right relied upon by the grantee in support of the application.
In disputes concerning the consequences of the infringement by the grantor of a contract conferring an exclusive concession, such as the payment of damages or the dissolution of the contract, the obligation to which reference must be made for the purposes of applying Article 5 (1) of the Convention is that which the contract imposes on the grantor and the non-performance of which is relied upon by the grantee in support of the application for damages or for the dissolution of the contract.
In the case of actions for the payment of compensation by way of damages, it is for the national court to ascertain whether, under the law applicable to the contract, an independent contractual obligation or an obligation replacing the unperformed contractual obligation is involved.

3. When the grantee of an exclusive sales concession is not subject either to the control or to the direction of the grantor, he cannot be regarded as being at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Convention of 27 September 1968.

In Case 14/76

Reference to the Court under Article 1 of the Protocol concerning the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Cour d'Appel of Mons, for a preliminary ruling in the action pending before that court between

ETS. A. DE BLOOS, S.P.R.L., Leuze, Belgium,

and

SOCIÉTÉ EN COMMANDITE PAR ACTIONS BOUYER, Tomblaine (Meurthe-et-Moselle), France,

on the interpretation of Article 5 of the Convention on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters signed in Brussels on 27 September 1968 by the six original Member States of the Community,

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, Lord Mackenzie Stuart and F. Capotorti, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and the arguments developed by the parties during the written procedure may be summarized as follows:

I — Facts and written procedure

1. Under an agreement of 24 October 1959, the Etablissements Bouyer S.A. (hereinafter referred to as 'Bouyer'), whose registered office is at Tomblaine, Meurthe-et-Moselle (France), granted to Etablissements A. De Bloos S.P.R.L. (hereinafter referred to as 'De Bloos'), whose registered office is at Leuze (Belgium), the exclusive right to distribute their products bearing the 'Bouyer' mark for Belgium, the Grand Duchy of Luxembourg and the Belgian Congo (which has since become the Democratic Republic of Zaire).

The agreement was notified to the Commission of the European Communities pursuant to Articles 4 and 5 of Regulation No 17 of the Council of 16 February 1962. By registered letter of 28 April 1969, the Commission declared that the exclusive distributorship agreement fell within the provisions of Regulation No 67/67 of the Commission of 22 March 1967 and could take advantage of the provisions of Article 85 (3) of the Treaty.

2. De Bloos complained of a unilateral breach of the contract without notice by Bouyer in September 1972 and, by writ of summons dated 9 April 1973, brought proceedings against the latter before the Tribunal de commerce of Tournai, seeking:

— a declaration of the court that, in accordance with Belgian law, the agreement should be dissolved on the ground of the grantor's wrongful conduct;
— the payment of damages, pursuant to the Belgian Law of 27 July 1961, as amended by the Law of 13 April 1971 (M.B. 29. 12. 1961 and 21. 4. 1971), concerning the unilateral revocation of exclusive sales concessions of indefinite duration.

3. Bouyer objected *inter alia* that by virtue of the 'Convention on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters', which was signed in Brussels on 27 September 1968 by the Member States of the Community in its original form, ratified in Belgium by the Law of 13 January 1971, and which entered into force on 1 February 1973 (hereinafter called the 'Brussels Convention'), the court before which proceedings had been brought had no territorial jurisdiction in the matter.

Articles 2 and 5 of the Brussels Convention provide as follows:

Article 2 (first paragraph):

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

Article 5:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

(1) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

.....

.....

(5) as regards a dispute arising out of the operation of a branch, agency or other establishment, in the courts for the place in which such branch, agency or other establishment is situated.'

The Tribunal commercial de Tournai found, *inter alia:*

— that the place where the goods were to be delivered was, regardless of the mode of dispatch, at all times the registered office of Bouyer;
— that the goods were accepted at the registered office and that all bills were payable there,

and concluded that it lacked jurisdiction on the ground that 'the place where the obligations arose and were due to be performed was ... in France where the defendant has its registered office'.

