parking Danmark A/S ('Apcoa') and the Skatteministeriet (Ministry of Taxation, Denmark) concerning whether control fees for infringement of regulations on parking on private property are subject to value added tax (VAT).

3. The Court is invited to rule on whether those fees constitute an amount payable as compensation for breach of contractual obligations or, in contrast, consideration for an identifiable supply for the purposes of the VAT Directive.

4. I will set out the reasons that lead me to propose that the Court should find them to be the latter.

II. Legal context

A. The VAT Directive

5. Article 2(1)(c) of the VAT Directive provides that 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is subject to VAT.

[1] Original language: French.
[2] OJ 2006 L 347, p. 1 ('the VAT Directive').

6. Article 9(1) of that directive provides:

'"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

7. According to Article 14(1) of that directive, the transfer of the right to dispose of tangible property as owner is considered to be a 'supply of goods'.

8. Article 24(1) of the directive provides:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods.'

9. Under Article 25 of the VAT Directive:

'A supply of services may consist, inter alia, in one of the following transactions:

(a) the assignment of intangible property, whether or not the subject of a document establishing title;

(b) the obligation to refrain from an act, or to tolerate an act or situation;

(c) the performance of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law.'

10. Article 135(1)(l) and (2)(b) of that directive provides:

'1. Member States shall exempt the following transactions:

…

(l) the leasing or letting of immovable property.

2. The following shall be excluded from the exemption provided for in point (l) of paragraph 1:

…

(b) the letting of premises and sites for the parking of vehicles'.

B. Danish law

1. The Law on VAT

11. Paragraph 4(1) of the lov om merværdiafgift (Law on Value Added Tax)[3] provides:

‘Goods and services supplied for consideration within the national territory shall be subject to the tax. “Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner. Any other supply shall be a supply of services.’

12. Under Paragraph 13(1)(8) of that law:

‘The following goods and services shall be exempt from the tax:

…

(8) The administration, letting and leasing of immovable property, including the supply of gas, water, electricity and heating as part of the letting or leasing. The exemption does not, however, cover … the letting of camp sites, parking areas and advertising spaces, or the hire of safes.’

13. Paragraph 27(1) of that law provides:

‘In respect of the supply of goods and services, the taxable amount shall be paid, including subsidies directly linked to the price of the goods or services, but shall not include tax payable hereunder. If payment takes place in full or in part before the supply or before the invoice is issued, the taxable amount shall be 80% of the sum paid.’

2. The Law on Road Traffic

14. According to the referring court, the færdselsloven (Law on Road Traffic) does not specify the situations in which control fees can be charged for parking on private land in breach of the regulations. However, since a legislative amendment in 2014, it has provided in Paragraph 122c(1) that an inspection charge (control fee) may be imposed in respect of parking on publicly accessible private land only if that is clearly indicated on site (subject to any clearly marked general prohibition on parking in the area).

III. The facts of the dispute in the main proceedings and the question referred

15. Apcoa is a private company that operates car parks on private land under contracts with the site owners. It lays down conditions for use of the parking areas, such as a prohibition on parking without an individual permit, maximum parking time and any payment of a fee for parking. Where the conditions of use are infringed, Apcoa levies additional specific control fees (510 Danish krone (DKK) (approximately EUR 69) in 2008 and 2009).

[3] ‘The Law on VAT’.

16. A sign at the entrance to the car parks at issue states, inter alia, that ‘control fees of DKK 510 may be charged for infringement of the regulations’ or ‘control fees of DKK 510/day may be charged for infringement of the regulations’. They also state that ‘the car park is operated in accordance with the rules of private law’.

17. Apcoa is subject to VAT on the fees charged for parking in accordance with the parking regulations.

18. On 25 October 2011, Apcoa applied to SKAT (the Danish tax authority) for a refund of the VAT paid in respect of control fees levied between 1 September 2008 and 31 December 2009, assessed at DKK 25 089 292 (approximately EUR 3 370 000).

