

JUDGMENT OF THE COURT (Sixth Chamber)
10 November 1993^{*}

In Case C-39/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal Cível da Comarca, Lisbon, for a preliminary ruling in the proceedings pending before that court between

Petróleos de Portugal SA (Petrogal)

and

Correia, Simões & Companhia, Ld.^a,

Correia, Sousa & Crisóstomo, Ld.^a,

on the interpretation of Article 85(2) of the EEC Treaty and Article 12(1(c) 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, corrigendum in OJ 1984 L 79, p. 38),

THE COURT (First Chamber),

composed of: D. A. O. Edward, President of the Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

^{*} Language of the case: Portuguese.

after considering the written observations submitted on behalf of:

- Petróleos de Portugal — Petrogal SA, by Adriano Figueiredo, of the Lisbon Bar,
- the Portuguese Government, by Luís Inez Fernandes, Director of the Legal Affairs Department of the General Directorate for the European Communities, and Luís Augusto Máximo dos Santos, Assistant in the Lisbon Law Faculty, acting as Agents,
- the Greek Government, by Nikolaos Mavrikas, Assistant Legal Adviser in the State Council for Legal Affairs, and Panagiotis Athanassoulis, Legal Agent of the State Council for Legal Affairs, acting as Agents,
- the Commission of the European Communities, by Ana Maria Alves Vieira and Francisco Enrique Gonzalez Diaz, of its Legal Service, acting as Agents, and Helena Varandas, a Portuguese official seconded to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Petróleos de Portugal — Petrogal SA, represented by Fernando Cunha de Sá, of the Lisbon Bar; Correia, Simões & Companhia, Limitada, and Correia, Sousa & Crisóstomo, Limitada, represented by Victor de Menezes Falcão, of the Lisbon Bar; the Greek Government, and the Commission of the European Communities at the hearing on 24 June 1993,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 July 1993,

gives the following

Judgment

1 By order of 22 March 1991, which was received at the Court on 13 February 1992, the Tribunal Cível da Comarca (Civil Court of First Instance), Lisbon, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 85(2) of the EEC Treaty and Article 12(1)(c) 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, corrigendum in OJ 1984 L 79, p. 38).

2 The question was raised in proceedings between, on the one hand, the company Petróleos de Portugal — Petrogal (hereinafter 'Petrogal') and, on the other, Correia Simões & Companhia, Limitada (hereinafter 'the reseller') and Correia, Sousa & Crisóstomo Limitada, following the unilateral termination by the reseller of a contract concluded on 17 May 1982 for a 15-year period, that is to say, until 17 May 1997.

3 Under Article 1 of that contract, Petrogal undertook to supply fuels and lubricants to the reseller, which agreed to purchase them for resale in its service station. The company Correia, Sousa & Crisóstomo Limitada, undertook to act as guarantor for the reseller *vis-à-vis* Petrogal.

4 The reseller terminated the agreement on 14 May 1990. Petrogal brought an action against it in the Tribunal Cível da Comarca, Lisbon, for breach of contract.

5 The Tribunal Cível da Comarca, Lisbon, considered that it was necessary to refer the following question to the Court for a preliminary ruling:

'Where, in breach of Article 12(1)(c) of Regulation (EEC) No 1984/83 of 22 June 1983, it is provided in a service-station agreement as contemplated in Article 10 of the regulation that the said agreement is concluded for an indefinite duration or for

a period of more than 10 years, does this, by virtue of Article 85(2) of the Treaty, render the agreement void in its entirety or is it possible, on the ground that the nullity affects only that point, to abridge the agreement by making it apply for a period of 10 years, the maximum permitted by the regulation?’

- 6 Reference is made to the Report for the Hearing for a fuller account of the legal background to the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.
- 7 The national court’s question seems to be based on the assumption that Regulation No 1984/83 lays down the conditions for the validity of service station agreements under Community competition rules.
- 8 Regulation No 1984/83 is only a block exemption regulation, adopted by the Commission pursuant to Regulation No 19/65 of the Council of 2 March 1965 on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices (OJ, English Special Edition 1965-1966, p. 35), as most recently amended by the Act of 12 June 1985 concerning the accession of the Kingdom of Spain and the Portuguese Republic and the adjustments of the Treaties (OJ 1985 L 302, p. 23, hereinafter ‘the Act of Accession’). In the event that an agreement does not fulfil all the conditions for exemption laid down by such a regulation, it does not follow that it is contrary to Article 85(1) of the Treaty. In such a case, it is for the national court to determine whether the agreement is compatible with that provision.
- 9 Article 10 of Regulation No 1984/83 provides that Article 85(1) of the Treaty is inapplicable to certain service-station agreements defined by it. In order to qualify for block exemption, the agreements must satisfy the conditions set out in Articles 11, 12 and 13 of the regulation.

- 10 Under Article 12(1)(c), Article 10 is not applicable where the agreement is concluded for an indefinite period or for more than 10 years.
- 11 However, by virtue of Article 15(3) and Article 15(4), as added by Article 26 of the Act of Accession, the prohibition laid down in Article 85(1) of the Treaty is not to apply to agreements of the type covered by Article 10 which were in force at the date of accession until they expire or, at the latest, until the regulation expires on 31 December 1997, provided that by 1 January 1989 the supplier has released the reseller from all obligations precluding such exemption.
- 12 It follows from that provision that the condition relating to the maximum duration of the agreement as set out in Article 12(1)(c) of the regulation does not apply to a agreement concluded prior to the date of accession, such as that at issue in the main proceedings.
- 13 Consequently, an agreement dating from before the date of accession concluded for an indefinite period or for more than 10 years may benefit from the exemption provided for by Regulation No 1984/83 until the date when it expires or, at the latest, until 31 December 1997, provided that as from 1 January 1989 at the latest its terms were made consistent with the requirements of Articles 10 to 13 of that regulation, with the exception of the requirement laid down in Article 12(1)(c) of the regulation relating to the duration of the agreement.
- 14 Accordingly, the reply to the national court's question must be that a service-station agreement concluded prior to the date of the accession of the Kingdom of Spain and the Portuguese Republic for an indefinite duration or for more than 10 years may benefit from the block exemption provided for by Regulation No 1984/83 in accordance with Article 15(3) and (4) of that regulation, provided that it fulfils the conditions prescribed by the regulation other than that laid down in Article 12(1)(c) relating to the duration of the agreement.

Costs

- 15 The costs incurred by the Government of the Portuguese Republic, the Government of the Hellenic Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in reply to the question referred to it by the Tribunal Cível da Comarca, Lisbon, by order of 22 March 1991, hereby rules:

A service-station agreement concluded prior to the date of the accession of the Kingdom of Spain and the Portuguese Republic for an indefinite duration or for more than 10 years may benefit from the block exemption provided for by 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 in accordance with Article 15(3) and (4) of that regulation, provided that it fulfils the conditions prescribed by the regulation other than that laid down in Article 12(1)(c) relating to the duration of the agreement.

Edward

Joliet

Rodríguez Iglesias

Delivered in open court in Luxembourg on 10 November 1993.

J.-G. Giraud

D. A. O. Edward

Registrar

President of the First Chamber