4. By notice of 5 September 1974, De Bloos appealed against this decision to the Cour d'Appel, Mons. Called upon to rule on the question of jurisdiction, the court at first rejected the contention that there was jurisdiction by consent under Article 17 of the Brussels Convention, because there was no agreement to that effect between the parties in respect of disputes concerning the contract itself, with which the proceedings are solely concerned.

Going on to consider the conditions for any application of Article 5 (1) of the Brussels Convention, the Cour d'Appel, Mons, attempted, on the basis of Belgian law, including the abovementioned Law of 27 July 1961, to define the obligations falling on the grantor of a concession in the event of unilateral termination on his part.

In so doing the court found *inter alia* that the contract in question must be treated as a contract concluded for an indefinite period within the meaning of paragraph 2 of Article 3 (a) of the said Belgian Law, and that, by virtue of that Law, its breach in this case called for:

— 'fair compensation' on the ground that there was no reasonable notice; and
— reasonable 'additional compensation' because the sales concession appears to have been terminated by the grantor on grounds other than misconduct by the grantee.

In this connexion, the Cour d'Appel, Mons, held that Belgian legal doctrine as well as Belgian case-law are divided as to the nature of this compensation: a normal obligation under the distributorship contract, something ancillary to the main obligation or a new and independent obligation ... The *forum solutionis* could differ according to which of these alternatives was chosen. Furthermore, the documents produced give no indication whether De Bloos was subject to the direction or control of Bouyer or whether it had the power to negotiate in the name of the grantor and bind the latter. The Mons court has therefore also judged it necessary to ask whether, in this case, the grantee was a 'branch', an 'agency' or an 'establishment of the grantor' within the meaning of Article 5 (5) of the Brussels Convention.

5. Pursuant to the Protocol concerning the jurisdiction of this Court in the interpretation of the Brussels Convention (hereinafter called 'the Protocol') especially Articles 1 (2), 2 (2) and 3 (2) thereof, the Cour d'Appel, Mons, by judgment of 9 December 1975, accordingly decided to stay the proceedings and to refer the following questions to the Court of Justice of the Communities:

I — In an action brought by the grantee of an exclusive sales concession against the grantor in which he claims that the latter has infringed the exclusive concession, may the term *'obligation'* in Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters

be applied without distinction to each of the obligations set out below or must its application to any of them be excluded:

1. Any obligation arising out of the outline contract granting an exclusive sales concession or even arising out of the successive sales concluded in performance of this outline contract;
2. The obligation in dispute or forming the basis of the legal proceedings and, if so,
   (a) the original obligation (such as the obligation not to sell to others in the territories agreed upon or the obligation to give reasonable notice in the event of unilateral breach);
   (b) or the obligation to provide the equivalent of the original obligation (to pay compensation or damages);
   (c) or the obligation to pay damages where the effect of novation arising from the dissolution or termination of the contract is to render void the original obligation;
   (d) or, finally, the obligation to pay 'fair compensation' or even 'additional compensation', provided for in Articles 2 and 3 of the Belgian Law of 27 July 1971 concerning the unilateral termination of exclusive sales concessions of indefinite duration, as amended by the Law of 13 April 1971;

II — Where, on the one hand, the grantee of an exclusive sales concession is not empowered either to negotiate in the name of the grantor or to bind him and, on the other hand, he is not subject either to the control or direction of the grantor, is such a person at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Brussels Convention?

6. A certified copy of the order making the reference was received at the Court Registry on 13 February 1976.

The United Kingdom, represented by W. H. Godwin, and the Commission of the EEC, represented by its principal legal adviser, Paul Leleux, submitted written observations pursuant to Article 5 of the Protocol and to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without a preparatory enquiry.