19. The dispute does not concern whether VAT is payable on sums arising under the relationship between Apcoa and the landowner of the car park in question.

20. On 12 January 2012, SKAT refused the application on the ground that the control fees are regarded as subject to VAT under Paragraphs 4(1) and 27(1) of the Law on VAT, read in conjunction with the second sentence of Paragraph 13(1)(8) of that law.

21. On 23 December 2014, the Landsskatteretten (National Tax Tribunal, Denmark) upheld that decision.

22. The Landsskatteretten (National Tax Tribunal) listed 13 types of situation in which Apcoa can levy control fees:

‘1. Where the fee paid is insufficient.

2. Where no currently valid parking ticket is visible in the windscreen.

3. Where the ticket cannot be checked, for example where the parking ticket is not displayed correctly.

Situations 1 to 3 apply to paid parking.

4. Where there is no valid parking ticket, for example in the case of a residents’ parking zone where permission is required to use specific parking spaces.

5. Parking in disabled parking spaces. This ground for charges applies only where there is a disabled parking sign, irrespective of whether parking is free or paid. To be able to park in those spaces, the motorist must have displayed evidence of entitlement in the windscreen.

6. Parking other than in designated parking places. This ground applies to all types of parking spaces where there is a sign indicating that vehicles should be parked inside the spaces.

7. Where parking is prohibited. This ground for charges applies, for example, where a vehicle is parked on a fire emergency access route.

8. Reserved parking areas. This ground for charges applies to all types of parking spaces where vehicles must be parked in the specific spaces.

9. Where no parking disc is visible.

10. Where a parking disc is incorrectly set/the parking time indicated has been exceeded.

11. Where the parking disc is illegible. This ground for charges applies, for example, where the needles on the parking disc have become detached or where there is an error in an electronic disc.

12. Where there is more than one parking disc. This ground for charges applies where the motorist has displayed several parking discs in the windscreen in order to extend the parking period.

Grounds for charges 9 to 12 are applied where parking is free for a limited period but a parking disc is required as proof of the time the vehicle was parked.

13. Other. This ground for charges applies to the infringement of parking regulations not described in any of the 12 preceding points. Point 13 applies, for example, where the parking clearly obstructs traffic. If this ground for charges is used to justify the levying of control fees, it shall be supplemented by a written description of the infringement.'

23. Apcoa's action against that decision was dismissed by the Retten i Kolding (Kolding District Court, Denmark) by a judgment of 23 January 2017, which was upheld by the Vestre Landsret (High Court of Western Denmark, Denmark) by its judgment of 10 September 2018.

24. Apcoa appealed against that judgment to the Højesteret (Supreme Court, Denmark) seeking, inter alia, acknowledgement by the Ministry of Taxation that the control fees levied for infringement of the parking regulations – in the relationship between the individual motorist and Apcoa – do not constitute consideration for a service subject to VAT within the meaning of Paragraph 4(1) of the Law on VAT, read in conjunction with Article 2(1)(c) of the VAT Directive.

25. The referring court states that the parties disagree as to whether there is a mutual exchange of services, in the light of the judgment of 3 March 1994 in *Tolsma*.[4] Having regard to the Court's case-law on the expression 'supply of services', it is uncertain whether Article 2(1)(c) of the VAT Directive can be interpreted as a basis for considering the control fees at issue to be remuneration for a service.

26. The referring court notes that, according to the information in the case file, the German, Swedish and United Kingdom tax authorities take the view that control fees for infringement of parking conditions on private land are not subject to VAT.

27. In those circumstances, the Højesteret (Supreme Court) stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Must Article 2(1)(c) of [the VAT Directive] be interpreted as meaning that control fees for infringement of regulations on parking on private property constitute consideration for a service supplied and that there is therefore a transaction subject to VAT?'

