JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
21 January 1999 *

In Joined Cases T-185/96, T-189/96 and T-190/96,

Riviera Auto Service Établissements Dalmasso SA, a French company in liquidation under court supervision, established in Nice, France, represented by Hélène Cauzette-Rey, court-appointed liquidator, and in these proceedings by Christian Bourgeon, of the Paris Bar, with an address for service at the office of François Brouxel, 6 Rue Zithe,

Garage des Quatre Vallées SA, a company incorporated under French law, established in Albertville, France,

Pierre Joseph Tosi, residing in Albertville,

under court administration, represented by Rémi Saint Pierre, court-appointed administrator,

Palma SA (CIA — Groupe Palma), a company incorporated under French law, established in Salon-de-Provence, France,

Christophe and Gérard Palma, residing in Salon-de-Provence,

in court-supervised liquidation, represented by Dominique Rafoni, administrator and liquidator,

* Language of the case: French.

represented in these proceedings by Jean-Louis and Gisèle Portolano, of the Aix-en-Provence Bar, France, with an address for service at the office of Nathan Roy, 18 Rue des Glacis,

applicants,

v

Commission of the European Communities, represented by Giuliano Marenco, Principal Legal Adviser, Guy Charrier and Loïc Guérin, national officials seconded to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Groupe Volkswagen France SA, established in Villers-Cotterets (France), represented by Joseph Vogel, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Arendt and Medernach, 8-10 Rue Mathias Hardt,

intervener,

APPLICATION for annulment of decisions to reject complaints alleging infringements of Article 85(1) of the EC Treaty (Cases T-185/96, T-189/96 and T-190/96) and, secondly, for damages for loss allegedly suffered as a result of those decisions (Cases T-189/96 and T-190/96),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: V. Tiili, President, A. Potocki and J. D. Cooke, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 October 1998

gives the following

Judgment

Background

1 The applicants are former dealers of VAG France, now Groupe Volkswagen France SA (hereinafter 'Volkswagen'), a subsidiary of the German car-maker, Volkswagen, and sole importer into France of Volkswagen ('VW') and Audi vehicles.

2 After termination of their dealerships by Volkswagen between 1986 and 1991, the applicants lodged with the Commission, under Article 3 of Regulation No 17 of the Council of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962 (I), p. 87), a number of complaints concerning refusals, based on Volkswagen's standard-form distribution agreement (hereinafter 'standard-form agreement'), to supply Audi and VW vehicles to them, after their rejection from the network.

3 The complainants requested the Commission to find that the standard-form agreement was contrary to Article 85(1) of the EC Treaty and that Volkswagen was not entitled to refuse to sell to them, or to prohibit its approved distributors from selling on to them, new Audi and VW vehicles and/or spare parts, on the sole ground that the complainants no longer formed part of its network.

4 At the Commission's request, Volkswagen gave its comments on the complaints and made information available pursuant to Article 11 of Regulation No 17. The Commission also conducted an investigation with 260 dealers by sending them a detailed questionnaire in response to which it received about 200 usable replies.

5 The investigation led to the initiation of a proceeding for establishing infringements of Community competition rules and to the notification to Volkswagen of a statement of objections finding 17 provisions in the standard-form agreement in force on 1 January 1990, or their application in practice, to be anti-competitive.

6 In the Commission's view, those anti-competitive practices had the effect of taking the whole of the standard-form contract outside the scope of the category exemption provided for by Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16, 'the old regulation').

7 In default of notification, the Commission added, the standard-form agreement could not be covered by an individual exemption under Article 85(3) of the Treaty. In any event, it did not satisfy the conditions laid down in that provision.

8 Consequently, the Commission informed Volkswagen that it was preparing to find it in infringement of Article 85(1) of the Treaty, to require it to bring its infringements to an end under pain of penalties and to impose on it a fine under Articles 15 and 16 of Regulation No 17.

9 After receiving the observations of the interested parties, the Commission held a hearing on 8 November 1994 at which Volkswagen and the complainants were represented.

10 In the end, the Commission decided to take no further action on the complaints. By communications dated 24 June 1996, the institution made known its intention not to pursue its investigation and requested the complainants to let it have their observations.

11 The Commission took the view that the observations submitted by the complainants disclosed no matters or arguments capable of altering its new point of view. Therefore, by decisions of 23 September 1996 (hereinafter 'decisions to reject the complaints'), the Commission definitively dismissed the complaints.