In letters of 31 May and 4 June 1976, the Court requested the views of the Member States and of the Commission on the question whether the Member States which were not signatories of the Protocol could take part in the proceedings before the Court on the interpretation of the Brussels Convention. The Governments which replied to this request under the procedure appropriate to the present case, namely the Danish, Belgian, British and Irish Governments, as well as the Commission, indicated their agreement to such participation.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice

A — Observations submitted by the United Kingdom

Although not yet a party to the Convention of 27 September 1968 or to the Protocol of 3 June 1971, the United Kingdom states that it has a considerable

interest in the application of those instruments particularly in view of Article 63 of the Convention which requires the Convention to be accepted as a basis for negotiation between the contracting parties and every State which becomes a member of the Community, and in view of its obligation to accede to the Convention as required by Article 3 (2) of the Act annexed to the Treaty of Accession of 22 January 1972.

After expressing the view that Article 20 of the Protocol on the Statute of the Court gives it the right to take part in the present proceedings, the United Kingdom recalls the fundamental principle, recognized by the Court in its decisions, beginning with the judgment in Case 13/61, *Bosch,* that, in giving a ruling under Article 177 of the EEC Treaty, the Court cannot decide on the application of the Treaty to particular cases but must restrict its ruling to questions of interpretation of the provisions of that Treaty. It is all the more important that this principle should be followed in the present case inasmuch as the Convention touches on many aspects of the internal law of the Member States, so that a judgment which did not keep within the limits of the Court's jurisdiction would have far-reaching and unforeseeable repercussions on the substantive national law, going far beyond aspects of the law concerning assumption of jurisdiction or recognition of judgments. Furthermore, as regards, in particular, the first question, it is a matter for the national court itself to define the meaning of the word 'obligation' in Article 5 (1) of the Convention and to determine the place of performance of that obligation and the Court of Justice must confine itself to providing the national court with the necessary guidance on the method to be followed in arriving at these definitions.

To this end, the national court before which proceedings are brought should apply its own law, and primarily the rules of private international law forming part of the national law, to determine what law governs the contract. This law could be the law of the forum itself, the law of another Member State of the Community or even the law of a non-Community State. Applying that law to the contract, the national court should then determine the nature of the obligations which flow from the contract, which of them are at issue in the proceedings, and the place where those obligations are to be performed. Only after such an investigation would the national court be able to decide whether or not it had jurisdiction under Article 5 (1) of the Convention. It is true that such a method could produce different legal results which would be avoided if the Court of Justice were itself to rule, for the purpose of applying Article 5 (1), on the place of performance of obligations, notwithstanding the substantive law applicable. Completely uniform results can, however, be achieved only by uniform laws adopted throughout the Community for determining law governing contractual obligations. Negotiations on a Convention which would provide such uniform rules are in progress.

On the other hand, the assignment to the Court of Justice of jurisdiction to determine the place of performance of obligations arising under particular types of contract would lead to unacceptable results. In giving its rulings, the Court would determine the place of performance not merely for the purposes of the Convention but for all purposes under contracts of the type in question. Within any one legal system the place of performance for the purpose of establishing jurisdiction under the Convention and for the purposes of the relationship between the parties needs to be the same. For practical purposes each ruling would thus take effect as a ruling on the substantive law of the Member States governing the category of contracts in question.

Moreover, the consequences of contracts would be rendered less certain, as the

place of performance of every obligation would become a matter which could one day be submitted for the determination of the Court of Justice and might then be found to differ from the previously accepted law on the basis of which the contract had been made.

Finally, in a comment on the obligation to pay damages, referred to by the court making the reference, the United Kingdom submits that only an obligation which forms part of the agreement between the parties can constitute an 'obligation' within the meaning of Article 5 (1) of the Convention. A remedy which can be sought under the national law for breach of the provisions of the contract cannot arise from an obligation coming under the said Article. The basic rule of the Convention, expressed in Article 2, is that a person is to be sued in the courts of the State where he is domiciled. Other bases of jurisdiction, such as the plaintiff's domicile, nationality or residence, are expressly barred by Article 3. However, a general exception to the principle in Article 2 is contained in Article 5 (1) which, however, applies only to the place of performance of the obligation. If such an exception were also to apply to an obligation to pay damages, this would mean that, in nearly every case based on breach of contract, the plaintiff could, on the basis of such an 'obligation', sue in the courts of his domicile; that Article 3 of the Convention would be frustrated; and that the opportunities for 'forum shopping' would increase.