28. Apcoa, the Danish Government, Ireland and the European Commission filed written observations.

[4] C-16/93, EU:C:1994:80.

29. Apcoa and the Danish Government replied within the time limits given to the questions to be answered in writing.

IV. Analysis

30. By its request for a preliminary ruling, the referring court enquires whether a transaction consisting of levying control fees[5] for infringement of parking conditions on private sites managed by Apcoa can be characterised as a supply of services, within the meaning of the VAT Directive.

31. Several principles need to be called to mind at the outset.

A. Summary of the applicable principles

32. First, as the Court of Justice stated in its judgment of 2 June 2016 in *Lajvér*:[6]

– although the VAT directive gives a very wide scope to VAT, only activities of an economic nature are covered by that tax;

– ‘economic activity’ is defined in the second subparagraph of Article 9(1) of the VAT Directive as including all activities of producers, traders and persons supplying services, inter alia the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis; and

– under the second subparagraph of Article 9(1) of the VAT Directive, in accordance with the requirements of the principle of neutrality of the common system of that tax, the term ‘exploitation’ refers to all transactions, whatever may be their legal form, by which it is sought to obtain income from the goods in question on a continuing basis.

33. Secondly, according to Article 24 of the VAT Directive, ‘supply of services’ means any transaction which does not constitute a supply of goods.

34. Thirdly, it can be seen from the Court’s settled case-law that a supply of services is made for consideration, within the meaning of the VAT Directive, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient. That is the case if there is a direct link between the service supplied and the consideration received, the sums paid constituting actual consideration for an identifiable service supplied in the context of such a legal relationship.[7]

[5] In the documents submitted to the Court, different expressions are used to refer to those fees: ‘control fees’, ‘penalty fees’, ‘increased parking fees’ and ‘parking fees’. Apcoa has stated that those control fees are commonly referred to as ‘parking fines’. In order to be consistent with the request for a preliminary ruling and the contents of the official documents to which it refers, I will use the expression ‘control fees’.

[6] C-263/15, EU:C:2016:392, paragraphs 20, 23 and 24. See, also, by way of a recent summary of those principles, judgment of 25 February 2021, *Gmina Wrocław (Transformation of the right of usufruct)* (C-604/19, EU:C:2021:132, paragraphs 67 to 69).

[7] See judgment of 21 January 2021, *UCMR – ADA* (C-501/19, EU:C:2021:50, paragraph 31 and the case-law cited).

B. Characterisation of the control fees

35. Since the dispute in the main proceedings does not concern whether Apcoa receives income from control fees on an ongoing basis,[8] it is necessary to determine the characteristics of the supply of services and of the consideration for that supply, having regard to the economic reality of the transaction at issue.[9]

36. It should be noted in that respect that:

– consideration of economic and commercial realities is a fundamental criterion for the application of the common system of VAT, as opposed to how the parties to the contract formally characterise the transaction;[10]

– the concept of 'supply of services' must be interpreted without regard to the purpose or results of the transactions concerned,[11] and

– the amount of the consideration, in particular the fact that it is equal to or greater or less than the costs which the taxable person incurred in providing his or her service, is not such as to affect the direct link between the services supplied and the consideration received.[12]

37. I will therefore examine the following questions in turn:

– Is there a service?

– Does the amount payable constitute actual consideration?

– Is there a direct link between the two?

1. A service

38. It is apparent from the request for a preliminary ruling that Apcoa manages private car parks on behalf of private landowners.[13]

[8] The Danish Government stated that increased parking fees are inherent to Apcoa's economic model and represented 34% to 35% of its total net turnover, that is to say approximately EUR 10.4 million in 2008 and EUR 11 million in 2009.