12 In that connection, the Commission considered that, upon examination, some of the objections turned out to concern stipulations or contractual practices which did not constitute anti-competitive restrictions under Article 85(1) of the Treaty.

13 At the same time the Commission also rejected the other objections raised at the outset, citing the lack of sufficient Community interest in pursuing proceedings. The Commission observed that the gathering of evidence of possible past infringements would have necessitated the employment of means disproportionate to its task and its staff, regard being had, *inter alia*, to the division of roles as between

the Community authorities and national courts. The Commission said that it was committed to intervening in the future through legislation, by elaboration of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1995 L 145, p. 25, 'the new regulation').

Procedure before the Court

14 Under those circumstances the applicants, by applications lodged on 22 and 26 November 1996, brought these proceedings.

15 By orders of 16 September 1997, Volkswagen was granted leave to intervene in the three cases in support of the form of order sought by the Commission, and lodged its statements in intervention on 18 December 1997.

16 On hearing the Report of the Judge Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry. However, by letter of 1 July 1998, it requested the parties to reply to certain questions in writing.

17 By order of 3 September 1998, the three cases were joined for the purposes of the oral procedure and the judgment.

18 The parties presented oral argument and gave replies to the Court's questions at the hearing on 13 October 1998.

Forms of order sought by the parties

Case T-185/96

19 The applicant claims that the Court should:

(i) annul the decision to reject the complaint;

(ii) order the Commission to pay the costs.

20 The Commission contends that the Court of First Instance should:

(i) dismiss the application as unfounded;

(ii) order the applicant to pay the costs.

21 The intervener submits that the Court should:

(i) dismiss the action as inadmissible;

(ii) dismiss the action as unfounded;

(iii) order the applicant to pay all the costs of the intervention.

Cases T-189/96 and T-190/96

22 The applicants claim that the Court should:

(i) annul the decisions to reject the complaints;

(ii) dispose of the case and declare that the standard-form agreement falls under Article 85(1) of the Treaty and that it does not satisfy the conditions for category exemption under the old regulation or the conditions for individual exemption under Article 85(3) of the Treaty;

(iii) declare that the Commission is non-contractually liable to the applicants and order it to make good the losses suffered by them in the amount of ECU 540 000, representing 10% of the projected figures which were prevented from being achieved by the Commission's inaction;

(iv) order the Commission to pay the costs in the amount of FRF 100 000.

23 The Commission contends that the Court should:

(i) dismiss the claims for annulment as unfounded;

(ii) dismiss the second and third heads of claim as inadmissible;

(iii) order the applicants to pay the costs.

24 The intervener contends that the Court should:

(i) dismiss the claim for damages as inadmissible;

(ii) dismiss the claim for annulment as unfounded;

(iii) in the alternative, dismiss the second head of claim;

(iv) order the applicants to pay all the costs of the intervention.

The claims for annulment (Cases T-185/96, T-189/96 and T-190/96)

Admissibility of the claims for annulment

25 It has been consistently held that an intervener is not entitled to raise an objection of inadmissibility which was not formulated, as in the present case, in the form of order sought by defendant (Case T-290/94 *Kaysersberg* v *Commission* [1997] ECR II-2137, paragraph 76).

26 The objection of inadmissibility raised by the intervener must therefore be rejected.

Admissibility of the second head of claim in Cases T-189/96 and T-190/96

27 The Court finds that, in so far as the second head of claim in Cases T-189/96 and T-190/96 requests the Court to dispose of the case and the complaints, it exceeds the limits of the power to review the legality of negative decisions which the Community judicature is called upon to exercise under Article 173 of the Treaty.

28 It follows that the second head of claim in Cases T-189/96 and T-190/96 must be dismissed as inadmissible.

Substance

As to the first plea alleging infringement of Article 85 of the Treaty, inasmuch as the Commission wrongly analysed certain clauses in the standard-form agreement as being not restrictive of competition

29 The applicants essentially allege that, in analysing four stipulations in the standard-form agreement as being not restrictive of competition, the Commission, in its rejection decisions, disregarded the principle that category exemptions must be strictly interpreted, as stated in the second recital in the preamble to the old regulation and also failed to take account of the worsening of the economic dependence of distributors entailed by the clauses at issue, whereas the limitation of that dependence is an essential precondition of category exemption.

30 The Court observes that the old regulation does not lay down mandatory provisions directly affecting the validity of the clauses of a contract or obliging the parties to adapt their terms or likewise have the effect of rendering a contract void where all the conditions laid down in the old regulation are not satisfied (see Case 10/86 *VAG France* v *Magne* [1986] ECR 4071, paragraph 16, and Case C-230/96 *Cabour* [1998] ECR I-2055, paragraph 47).