In the light of these comments, the United Kingdom submits that the reply to the court making the reference should be as follows:

'(i) that Question 1 should not be answered in relation to the particular contract involving an exclusive sales concession which was before the Cour d'Appel, Mons;

(ii) that for the purpose of interpreting the term "obligation" in Article 5 (1), the nature of the obligation in question and the place where it is to be performed are to be determined by the national court in which proceedings are instituted by applying its national law, including the choice of legal rules which form part of that law, to the contract before the court;

(iii) that in identifying the particular obligation arising from the terms of the contract which is in issue in the proceedings before the referring court, any consequential duty imposed by national law to pay damages or compensation for breach of the contract should be left out of consideration.'

B — Written observations submitted by the Commission of the European Communities

The Commission makes the preliminary comment that, in the present state of the international law of contract, the determination of the place for performance of a contractual obligation can be effected only in terms of national law. After applying the rule of the *lex fori* the national court must, in the light of the substantive law governing the legal relationship in question, ascertain the place for performance of the obligation imposed on one or other of the parties. Only after this has been done can it decide whether or not it has jurisdiction under Article 5 (1) of the Brussels Convention.

In the light of this, with reference particularly to the point of Community law raised by the court making the reference, the Commission takes the view that, in cases such as the present, the first thing to be done is to study the solutions provided by the substantive law which the referring court has to apply to the legal relationship in dispute and its concomitant obligations, before trying to ascertain in what way Article 5 (1), referred to above, ought to be applied, either on the basis of, or independently of, those solutions.

The Belgian Law of 27 July 1961 as amended on 13 April 1971 determined with *mandatory* effect the consequences of a unilateral termination of an exclusive sales concession of indefinite duration: there must be either reasonable notice or fair compensation together with, as necessary, additional compensation representing, *inter alia,* any increase in goodwill.

Belgian case-law and legal commentators are not agreed on the nature of the *obligation to compensate* in cases where the parties disagree about the conditions in which the concession can be withdrawn. One view is that compensation is for the breach of the principal obligation (failure of the exclusive dealership or lack of notice), so that an application for compensation may be based on nothing but that obligation, in which case the same rules of territorial jurisdiction which apply to that obligation also apply to the action for compensation. Another view is that compensation (including any additional compensation) is a self-contained obligation which is independent of the main obligation, in which case the obligation to compensate, being an obligation to pay money which, under Belgian law must be enforced in the place where the debtor has his residence, comes under the territorial jurisdiction of the courts of the place where the debtor is domiciled.

Furthermore, Article 4 of the same Belgian law resolves, indirectly but also with binding force, any conflict of laws by laying down that, in a dispute which is the subject of proceedings before a Belgian court, the effects of the revocation of a sales concession the repercussions of which are felt in whole or in part on Belgian territory shall be subject to Belgian law.

The foregoing does not however mean that the application of Article 5 (1) of the Convention on the question of the sales concession is governed exclusively by the internal law dealing with the obligation or obligations in question. In view of the international context in which the Convention and the abovementioned provision are placed, it is also necessary to ascertain whether each and every solution provided by the internal law applicable is or is not compatible with the meaning and scope of the word 'obligation' which appears in Article 5 (1).

In the Commission's view, this word must be given a 'Community' meaning and scope. It is true that the Convention sets up a unified system of 'jurisdiction' between the contracting States, but, so long as there exists no convention dealing with 'legislative' powers and no harmonization of the substantive rules important in the field of the law of obligations, it is impossible to avoid the risk of cases being settled on a radically different basis depending on which of two courts in different countries, both of which courts have the requisite powers under the Convention, was seised of the dispute. The only way of reducing this risk is specifically by avoiding any unnecessary increase in the available choice of national courts open to litigants. This is why the concept of 'obligation' (performed or to be performed) in Article 5 (1) must have a Community application; it ought not to be left for definition to national law even though the *place* of performance can only be ascertained with the help of the relevant substantive law.