[9] See judgments of 22 November 2018, *MEO – Serviços de Comunicações e Multimédia* (C-295/17, EU:C:2018:942, 'judgment in *MEO – Serviços de Comunicações e Multimédia*', paragraphs 61 and 62), and of 11 June 2020, *Vodafone Portugal* (C-43/19, EU:C:2020:465, 'judgment in *Vodafone Portugal*', paragraphs 47 to 49). As Advocate General Kokott stated in her Opinion in *Gmina Wrocław (Transformation of the right of usufruct)* (C-604/19, EU:C:2020:647, point 35), 'not all payments necessarily result in taxable reciprocal performance'.

[10] See judgment in *MEO – Serviços de Comunicações e Multimédia* (paragraph 43 and the case-law cited), and judgment of 17 December 2020, *Franck* (C-801/19, EU:C:2020:1049, paragraph 43).

[11] See judgment in *MEO – Serviços de Comunicações e Multimédia* (paragraph 60 and the case-law cited).

[12] See judgment of 11 March 2020, *San Domenico Vetraria* (C-94/19, EU:C:2020:193, paragraph 29).

[13] The circumstances are therefore different from those which the Court was called upon to examine in the earlier cases. As regards the taxation of the activities of a *body governed by public law* consisting of making spaces available to motorists for parking their vehicles in return for financial consideration, either on the public highway or in car parks established on the city's public property, its private property or land belonging to private individuals, and the need to determine whether that body is acting as a public authority, see judgment of 14 December 2000, *Fazenda Pública* (C-446/98, EU:C:2000:691, paragraphs 21 to 23). See, also, as an example of the variety of situations in which parking fees are recovered, judgment of 25 March 2021, *Obala i lučice* (C-307/19, EU:C:2021:236, paragraphs 27, 67, 95 and 96), concerning judicial cooperation in civil matters, on the management and maintenance of public parking zones by a company incorporated by a local authority for that purpose.

39. In that capacity, Apcoa sets the conditions for using the car parks, such as:

– a prohibition on parking without specific permission;

– the maximum parking period;

– the amount of parking fees; and

– the payment of specific fees [14] in the event of infringement of the parking regulations. To summarise, those fees, referred to as ‘control fees’, are charged where the period from which other parking fees are payable is exceeded or where there is no valid proof of parking or incorrect use of the parking area or space.

40. It emerges from the request for a preliminary ruling and the observations of the parties and interested parties that the key question to be determined is whether the conclusion that the Court reached in its judgment of 18 July 2007, *Société thermale d'Eugénie-les-Bains,* [15] can be extended by analogy to cover the transactions at issue and, therefore, be distinguished from the conclusion reached in the judgment in *MEO – Serviços de Comunicações e Multimédia*.

41. Specifically, should the control fees be regarded as compensation, as Apcoa and the Commission suggest, or as consideration for the benefit enjoyed by a customer, that is to say, a space to park a vehicle, irrespective of the particular circumstances associated with the parking regulations, as the Højesteret (Supreme Court) has already held [16] and as the Danish Government claims?

42. I share the second view. First, I would recall that, according to the Court's case-law, how contractual provisions are characterised under national civil law is of no effect unless those provisions genuinely reflect the economic reality of the transaction, which it is for the referring court to determine. [17]

43. Second, the control fees seem to me to be components of the consideration for the opportunity to park their vehicles that is offered to customers, by reason of the economic components that comprise those fees.

44. Apcoa offers a service consisting of making parking spaces available to motorists, according to a variety of practical arrangements. In order to do so, Apcoa has defined spaces and reserved some of them, such as those for disabled customers. That service is supplied irrespective of whether or not the regulations governing use of those spaces are complied with.

45. In specific terms, as soon as a motorist enters an Apcoa-managed car park, he or she is placed in a position to benefit from a parking space for a given period.

[14] In its reply to the Court's written question, Apcoa stated that ‘where the parking time is exceeded, only control fees are charged’.

[15] C-277/05, EU:C:2007:440.

