JUDGMENT OF THE COURT (Third Chamber)

14 December 2006 *

In Case C-217/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunal Supremo (Spain), made by decision of 3 March 2005, received at the Court on 17 May 2005, in the proceedings

Confederación Española de Empresarios de Estaciones de Servicio

v

Compañía Española de Petróleos SA,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Borg Barthet, J. Malenovský, U. Lõhmus (Rapporteur) and A. Ó Caoimh, Judges,

* Language of the case: Spanish.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 July 2006,

after considering the observations submitted on behalf of:

— Confederación Española de Empresarios de Estaciones de Servicio, by A. Hernández Pardo, C. Flores Hernández and L. Ruiz Ezquerra, abogados,

— Compañía Española de Petróleos SA, by J. Folguera Crespo and A. Martínez Sánchez, abogados,

— the Commission of the European Communities, by E. Gippini Fournier and K. Mojzesowicz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the 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).

2 The reference was made in the course of proceedings between Confederación Española de Empresarios de Estaciones de Servicio ('the Confederation'), the applicant in the main proceedings, and Compañía Española de Petróleos S.A. ('CEPSA'), the defendant in the main proceedings, concerning practices by CEPSA alleged to restrict competition, arising from agreements concluded between it and a number of undertakings operating service stations.

Legal background

Community legislation

3 Regulation No 1984/83 excludes from the scope of Article 85(1) of the Treaty (subsequently Article 85 of the EC Treaty and now Article 81 EC) certain categories of exclusive purchasing agreements and concerted practices which normally satisfy the conditions laid down in Article 85(3), on the ground that they lead in general to an improvement in distribution. The regulation contains specific provisions for service-station agreements in Articles 10 to 13.

4 Under Article 10 of Regulation No 1984/83:

'Pursuant to Article 85(3) of the Treaty and subject to Articles 11 to 13 of this Regulation, it is hereby declared that Article 85(1) of the Treaty shall not apply to agreements to which only two undertakings are party and whereby one party, the reseller, agrees with the other, the supplier, in consideration for the according of special commercial or financial advantages, to purchase only from the supplier, an

undertaking connected with the supplier or another undertaking entrusted by the supplier with the distribution of his goods, certain petroleum-based motor-vehicle fuels or certain petroleum-based motor-vehicle and other fuels specified in the agreement for resale in a service station designated in the agreement.'

5 Article 11 of Regulation No 1984/83 provides:

'Apart from the obligation referred to in Article 10, no restriction on competition shall be imposed on the reseller other than

(a) the obligation not to sell motor-vehicle fuel and other fuels which are supplied by other undertakings in the service station designated in the agreement;

(b) the obligation not to use lubricants or related petroleum-based products which are supplied by other undertakings within the service station designated in the agreement where the supplier or a connected undertaking has made available to the reseller, or financed, a lubrication bay or other motor-vehicle lubrication equipment;

(c) the obligation to advertise goods supplied by other undertakings within or outside the service station designated in the agreement only in proportion to the share of these goods in the total turnover realized in the service station;

(d) the obligation to have equipment owned by the supplier or a connected undertaking or financed by the supplier or a connected undertaking serviced by the supplier or an undertaking designated by him.'

6 Article 12 of Regulation No 1984/83 sets out the clauses and contractual obligations which preclude the application of Article 10. Article 13 provides that Articles 2(1), 3(3)(a) and (b), 4 and 5 of that regulation are to apply mutatis mutandis to service-station agreements.

National legislation

7 Article 1(1) of Law No 16/1989 on the Protection of Competition (Ley No 16/1989 de Defensa de la Competencia) of 17 July 1989 (BOE No 170 of 18 July 1989, p. 22747) ('Law No 16/1989') classifies as prohibited conduct certain types of anti-competitive conduct drawn directly from Article 85(1) of the Treaty.