Against this background, the term 'obligation' in Article 5 (1) cannot be regarded

— as being the same as the concept of contract;

— or as embracing any obligation whatsoever arising out of a contractual relationship. As this is a question involving the jurisdiction of the courts, this term must refer to the 'obligation on which the application is based', namely the obligation which lies on the defendant as a

party to the contract. In particular there must be no confusion between the 'obligation' as defined above and the 'remedy' or 'remedies' claimed by the plaintiff, which, even in the case of an exclusive sales concession, may very considerably from the legislation of one country to that of another. The correctness of this interpretation of the word 'obligation' is moreover confirmed by several considerations, in particular by the wording of Article 5 (1) itself considered in the light of the German and Italian versions, by the report on the Convention submitted to the governments and by the preparatory work now in progress for the accession of the new Member States.

It is true that, especially in the case of a contract of sale, the disputed obligation would differ according to whether the defendant in the action is the seller or the buyer: in one case, delivery of the goods, in the other, payment. Nevertheless, the fact that in bilateral contracts the obligations of the parties are different ought not to produce results which conflict with the proper administration of justice by breaking down the obligations of one of the parties into various facets, with the result that jurisdiction is shared between the courts of several countries depending upon the different heads of claim which arise from the defendant's principal obligation.

The foregoing considerations lead to the conclusion that in the case of an exclusive sales concession, which is a complex contract:

— the contract normally entails two fundamental and distinct obligations: that of the grantor not to supply goods to anyone other than the grantee on the territory agreed upon and that of the grantee not to obtain supplies from sources other than the grantor. These obligations must, for the purposes of Article 5 (1) of the Convention, be considered separately;
— sales effected under the contract entail specific obligations which may give rise to disputes which do not call into question the main obligations of the contract of concession;
— the main obligation of the grantor may give rise to disputes on various grounds. If the grantor does not comply with his obligation the fact that the law can, if need be, replace or complete the contract so as to determine the effect of this or that aspect of his conduct is not very important: it is at all times the same obligation on which the application is based or which is in dispute.

It should not be possible for the idiosyncracies or, more especially, the legal terminology of the national law applied by the court before which the proceedings are brought to modify these principles. The Belgian Law of 27 July 1961 itself seems to demonstrate the irrelevance of such terminology for the purposes of applying Article 5 (1) of the Convention: whether the compensation provided for under Article 2 of the Law constitutes an obligation ancillary to that to give notice or compensation under general law for a wrongful unilateral breach of the contract, what remains at issue is the effect of the failure by the grantor duly to carry out his principal obligation before it has been validly discharged. In either case, it is of course this obligation which is 'at issue'.

The Commission contends that a solution along those lines is the only one which accords with the spirit of the Convention. The case in point itself demonstrates the serious difficulties to which any other solution would lead. Of the two heads of claim involved in the dispute, the first, which is for a judicial dissolution of the contract on the ground of the grantor's wrongful conduct, is undoubtedly bound up with the fundamental obligation of the latter. If, under the Belgian rules on the conflict of laws, the obligation must be performed on the territory covered by the

concession, the Belgian court has undoubted jurisdiction in the matter. But it would not have jurisdiction concerning the second head of claim, the payment of damages, since the outcome of this depends on the decision to be taken on the first head. In that case, jurisdiction on the second head would devolve on the court of the defendant's domicile in France. Such an outcome would not only do nothing to solve international disputes but would also conflict with the spirit of the Convention, one of the objects of which is precisely to ensure that jurisdiction is concentrated in a single court.