[16] The request for a preliminary ruling notes that in 2007 and 2014 the Landsskatteretten (National Tax Tribunal) followed a judgment delivered by the referring court on 12 April 1996 concerning the tax payable by Apcoa on control fees. The Højesteret (Supreme Court) held that the increased fees, levied on the basis of a quasi-contractual relationship, had to be regarded as consideration for a service and, therefore, as subject to VAT, regardless of the fact that they were set at a standard rate which was very high in comparison with the ordinary parking fee and intended to prevent parking in breach of the regulations.

[17] See the first indent of point 36 of this Opinion. See, also, Opinion of Advocate General Kokott in *MEO – Serviços de Comunicações e Multimédia* (C-295/17, EU:C:2018:413, point 34) in which she notes that ‘it is of no importance … how the national law regards the indemnity. It is irrelevant from the point of view of VAT law … whether it is to be regarded as compensation for a claim in tort or a contractual penalty, or as damages, compensation or consideration.’

46. That service falls within the definition of 'letting' within the meaning of Article 135(2)(b) of the VAT Directive, which includes any economic activity consisting of receiving remuneration in consideration for making vehicle parking spaces available, irrespective of the legal status of the person letting them or whether that person owns those spaces.[18]

47. That being so, where Apcoa charges additional fees, it is necessary to ascertain whether any analogy can be drawn with the solution that the Court identified in its judgment of 18 July 2007, *Société thermale d'Eugénie-les-Bains* as regards whether those fees are subject to VAT.[19]

48. In that judgment, the Court held that 'a sum paid as a deposit, in the context of a contract relating to the supply of hotel services which is subject to VAT, is to be regarded, where the client exercises the cancellation option available to him and that sum is retained by the hotelier, as a fixed cancellation charge paid as compensation for the loss suffered as a result of client default and which has no direct connection with the supply of any service for consideration and, as such, is not subject to that tax.'[20]

49. The Court stated that 'the retention of the deposit at issue in the main proceedings is … triggered by the client's exercise of the cancellation option made available to him and serves to compensate the hotelier following the cancellation'.[21] Accordingly, in such a situation, it is because the hotelier was unable to provide the hotel service reserved by the client and because the client, obviously, did not use the service that the client compensates the hotelier for a loss of profit.

50. My view is therefore that the scope of the judgment of 18 July 2007, *Société thermale d'Eugénie-les-Bains*,[22] should be confined to those cases in which the contracting party is compensated because there was no transaction, which is in line with the judgments of 1 July 1982, *BAZ Bausystem*[23] (concerning interest on account of late payment); of 29 February 1996, *Mohr*[24] (concerning compensation for lost business); and of 18 January 2017, *SAWP*[25] (concerning fair compensation for the holders of reproduction rights).

51. In the present case, where an Apcoa-managed car park is used, the motorist who pays control fees has had the benefit of a parking space or area. The amount of the fees is determined by the fact that the conditions which the motorist accepted on entering the car park are fulfilled.

52. Under those circumstances, I believe, in common with the Danish Government, that it is helpful to compare the situation under analysis with the judgment in *Vodafone Portugal*, delivered after the request for a preliminary ruling was submitted and after Apcoa filed its written

[18] So far as I am aware, the Court has delivered only one judgment on the scope of Article 135 of that directive. This is the judgment of 13 July 1989, *Henriksen* (173/88, EU:C:1989:329, paragraph 17), concerning a letting of spaces which was linked to a non-taxable letting. The Court interpreted Article 13B(b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), whose provisions correlate to those of Article 135(2)(b) of the VAT Directive (see Annex XII to that latter directive).

[19] C-277/05, EU:C:2007:440.

[20] Judgment of 18 July 2007, *Société thermale d'Eugénie-les-Bains* (C-277/05, EU:C:2007:440, paragraph 36).

[21] Judgment of 18 July 2007, *Société thermale d'Eugénie-les-Bains* (C-277/05, EU:C:2007:440, paragraph 32).