8 Royal Decree No 157/1992 implementing Law No 16/1989 with regard to block exemptions, individual authorisations, and the Competition Protection Register (Real Decreto 157/1992, por el que se desarrolla la Ley 16/1989 de 17 de julio en materia de exenciones por categories, autorización singular y registro de defensa de

la competencia) of 21 February 1992 (BOE No 52, of 29 February 1992, p. 7106) ('Royal Decree No 157/1992'), provides in Article 1:

'Block exemptions

(1) In accordance with Article 5(1)(a) of [Law 16/1989], agreements shall be authorised to which only two undertakings are party and which, belonging to one of the following categories, affect only the national market and satisfy the conditions laid down below for each of those categories:

...

(b) exclusive purchasing contracts under which one party agrees with another party to purchase, for resale, certain products only from that party, an undertaking connected with that party, or another undertaking entrusted by that party with the distribution of his goods, provided that the agreement complies with the provisions laid down in Commission Regulation (EEC) No 1984/83 of 22 June 1983 ...

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 On 4 May 1995, the Confederation filed a complaint with the Servicio de Defensa de la Competencia (Competition Protection Department), attached to the Ministry of Economic Affairs and Finance, against certain undertakings in the petroleum sector including CEPSA. The Confederation complained that the agreements concluded at the end of 1992 between CEPSA and service-station operators, originally entitled 'fixed purchase contracts', subsequently amended to become 'sales guarantee commission arrangements' and/or 'agency contracts' ('the agreements concerned'), had the effect of restricting competition. It is apparent from the documents in the file submitted to the Court that 95% of service stations in the CEPSA network are bound by this type of contract.

10 By decision of 7 November 1997, the Confederation's complaint was filed as requiring no action on the ground that the agreements concerned were not contrary to Article 1(1) of Law No 16/1989, since that provision is not applicable to agreements concluded by commission agents, commercial agents or intermediaries with other undertakings. The appeal by the Confederation against that decision was dismissed by the Tribunal de Defensa de la Competencia by decision of 1 April 1998 on essentially the same grounds.

11 Since its subsequent action before the Audiencia Nacional was also dismissed by decision of 22 January 2002, the Confederation brought an appeal before the Tribunal Supremo. One of the pleas in law relied on in support of that appeal alleges infringement of Article 85(1) of the Treaty and of Regulation No 1984/83, to which Royal Decree No 157/1992 refers.

12 In the context of that dispute, the Tribunal Supremo decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Articles 10 to 13 of Regulation [No 1984/83] be interpreted as meaning that they include within their scope contracts for the exclusive distribution of motor-vehicle and other fuels which are nominally classified as commission or agency contracts and which contain the following clauses:

(a) the service-station operator undertakes to sell the supplier's motor-vehicle and other fuels in accordance with the retail prices, conditions, and sales and business methods stipulated by the supplier;

(b) the service-station operator assumes the risk associated with the products as soon as he receives them from the supplier in the storage tanks at the service station;

(c) once he has received the products, the service-station operator assumes the obligation to keep the products in the conditions necessary to ensure that they undergo no loss or deterioration and is liable, where applicable, both to the supplier and to third parties for any loss, contamination or adulteration which may affect the products and for any damage arising as a result thereof;

(d) the service-station operator is required to pay the supplier the cost of the motor-vehicle and other fuels nine days after the date of their delivery to the service station?'

The question referred for a preliminary ruling

The jurisdiction of the Court to answer the question and its admissibility

13 CEPSA and the Commission of the European Communities both submit that no reply should be given to the question referred for a preliminary ruling, although for different reasons.

14 First of all, as regards CEPSA's position, it argues that the Court has no jurisdiction to answer the question referred, first, on the ground that the dispute in the main proceedings is entirely a matter of national law. The reference made to the 'provisions laid down in Regulation No 1984/83' by Article 1(1)(b) of Royal Decree No 157/1992 does not really constitute a reference to Community law, but simply incorporates the contents of Articles 10 to 13 of that regulation into national law. Therefore, those provisions of Community law are relevant in the context of the dispute in the main proceedings only as elements of Spanish domestic law.