Furthermore, although the Convention is concerned only with the jurisdiction of the courts, it would not be unreasonable to resolve this jurisdiction in terms which accord with the corresponding legislative powers. It is generally accepted that, if the contract is silent on the subject, an exclusive sales concession is subject to the law of the country where it is to be performed. This principle has been adopted in the Convention under preparation on 'the law applicable to contractual and non-contractual obligations' the preliminary draft of Article 4 of which refers, in default of an express or implied choice in the contract, to 'the law of the country with which it is most closely connected'.

On the basis of the foregoing considerations, the Commission submits that the questions referred should be answered as follows:

'In disputes concerning exclusive sales concessions:

— an obligation the place of performance of which entails the jurisdiction of the court of that place cannot consist of any kind of obligation capable of being created by the outline contract and its conditions, but must constitute the contested obligation on which the application is based; because of this, obligations arising, in particular, from sales concluded in fulfilment of the contract cannot be taken into account in case of a dispute concerning the observance of an exclusive right;
— it is the original obligation of the grantor, namely, to honour the exclusive right granted to the grantee, which is at issue and at the root of *each and every* application concerning the consequences, flowing from the contract or from the law, to be drawn from non-observance of this obligation, and this is so whatever the nature or the specific classification under national law of the compensation applied for; it is of little moment whether, under the substantive law applicable, those consequences do or do not mean the extinction of the original obligation.'

III — Oral procedure

The United Kingdom, represented by Mr Pinkerton, and the Commission of the European Communities presented oral observations at the hearing on 30 June 1976.

The Advocate-General delivered his opinion on 15 September 1976.

Law

1 By order of 9 December 1975, received at the Court Registry on 13 February 1976, the Cour d'Appel, Mons, has referred to the Court under the Protocol of

3 June 1971 concerning the interpretation of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as 'the Convention') questions concerning the interpretation of Article 5 (1) and (5) of the said Convention.

2 From the order making the reference it appears that the case is at this stage concerned with the question whether the Belgian court has jurisdiction to hear an action which the grantee of an exclusive distributorship contract, whose registered office is in Belgium, has brought against the grantor, who is established in France.

3 Complaining of a unilateral breach, without notice, of the said contract, the grantee brought proceedings against the grantor before the Belgian court seeking, in accordance with Belgian law, the dissolution of the contract by the court, on the ground of the grantor's wrongful conduct, and the payment of damages.

4 When the Belgian court of first instance decided that it had no jurisdiction to hear the case, the grantee appealed before the Cour d'Appel, Mons.

5 In the first question, the Court is asked whether, in an action brought by the grantee of an exclusive sales concession against the grantor in which he claims that the latter has infringed the exclusive concession, the term 'obligation' in Article 5 (1) of the Convention is to be interpreted as applying without distinction to any obligation arising out of the outline contract granting an exclusive sales concession or even arising out of the successive sales concluded in performance of the said contract, or as referring exclusively to the obligation forming the basis of the legal proceedings.

6 If the last-mentioned possibility is the correct one, the Court is further asked to rule whether the word 'obligation' in the aforementioned Article 5 (1) refers to the original obligation, the obligation to provide the equivalent of the original obligation or to obligation to pay damages where the effect of the dissolution or termination of the contract is to render void the original obligation, or, finally, to the obligation to pay 'fair compensation' or even 'additional compensation' within the meaning of the Belgian Law of 27 July 1961.

7 Under Article 5 (1) of the Convention, a person domiciled in a Contracting State may, in another Contracting State, be sued:

'in matters relating to a contract, in the courts for the place of performance of the obligation in question.'

8 As stated in its preamble, the Convention is intended to determine the international jurisdiction of the courts of the contracting States, to facilitate the recognition and to introduce an expeditious procedure for securing the enforcement of judgments.

9 These objectives imply the need to avoid, so far as possible, creating a situation in which a number of courts have jurisdiction in respect of one and the same contract.

10 Because of this, Article 5 (1) of the Convention cannot be interpreted as referring to any obligation whatsoever arising under the contract in question.