[22] C-277/05, EU:C:2007:440.

[23] 222/81, EU:C:1982:256, paragraph 8.

[24] C-215/94, EU:C:1996:72, paragraph 21.

[25] C-37/16, EU:C:2017:22, paragraph 30.

observations, because it has had the effect of supplementing the judgment in *MEO – Serviços de Comunicações e Multimédia,*[26] in a manner conducive to an interpretation of the scope of that judgment different from the scope for which Apcoa argues in its written observations.

53. In *Vodafone Portugal*, the Court stated that:

– 'In the context of its business activities, [Vodafone Portugal – Comunicações Pessoais SA ('Vodafone')] concludes with its customers services contracts, some of which include special promotions subject to conditions which tie those customers in for a predetermined minimum period ("the tie-in period"). Under those terms and conditions, customers commit to maintaining a contractual relationship with Vodafone and to using the goods and services supplied by that company for the tie-in period, in exchange for benefiting from advantageous commercial conditions, usually related to the price payable for the contracted services';[27] and

– 'failure by customers to comply with the tie-in period for reasons attributable to themselves results in them paying the amounts provided for in the contracts. Those amounts seek to deter such customers from failing to comply with the tie-in period.'[28]

54. The Court noted the following features:[29]

– 'Vodafone commits to providing to its customers the supplies of services agreed in the contracts concluded with them and under the conditions stipulated in those contracts'; and

– 'its customers commit to paying the monthly instalments provided for under those contracts and also, if necessary, the amounts due where those contracts were terminated before the end of the tie-in period for reasons specific to those customers'.

55. The Court held that 'where those customers do not comply with that tie-in period, the supply of services must be regarded as having been made, since those customers are placed in a position to benefit from those services'.[30]

56. Having regard to the economic reality of the transactions, the Court found that the amounts payable by customers reflect the recovery of some of the costs associated with the supply of the services which that operator has provided to those customers.[31] Those amounts represent part of the cost of the service which the provider committed to supplying[32] and seek to guarantee the operator a minimum remuneration for the service provided.[33]

26 See footnote 33 of this Opinion.

27 Judgment in *Vodafone Portugal* (paragraph 18).

28 Judgment in *Vodafone Portugal* (paragraph 19).

29 Judgment in *Vodafone Portugal* (paragraph 37).

30 Judgment in *Vodafone Portugal* (paragraph 41).

31 Judgment in *Vodafone Portugal* (paragraph 38).

32 Judgment in *Vodafone Portugal* (paragraph 39).

33 See judgment in *Vodafone Portugal* (paragraph 40). On the basis of its findings on how the amounts payable are calculated (see paragraph 34 of that judgment), the Court responded to the referring court's doubts, expressed in paragraphs 26 and 27 of its judgment, as to the scope of the judgment in *MEO – Serviços de Comunicações e Multimédia* on account of its statements concerning the fact that the amount paid in respect of the failure to comply with the tie-in corresponded to the amount which the operator concerned would have received during the remainder of that period had the contract not been terminated.

57. In my view that finding can be transposed to the transactions at issue in the main proceedings since, in common with the Danish Government, I believe that, in the situations in which control fees are payable, the users of Apcoa-managed car parks have had an opportunity to benefit from a place to park. The price of that service is correlated with the ways in which the sites can be used that the operator is not able to control.

2. Actual consideration

58. Apcoa argues that the control fees are not consideration for a supply, because they are at a standard rate far above the value of the supply made to the motorist. In common with the Commission, it asserts that those fees seek to penalise an infringement of the conditions of use of its car parks.

59. However, first, I would note that the Court has held that the amount of the consideration is irrelevant.[34] Second, no argument can be based on the fact that the flat-rate charge is intended to deter clients from infringing the parking regulations because, according to settled case-law, the purpose and results of the transaction concerned are irrelevant to its characterisation, which is determined exclusively by the economic reality.[35]

60. In the present case, my view is that, first, the amount of the control fees is correlated with the fact that a driver who has parked in a car park made available by Apcoa chooses to exceed the time for using the parking space concerned, or not to correctly prove entitlement to use it or to park either in a space not reserved for that motorist or in a manner that causes an obstruction.