15 Second, CEPSA takes the view that, in the absence of an effect on trade between Member States, Article 85(1) of the Treaty is not applicable to the dispute in the main proceedings.

16 As a preliminary point, it must be observed that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine

in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, in particular, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 24, and Case C-306/99 *BIAO* [2003] ECR I-1, paragraph 88).

17 Where questions submitted by national courts concern the interpretation of a provision of Community law, the Court of Justice is bound, in principle, to give a ruling unless it is obvious that the request for a preliminary ruling is in reality designed to induce the Court to give a ruling by means of a fictitious dispute, or to deliver advisory opinions on general or hypothetical questions, or that the interpretation of Community law requested bears no relation to the actual facts of the main action or its purpose, or that the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *BIAO*, paragraph 89 and the case-law cited).

18 That is not the position in the dispute in the main proceedings.

19 The Court has already held that neither the wording of Article 234 EC nor the aim of the procedure established by that article indicates that the Treaty makers intended to exclude from the jurisdiction of the Court requests for a preliminary ruling on a Community provision where the domestic law of a Member State refers to that Community provision in order to determine the rules applicable to a situation which is purely internal to that State (*Leur-Bloem*, paragraph 25).

20 Therefore, where, in regulating internal situations, domestic legislation adopts the same solutions as those adopted in Community law in order, as in the case in the

main proceedings, to avoid any distortion of competition, it is clearly in the Community interest that, in order to forestall a risk of future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, in particular, Case C-28/95 *Leur-Bloem*, paragraph 32, and Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 16).

21 Furthermore, contrary to CEPSA's submissions, the circumstances in the case in the main proceedings are different from those in Case C-346/93 *Kleinwort Benson* [1995] ECR I-615. In that judgment, the Court held that it had no jurisdiction to interpret national legislation which did not make a direct and unconditional reference to Community law, but which merely took the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 1) as a model and did not wholly reproduce the terms thereof. It is apparent from paragraph 18 of that judgment that express provision was made in that legislation for the national authorities to adopt modifications 'designed to produce divergence' between any provision of that legislation and a corresponding provision of the Convention. Moreover, that legislation distinguished between the provisions applicable to Community situations and those applicable to domestic situations.

22 As far as concerns this reference for a preliminary ruling, although Article 1(1)(b) of Royal Decree No 157/1992 makes express reference to Regulation No 1984/83 only in order to determine the rules applicable to domestic situations, the fact remains that, by means of a reference to the provisions of Regulation No 1984/83, the national legislature decided to apply the same treatment to domestic and to Community situations. It follows that where there is a reference to an act of Community law in national legislation, such as there is in the case in the main proceedings, the Court has jurisdiction to interpret that act.

23 Having regard to those considerations, there is no need to examine the arguments put forward by CEPSA as regards the absence of effect on trade between Member States.

24 Therefore, CEPSA's contention that the Court lacks jurisdiction must be dismissed.

25 As regards the Commission's position, while not formally pleading that the reference for a preliminary ruling is inadmissible, it emphasises that the factual context of the dispute in the main proceedings is not described adequately in the order for reference, and expresses doubts as to how useful an answer to the question referred for a preliminary ruling will be, having regard to the circumstances of that dispute and, in particular, the fact that, if the file is reopened by the Spanish competition authorities, they may conclude that 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), which replaced Regulation No 1984/83, is now applicable.

26 It must be observed in that regard that, according to settled case-law, the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (Case C-72/03 *Carbonati Apuani* [2004] ECR I-8027, paragraph 10, and Case C-134/03 *Viacom Outdoor* [2005] ECR I-1167, paragraph 22).

