

Examination in Commercial Contract Law 3780

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Four hours

No materials

Please answer the following five questions.

1

Flash Gordon, a Finnish national living in Vaasa, Finland, has bought electricity from El fjord AS, a Norwegian electricity supplier that has its seat in Bergen, Norway. The electricity is to be delivered in Vaasa. The law of what country or countries governs the contract? Where can El fjord be sued for breach of contract?

2

Flash builds innovative container-size power generators in Vaasa. The power generators do not need any fuel since they contain a kryptonite component that can provide very large amounts of energy out of nothing. The City of Kiel, Germany, has bought one of those power generators to power the whole city. Flash and Kiel have agreed on the following delivery term: CIF Kai 2, Kiel, Germany Incoterms® 2010. Flash agreed on the carriage of the power generator by sea with Oy Backman-Trummer Ab, a freight forwarder located in Vaasa. On arrival, the power generator did not work. The kryptonite component was clearly damaged by sea water. Who can be made responsible for the damage?

3

Fingrid, a Finnish company, and Elering, an Estonian company, are electricity transmission system operators. There is already one direct current link connecting the Finnish and Estonian grids. On 1 November 2010, Fingrid and Elering signed a co-operation agreement on the construction of a second direct current link, EstLink 2, between the two countries.

EstLink 2 will be a submarine cable with a transmission capacity of 650 megawatts. It has been planned for years. The necessary government permits are expected this year, and the processing of the main contracts of the project is in progress. Contracts with the suppliers were signed in December 2010.

Actual construction work started in January 2011. The goal is that the new link will be brought to commercial operation at the beginning of 2014.

The submarine cable will cost € 320 million to build. The Commission of the European Union has granted an investment subsidy of € 100 million for the project. The first instalment has already been paid to Fingrid and Elering.

What are the probable terms of the contract with the main supplier? Choose:

- the specifications of the goods or the scope of supply
- delivery terms
- payment terms

Use all your creativity!

4

Flash Gordon wants to operate a system of sole distributors in the Nordic countries. In order to maximise profits, it wants to: a) appoint just one sole distributor for each country, b) prohibit cross-border sales to customers, c) set a resale price for each country, and d) prohibit sole distributors from manufacturing or selling competing products during the term of the contract. Are such clauses legal?

5

Please have a look at the following old contract. Would its terms comply with present competition laws?

*Pronuptia de Paris GmbH (hereinafter called "the Franchisor") and Pronuptia de Paris Irmgard Schillgallis (hereinafter called "the Franchisee") have made the following contract on 24 February 1980:*

*The Franchisor:*

- (a) Grants the Franchisee, in respect of a territory defined by means of a map attached to the contract, the exclusive right to use the trade-mark 'Pronuptia de Paris' for the marketing of her goods and services and the right to advertise;*
- (b) Undertakes not to open any other Pronuptia shops in the territory in question or to provide goods or services to third parties in that territory;*
- (c) Undertakes to assist the Franchisee with regard to the commercial aspects of her business, advertising, the establishment and decoration of the shop, staff training, sales techniques, fashion and products, purchasing and marketing and, in general, everything which, in its experience, is likely to help to improve the turnover and profitability of the Franchisee's business.*

*The Franchisee, who remains sole proprietor of her business and assumes all its risks, is obliged:*

- (a) To sell the goods, using the trade name and trade-mark 'Pronuptia de Paris', only in the shop specified in the contract, which must be equipped and decorated mainly for the sale of bridal fashions in accordance with the Franchisor's instructions, in such a way as to enhance the brand image of the Pronuptia chain, and cannot be transferred to another location or altered without the agreement of the Franchisor;*

- (b) To purchase from the Franchisor 80% of wedding dresses and accessories, together with a proportion of cocktail and evening dresses to be set by the Franchisee herself, and to purchase the remainder only from suppliers approved by the Franchisor;*
- (c) To pay the Franchisor, in return for the benefits granted, a single entry fee for the contract territory of DEM 15 000 and, throughout the duration of the contract, a royalty of 10% of total sales of Pronuptia products and all other goods, including evening dresses purchased from suppliers other than Pronuptia;*
- (d) To regard the prices suggested by the Franchisor as recommended retail prices, without prejudice to her freedom to fix her own prices;*
- (e) To advertise in the contract territory only with the Franchisor's agreement, and in any event to harmonize that advertising with the Franchisor's international and national advertising, to distribute catalogues and other publicity material provided by the Franchisor to the best of her abilities and in general to apply the business methods imparted to her by the Franchisor;*
- (f) To make the sale of bridal fashions her main purpose;*
- (g) To refrain, during the period of validity of the contract and for one year after its termination, from competing in any way with a Pronuptia shop and in particular from opening a business of a nature identical or similar to that carried on under the contract, or participating directly or indirectly in such a business, in the federal republic of Germany, in West Berlin or in an area where Pronuptia is already represented in any way;*
- (h) Not to assign to third parties the rights and obligations arising under the contract or the business without the prior approval of the Franchisor, it being understood that the Franchisor will not withhold its approval if such an assignment takes place for health reasons and if the new contracting party shows that he is financially sound and is not in any way a competitor of the Franchisor.*

Good luck! You may take the questions with you, if you like.