61. Second, in terms of the economic reality, it should be found that the amount of the control fees necessarily take into account the higher cost of operating car parks. That increased cost is caused by parking that does not fulfil the normal conditions of use of the service offered. In other words, the amount of the consideration seeks to provide Apcoa with contractual remuneration for the supply made in circumstances attributable to the user which do not alter the economic and commercial reality of its relationship with the user.

62. I note that the June 2013 report on enhanced consumer protection in the field of parking, drawn up by a working group of the Justitsministeriet (Danish Ministry of Justice), to which the referring court refers, states that 'the representatives of the Danske Private Parkeringsselskabers Brancheforening [(Danish Private Parking Association)] informed the working group that the increase [in private parking fees[36]] to DKK 590 was prompted inter alia by an ongoing increase in the various operating expenses of a parking undertaking and by the fact that the public tariff could no longer be charged. That association asserted specifically in that respect that the fee had to reflect the higher price of parking compliant with the regulations, that companies are subject to VAT on the parking fees paid and that, unlike the fees imposed by public authorities, their payment cannot be required of the owner on the basis of third-party liability'. The report also states that 'the level of the current private parking fees is determined on the basis of calculations of overall changes in prices and pay and in fact normally depends on costs and on the market'.[37]

[34] See the third indent of point 36 of this Opinion.

[35] See the second indent of point 36 of this Opinion.

[36] That expression drawn from the referring court's quotation from the June 2013 report corresponds to the expression 'control fees', see footnote 5 of this Opinion.

[37] The Danish Government indicated that those fees have increased regularly since 2009 and that, for 2020, they had been set by several private parking companies, including Apcoa, at at least DKK 750 (approximately EUR 100).

3. Link between the service and the actual consideration

63. It is apparent from settled case-law that a supply of services is effected 'for consideration', within the meaning of Article 2(1)(c) of the VAT Directive, and is therefore subject to tax, only if there is a *direct* link between the service supplied and the consideration received.[38]

64. Apcoa concurs with the Commission in considering there to be no such direct link, because there is no specific economic link with the value of a parking service.

65. However, it emerges from the Court's settled case-law that there is a direct link where two services are mutually dependent on each other, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient, that is to say, that one is made only on condition that the other is also made, and vice versa.[39]

66. That is the case here. There is direct link between a motorist's parking in specific circumstances determined by Apcoa and the fact that Apcoa receives increased parking fees.

67. Moreover, in my view liability to tax cannot depend on whether the customer uses the parking space or area supplied correctly or incorrectly. A person who benefits from the supply of a parking service at an ordinary price cannot be treated differently for the purposes of VAT from a person who is prepared to use that service at a higher cost.[40]

68. I therefore conclude that the control fees received by Apcoa constitute actual consideration for the parking service enjoyed by the client in specific circumstances chosen by the client and, accordingly, that they are subject to VAT.

V. Conclusion

69. In the light of the foregoing, I propose that the Court should reply as follows to the question referred by the Højesteret (Supreme Court, Denmark) for a preliminary ruling:

Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the fees levied by an economic operator in consideration for the parking of vehicles, where the amount of those fees is fixed by the operator on the basis of the conditions of use relating to that parking, must be considered to be remuneration for a supply of services for consideration and as such subject to that tax.

[38] See point 34 of this Opinion.

[39] See judgment of 11 March 2020, *San Domenico Vetraria* (C-94/19, EU:C:2020:193, paragraph 26 and the case-law cited).

[40] See, by analogy, judgment in *MEO – Serviços de Comunicações e Multimédia* (paragraph 47).