27 Furthermore, the information provided in the order for reference must not only enable the Court to give a useful answer, but must also give the Governments of the Member States and the other interested parties the opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice (see, to that effect, inter alia, orders in Joined Cases C-128/97 and C-137/97 *Testa and Modesti* [1998] ECR I-2181, paragraph 6, and in Case C-325/98 *Anssens* [1999] I-2969, paragraph 8).

28 Accordingly, a question referred for a preliminary ruling by a national court is inadmissible where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see to that effect, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 19).

29 In order to ascertain whether the information supplied by the Tribunal Supremo satisfies those requirements, the nature and scope of the question raised have to be taken into consideration. In so far as the need for precision with regard to the factual context applies especially in the area of competition, which is characterised by complex factual and legal situations, the Court must examine whether the order for reference supplies sufficient information to enable it to give a useful answer to that question (see, to that effect, *Viacom Outdoor*, paragraph 23).

30 In that regard, it must be observed that the order for reference does not contain certain information that would be relevant for the purposes of answering the question referred. Although the wording of the question does indicate that the

service-station operator assumes the risks associated with the goods as soon as he receives them from the supplier, the fact remains that the order for reference does not make it clear whether or not that operator assumes certain specific risks under the fuel distribution agreements, who is the owner of the fuel after its delivery to the service-station operator, or who bears the transport costs.

31 Nevertheless, despite such gaps, the order for reference does make it possible to determine the scope of the question referred, as evidenced by the contents of the observations submitted by the parties to the main proceedings and the Commission. Therefore, the Court has sufficient factual material to interpret the Community rules concerned and to give a useful answer to that question.

32 Moreover, as the Advocate General points out in point 30 of her Opinion, it is not obvious that the lawfulness of the 1997 decision by the Servicio de Defensa de la Competencia to file the complaint and not to take any action should not be assessed in the light of the law in force at the time, namely, in particular, Regulation No 1984/83. In any event, the decision as to the applicability of that regulation to the factual situation that is the subject-matter of the dispute in the main proceedings is a matter for the national court. Consequently, the Commission's doubts as to the relevance of the question referred are also not such as to affect its admissibility.

33 It follows that a reply must be given to the question referred for a preliminary ruling.

Substance

34 By its question, the national court asks, essentially, whether exclusive fuel distribution contracts with the characteristics it describes fall within the scope of Article 85 of the Treaty and Regulation No 1984/83.

35 As a preliminary point, it must be observed that that regulation merely provides for a block exemption, by which certain categories of agreements between undertakings avoid the prohibition on agreements, decisions and concerted practices laid down in Article 85(1) of the Treaty. Thus, only agreements between undertakings within the meaning of Article 85(1) of the EC Treaty are covered by Regulation No 1984/83.

36 It is therefore appropriate to examine, first of all, whether the agreements at issue in the main proceedings constitute such agreements between undertakings and, second, whether the block exemption introduced by Regulation No 1984/83 is applicable to them.

37 In that connection, it must be recalled that, according to settled case-law, agreements between traders at different levels in the economic process, namely 'vertical agreements', may constitute agreements within the meaning of Article 85(1) of the Treaty and be prohibited by that provision (see, to that effect, Joined Cases 56/64 and 58/64 *Consten and Grundig* v *Commission* [1966] ECR 299, 338, and Case C-266/93 *Volkswagen and VAG Leasing* [1995] ECR I-3477, paragraph 17).

38 However, vertical agreements such as the agreements between CEPSA and service-station operators are covered by Article 85 of the EC Treaty only where the operator is regarded as an independent economic operator and there is, consequently, an agreement between two undertakings.

39 It is settled case-law that, in Community competition law, the definition of an 'undertaking' covers any entity engaged in an economic activity, regardless of the legal status of that entity and the way in which it is financed (Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21, and Case C-205/03 P *FENIN* v *Commission* [2006] ECR I-6295, paragraph 25).

40 The Court has also stated that, in the same context, the term 'undertaking' must be understood as designating an economic unit for the purpose of the subject-matter of the agreement in question even if in law that economic unit consists of several persons, natural or legal (Case 170/83 *Hydrotherm* [1984] ECR 2999, paragraph 11).

