

Article 85 of the Treaty of Rome and EC Regulation 1984/83

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings; and
- any concerted practice or category of concerted practices

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

EC Regulation 1984/83

EC Regulation 1984/83 deals with the application of Article 85(3) to categories of exclusive purchasing agreements. Title III of this Regulation makes special provisions for service station agreements. It says:

Article 10

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.

Article 11

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.

Article 12

1. Article 10 shall not apply where:

- (a) the supplier or a connected undertaking imposes on the reseller exclusive purchasing obligations for goods other than motor vehicle and other fuels or for services, except in the case of the obligations referred to in Article 11(b) and (d);
- (b) the supplier restricts the freedom of the reseller to obtain from an undertaking of his choice goods or services for which under the provisions of this Title neither an exclusive purchasing obligation nor a ban on dealing in competing products may be imposed;
- (c) the agreement is concluded for an indefinite duration or for a period of more than 10 years;
- (d) the supplier obliges the reseller to impose the exclusive purchasing obligation on his successor for a longer period than the reseller would himself remain tied to the supplier.

2. Where the agreement relates to a service station which the supplier lets to the reseller, or allows the reseller to occupy on some other basis, in law or in fact, exclusive purchasing obligations or bans on dealing in competing products specified in this Title may, notwithstanding paragraph 1(c), be imposed on the reseller for the whole period for which the reseller in fact operates the premises.

Article 13

Article 2(1) and (3), 3(a) and (b), 4 and 5 of this Regulation shall apply *mutatis mutandis*.