11 On the contrary, the word 'obligation' in the article refers to the contractual obligation forming the basis of the legal proceedings.

12 This interpretation is, moreover, clearly confirmed by the Italian and German versions of the article.

13 It follows that for the purposes of determining the place of performance within the meaning of Article 5, quoted above, the obligation to be taken into account is that which corresponds to the contractual right on which the plaintiff's action is based.

14 In a case where the plaintiff asserts the right to be paid damages or seeks a dissolution of the contract on the ground of the wrongful conduct of the other party, the obligation referred to in Article 5 (1) is still that which arises under the contract and the non-performance of which is relied upon to support such claims.

15 For these reasons, the answer to the first question must be that, in disputes in which the grantee of an exclusive sales concession charges the grantor with having infringed the exclusive concession, the word 'obligation' contained in Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters refers to the obligation forming the basis of the legal proceedings, namely the contractual obligation of the grantor which corresponds to the contractual right relied upon by the grantee in support of the application.

16 In disputes concerning the consequences of the infringement by the grantor of a contract conferring an exclusive concession, such as the payment of damages or the dissolution of the contract, the obligation to which reference must be made for the purposes of applying Article 5 (1) of the Convention is that which the contract imposes on the grantor and the non-performance of which is relied upon by the grantee in support of the application for damages or for the dissolution of the contract.

17 In the case of actions for the payment of compensation by way of damages, it is for the national court to ascertain whether, under the law applicable to the contract, an independent contractual obligation or an obligation replacing the unperformed contractual obligation is involved.

18 In the second question, the Court is asked to rule whether, in circumstances where, on the one hand, the grantee of an exclusive sales concession is not empowered either to negotiate in the name of the grantor or to bind him and, on the other hand, is not subject either to the control or direction of the grantor, he should be regarded as being at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Brussels Convention.

19 Under Article 5 (5) of the Convention, a person domiciled in a Contracting State may, in another Contracting State, be sued:

'as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated.'

20 One of the essential characteristics of the concepts of branch or agency is the fact of being subject to the direction and control of the parent body.

21 It is clear from both the object and the wording of this provision that the spirit of the Convention requires that the concept of 'establishment' appearing in the said article shall be based on the same essential characteristics as a branch or agency.

22 It is, in consequence, impossible to extend the concepts of branch, agency or other establishment to the grantee of an exclusive concession whose operations are of the kind indicated by the national court.

23 For the foregoing reasons, the answer to the second question must be that, when the grantee of an exclusive sales concession is subject neither to the control nor to the direction of the grantor, he cannot be regarded as being at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Convention of 27 September 1968.

Costs

24 The costs incurred by the Government of the United Kingdom and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable.

25 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Cour d'Appel, Mons, by order of 9 December 1975, hereby rules:

1. **In disputes in which the grantee of an exclusive sales concession is charging the grantor with having infringed the**

exclusive concession, the word 'obligation' contained in Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters refers to the contractual obligation forming the basis of the legal proceedings namely the obligation of the grantor which corresponds to the contractual right relied upon by the grantee in support of the application.

In disputes concerning the consequences of the infringement by the grantor of a contract conferring an exclusive concession, such as the payment of damages or the dissolution of the contract, the obligation to which reference must be made for the purposes of applying Article 5 (1) of the Convention is that which the contract imposes on the grantor and the non-performance of which is relied upon by the grantee in support of the application for damages or for the dissolution of the contract.

In the case of actions for payment of compensation by way of damages, it is for the national court to ascertain whether, under the law applicable to the contract, an independent contractual obligation or an obligation replacing the unperformed contractual obligation is involved.

2. **When the grantee of an exclusive sales concession is not subject either to the control or to the direction of the grantor, he cannot be regarded as being at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Convention of 27 September 1968.**

Lecourt Kutscher O'Keeffe Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart Capotorti

Delivered in open court in Luxembourg on 6 October 1976.

A. Van Houtte
Registrar

R. Lecourt
President