41 The Court has furthermore made clear that for the purposes of applying the rules on competition the formal separation between two parties resulting from their separate legal personality is not conclusive, the decisive test being the unity of their conduct on the market (see, to that effect, Case 48/69 *ICI* v *Commission* [1972] ECR 619, paragraph 140).

42 In certain circumstances, the relationship between a principal and his agent may be characterised by such economic unity (see, to that effect, Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73 *Suiker Unie and Others* v *Commission* [1975] ECR 1663, paragraph 480).

43 In that connection, it is clear, however, from the case-law that agents can lose their character as independent traders only if they do not bear any of the risks resulting

from the contracts negotiated on behalf of the principal and they operate as auxiliary organs forming an integral part of the principal's undertaking (see, to that effect, *Volkswagen and VAG Leasing*, paragraph 19).

44 Therefore where an intermediary, such as a service-station operator, while having separate legal personality, does not independently determine his conduct on the market since he depends entirely on his principal, such as a supplier of fuel, because the latter assumes the financial and commercial risks as regards the economic activity concerned, the prohibition laid down in Article 85(1) of the Treaty is not applicable to the relationship between that intermediary and the principal.

45 Conversely, where the agreements concluded between a principal and its intermediaries confer on or allow them functions which, from an economic point of view, are approximately the same as those carried out by an independent economic operator, because they make provision for those intermediaries to assume the financial and commercial risks linked to sales or the performance of contracts entered into with third parties, such intermediaries cannot be regarded as auxiliary organs forming an integral part of the principal's undertaking, so that a clause restricting competition which they have entered into may be an agreement between undertakings for the purposes of Article 85 of the Treaty (see, to that effect, *Suiker Unie*, paragraphs 541 and 542).

46 It follows that the decisive factor for the purposes of determining whether a service-station operator is an independent economic operator is to be found in the agreement concluded with the principal and, in particular, in the clauses of that

agreement, implied or express, relating to the assumption of the financial and commercial risks linked to sales of goods to third parties. As the Commission rightly submitted in its observations, the question of risk must be analysed on a case-by-case basis, taking account of the real economic situation rather than the legal classification of the contractual relationship in national law.

47 In those circumstances, an assessment must be made as to whether or not, in the context of agreements having the characteristics described by the national court, the service-station operators assume certain financial and commercial risks linked to the sale of fuel to third parties.

48 An analysis of how those risks are allocated must be made in the light of the factual circumstances of the case in the main proceedings. As has already been pointed out in paragraph 30 of this judgment, the file submitted to the Court does not provide full information as to the way in which that allocation operates under the agreements concluded between CEPSA and the service-station operators.

49 In that context, it must be recalled that the Court has no jurisdiction to give a ruling on the facts in an individual case or to apply the rules of Community law which it has interpreted to national measures or situations, since those questions are matters within the jurisdiction of the national court (see, in particular, Case C-253/03 *CLT-UFA* [2006] ECR I-1831, paragraph 36, and Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 69).

50 Nevertheless, in order to give a useful answer to the national court, it is appropriate to set out the criteria enabling an assessment to be made as to the actual allocation

of the financial and commercial risks between service-station operators and the fuel supplier under the agreements at issue in the main proceedings, for the purposes of determining whether Article 85 of the Treaty is applicable to them.

51 In that connection, the national court should take account, first, of the risks linked to the sale of the goods, such as the financing of fuel stocks and, second, of the risks linked to investments specific to the market, namely those required to enable the service-station operator to negotiate or conclude contracts with third parties.

52 First, as regards the risks linked to the sale of the goods, it is likely that the service-station operator assumes those risks when he takes possession of the goods at the time he receives them from the supplier, that is to say, prior to selling them on to a third party.