31 In such a situation, the contract in question will be caught by the prohibition laid down in Article 85(1) only if its object or effect is perceptibly to restrict competition within the common market and it is capable of affecting trade between Member States (see *Cabour*, cited above, paragraph 48).

32 In adjudging whether the first plea is well founded, the Court's only task therefore is to ascertain whether the Commission erred in law in arriving at the definitive conclusion that the clauses under examination did not constitute restrictions on competition within the meaning of Article 85(1) of the Treaty.

— Volkswagen's control of resales of contractual products to final consumers by intermediary agents

33 The applicants criticise the Commission for no longer regarding as anti-competitive the clause in the standard-form contract laying down Volkswagen's means of control over the orders submitted to dealers by agents on behalf of final consumers.

34 The Court observes that the Commission arrived at the conclusion, which was not refuted by the applicants, that, once accepted by the dealers, the orders in question could not be cancelled and were thus irreversible.

35 In those circumstances, the Court considers that the Commission has not been shown to have erred in law in holding that those means of control over the water-tightness of an exclusive distribution network did not in themselves constitute a restriction of competition within the meaning of Article 85(1) of the Treaty.

— Direct sales by Volkswagen to certain final consumers

36 The applicants criticise the Commission for finally deciding that direct sales to certain final consumers, reserved under the standard-form agreement to Volkswagen at prices lower than those allowed to its dealers, were not caught by Community

competition rules, thereby disregarding the effect that those sales, by virtue of their volume and detailed arrangements, could have on the economic balance of the distributorships.

37 The Court finds that this complaint concerns not the actual lawfulness of the clause under examination but solely a possible upsetting of the economic balance of the distributorship agreement as the result of the unfair application, which has not been proven, of that provision by Volkswagen.

— Distributor's remuneration

38 The applicants allege that the Commission was wrong to come to the final determination that the latitude enjoyed by Volkswagen in calculating the remuneration of its distributors, by way of discounts and rebates, did not come within the scope of Community competition rules. Volkswagen, it is claimed, imposed an initial reduction in margin, unsupported by any consideration, then a provisional withholding of margin, chiefly on the ground that there had been 'unauthorised intra-network discounting'. For that reason, distributors had been unable, during a part of the 1993 financial year, to have their full margins.

39 The Court observes that the relevant provision in the standard-form agreement made the remuneration of distributors dependent in law on market conditions.

40 Moreover, as the Commission has rightly pointed out, the two interventions of which Volkswagen is accused happened in relations between manufacturer and distributors. Finally, these have not been shown to constitute direct interference by Volkswagen in the determination of resale prices to the final consumer by distributors, since the 'tariff prices' recommended by Volkswagen to distributors did not appear to be in the nature of imposed resale prices.

— Agreement concerning joint current account

41 The applicants maintain that the Commission was wrong to hold that the arrangements for the operation of the current account agreement had no anti-competitive effect, although under that agreement Volkswagen was able to limit the cash available to the distributor and his freedom to put himself in funds, owing to the particular rights which Volkswagen is alleged to have reserved to itself in delaying crediting to that account amounts due to the distributor.

42 The Court observes that the applicants' complaints do not concern the clause in issue itself but the manner in which it may have been misused, which does not emerge at all from the file.

43 It has not therefore been established that the Commission erred in law in concluding that the provisions of the standard-form agreement examined above were not in themselves restrictive of competition within the meaning of Article 85(1) of the Treaty.

44 The first plea must therefore be dismissed as unfounded.

The second plea: infringement of Article 85 of the Treaty owing to the Commission's refusal to find other clauses in the standard-form agreement to be anti-competitive

45 By their second plea the applicants allege essentially that the Commission was wrong in not holding eight other provisions of the standard-form agreement to be anti-competitive and in wrongly relying on a lack of sufficient Community interest in pursuing the investigation of the complaints. According to the applicants, the Commission cannot maintain that the gathering of evidence of infringements of

Article 85(1) of the Treaty would have been out of proportion to the means at its disposal, when, on the contrary, the evidence on the file would have enabled the objections initially notified to Volkswagen to be upheld. Contrary to the Commission's contention, the national courts would find it impossible to make any effective ruling on the restrictions of competition at issue. Nor can the expiry of the old regulation and the entry into force of the new regulation substantiate the claim of lack of Community interest.

