

## **Exam Question JUS5230 spring 2020**

Welletton, a known Italian clothes producer, and Mulova, a recognised US watch producer, enter into a licence agreement for the production by Mulova of watches with Welletton's trade mark.

The agreement is extensive and regulates in detail, among other things, the conditions under which Welletton grants Mulova the right to use its trade mark, the technical specifications of the watches to be produced, and the royalties that have to be paid.

A large part of the agreement is devoted to the marketing of the watches: Welletton is renowned for its colourful and pop image, and is interested in maintaining the brand's profile by carefully controlling the sales channels of its products, as well as their sale price. Mulova is known for its aggressive marketing techniques, and has high expectations on the profitability of its products. To permit both parties to obtain their respective objectives, the agreement contains a division of the market: Welletton has the exclusive right to market the watches in Italy, and Mulova has the exclusive right to market them in the other countries. The parties shall meet periodically to fix the sale prices in the respective territories, so as to ensure that prices are coordinated.

The agreement has the duration of eight years.

According to its governing law clause, the agreement is subject to the UNIDROIT Principles for International Commercial Contracts.

Disputes arising out of the agreement shall be solved by ad hoc arbitration in the Netherlands.

The watches do not have success in the market segment that Welletton is interested in. Therefore, three years prior to the expiration of the agreement, Welletton terminates the agreement.

Mulova was making a significant profit on the sale of the watches, and does not accept the early termination of the agreement.

Therefore, Mulova starts arbitration against Welletton, pleading that the parties had agreed to a duration of eight years, and claiming damages for breach of contract because the agreement was terminated three years earlier.

Welletton admits that the early termination is not in compliance with the terms of the agreement. However, it argues that the agreement is invalid because it contains provisions on market sharing and price fixing that violate EU competition law.

1. Which legal sources should Mulova invoke, and on what basis can it invoke them, to argue that Welletton breached the contract? You can assume that the terms of the contract and the UNIDROIT Principles do not provide a basis for early termination.
  
2. Which legal sources should Welletton invoke, and on what basis can it invoke them, to argue that it is not bound by the agreement? You can assume that, if EU competition law is applicable, the agreement is invalid.
  
3. On the basis of what legal sources would you decide the dispute?
  
4. Assuming that the arbitral tribunal accepted Mulova's arguments and ordered Welletton to pay damages for breach of contract, does Welletton have a recourse against the decision?