53 Likewise, the service-station operator who assumes, directly or indirectly, the costs linked to the distribution of those goods, particularly the transport costs, should be regarded as thereby assuming part of the risk linked to the sale of the goods.

54 The fact that the service-station operator maintains stocks at his own expense could also be an indication that the risks linked to the sale of the goods are transferred to him.

55 Furthermore, the national court should determine who assumes responsibility for any damage caused to the goods, such as loss or deterioration, and for damage caused by the goods sold to third parties. If the service-station operator were responsible for such damage, irrespective of whether or not he had complied with the obligation to keep the goods in the conditions necessary to ensure that they undergo no loss or deterioration, the risk would have to be regarded as having been transferred to him.

56 It is also necessary to assess the allocation of the financial risk linked to the goods, in particular as regards payment for the fuel should the service-station operator not find a purchaser, or where payment is deferred as a result of payment by credit card, on the basis of the rules or practices relating to the payment system for fuel.

57 In that connection, it is apparent from the order for reference that the service-station operator is required to pay CEPSA the amount corresponding to the sale price of the fuel nine days after the date of delivery and that, by the same date, the service-station operator receives commission from CEPSA, in an amount corresponding to the quantity of fuel delivered.

58 In those circumstances, it is for the national court to ascertain whether the payment to the supplier of the amount corresponding to the sale price of the fuel depends on the quantity actually sold by that date and, as regards the turnover period for the goods in the service-station, whether the fuel delivered by the supplier is always sold within a period of nine days. If the answer is in the affirmative it would have to be concluded that the commercial risk is born by the supplier.

59 As regards the risks linked to investments specific to the market, if the service-station operator makes investments specifically linked to the sale of the goods, such as premises or equipment such as a fuel tank, or commits himself to investing in advertising campaigns, such risks are transferred to the operator.

60 It follows from the foregoing that, in order to determine whether Article 85 of the Treaty is applicable, the allocation of the financial and commercial risks between the service-station operator and the supplier of fuel must be analysed on the basis of criteria such as ownership of the goods, the contribution to the costs linked to their distribution, their safe-keeping, liability for any damage caused to the goods or by the goods to third parties, and the making of investments specific to the sale of those goods.

61 However, as the Commission rightly submits, the fact that the intermediary bears only a negligible share of the risks does not render Article 85 of the Treaty applicable.

62 Nevertheless, it must be pointed out that, in such a case, only the obligations imposed on the intermediary in the context of the sale of the goods to third parties on behalf of the principal fall outside the scope of that article. As the Commission submitted, an agency contract may contain clauses concerning the relationship between the agent and the principal to which that article applies, such as exclusivity and non-competition clauses. In that connection it must be considered that, in the context of such relationships, agents are, in principle, independent economic operators and such clauses are capable of infringing the competition rules in so far as they entail locking up the market concerned.

63 If, following examination of the risks assumed by the service-station operators involved in the case in the main proceedings, the obligations imposed on them in the context of the sale of goods to third parties were not to be regarded as agreements between undertakings within the meaning of Article 85 of the Treaty, the obligation imposed on those service-station operators to sell fuel at a specific price would fall outside that provision and would thus be inherent in CEPSA's ability to delimit the scope of the activities of its agents. Conversely, if the national court were to conclude that there was an agreement between undertakings within the meaning of Article 85 of the Treaty as regards the sale of goods to third parties, the question would arise as to whether the obligation in question falls within the block exemption provided for in Articles 10 to 13 of Regulation No 1984/83.

64 In that connection, it must be observed that Article 11 of Regulation No 1984/83 lists the obligations that, apart from an exclusivity clause, may be imposed on a reseller, which do not include the imposition of the retail price. Consequently, stipulation by CEPSA of that price would constitute a restriction on competition not covered by the exemption in Article 10 of that regulation.

65 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling must be that Article 85 of the Treaty 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.

66 Articles 10 to 13 of Regulation No 1984/83 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.

Costs

67 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

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.**

[Signatures]