46 In order, as in the present case, to dismiss a complaint on the ground that it lacks sufficient Community interest, the Commission must, in exercising its power of appraisal, weigh the significance of the alleged infringements as regards the functioning of the common market against the probability of its being able to establish the existence of the infringements and the extent of the investigative measures required in that connection (Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223, paragraph 86, and Case T-5/93 *Tremblay and Others* v *Commission* [1995] ECR II-185, paragraph 62).

47 It is for the Commission to gather sufficiently precise and consistent evidence to support the firm conviction that the alleged infringements constitute appreciable restrictions of competition within the meaning of Article 85(1) of the Treaty. That requirement is not satisfied, in particular, where a plausible explanation can be given for those alleged infringements which rules out an infringement of Community rules on competition (Joined Cases 29/83 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraph 16 et seq.).

48 Moreover, where, as in the present case, the Commission does not have exclusive competence to find contractual clauses to be incompatible with Article 85(1) of the Treaty, national courts also having such competence, owing to the fact that that provision has direct effect, a complainant does not have the right to obtain from the Commission a decision under Article 189 of the EC Treaty regarding the existence or otherwise of the infringements alleged (Case T-186/94 *Guérin* v *Commission* [1995] ECR II-1753, paragraph 23).

49 Although the Commission may, at the behest of private traders, initiate proceedings for finding infringements of Article 85 of the Treaty, the private interest of the complainants coincides correspondingly less with the Community interest in pursuing the investigation of the alleged infringements where the Commission has already concluded that some of the original charges must be dismissed.

50 The Commission may be all the more justified in urging the complainants to seek redress in the national courts since it is for those courts to examine the actual conditions under which the standard-form agreement is to be performed by the parties (cf. the judgment in Case T-88/92 *Leclerc* v *Commission* [1996] ECR II-1961, paragraphs 122 and 123) and to assess, in the light of the applicable national law, the scope and consequences of any automatic nullity of certain contractual provisions under Article 85(2) of the Treaty, with particular regard to all the other matters covered by the agreement (Case 319/82 *Société de Vente de Ciments et Bétons de l'Est* v *Kerpen & Kerpen* [1983] ECR 4173, paragraphs 11 and 12, and *Cabour*, cited above, paragraph 51).

51 It is therefore a matter for the national court to determine, under its own laws, the liability which the parties to the contract may incur as a result of a refusal to sell to resellers outside the network, on the basis of a distribution agreement containing provisions which would be void.

52 Finally, although the Commission must not fail to take account of the extent of the protection which national courts can give to the rights which complainants have under the Treaty (*Automec* v *Commission*, cited above, paragraph 89), it should none the less be observed that the old and the new regulations can assist the national courts in assessing the lawfulness of contractual provisions which come under their scrutiny.

53 It is in light of the abovementioned principles that it is necessary to consider whether, in the present case, the Commission committed a manifest error of appraisal by dismissing the complaints on the ground of insufficient Community interest in pursuing the investigation (*Tremblay and Others* v *Commission*, cited above, paragraph 64).

— Obstacles to cross-border transactions

54 The applicants allege that the standard-form agreement contained provisions clearly intended to impede cross-border sales of contractual products between distributors in the network. In particular, the distributor was under an obligation to make monthly purchases of contractual products, to take orders on forms provided by Volkswagen and to forward to it a volume of orders enabling it to maintain a minimum level of stocks. Moreover, the investigation established that there were no cross-border resales between network distributors and that there was evidence, such as warning circulars addressed to distributors by Volkswagen, of Volkswagen's intention to block such transactions.

55 The Court considers, on the contrary, that the Commission was entitled to take the view that the actual wording of the provisions of the standard-form agreement, which prohibits distributors from reselling the contractual products only to distributors outside the network, was not sufficient to support the applicants' allegations, and that the rules governing the distributors' obligation to purchase from Volkswagen did not in themselves necessarily exclude acquisitions of contractual products from other resellers in the network.

56 Nor, moreover, has it been demonstrated that the Commission was manifestly wrong to conclude that the evidence initially used against Volkswagen was in the end insufficiently precise or consistent in order to support a finding of an infringement firm enough to withstand any possible review of legality.

57 In particular, the circulars initially treated as evidence against Volkswagen criticise French distributors for re-exporting to non-authorised intermediaries and warn them against any 'exports in whatever form which breach its contract ...'. Upon a close reading those circulars do not therefore show an intention to prohibit cross-border reselling between network distributors.

58 Furthermore, as the intervener observed at the hearing, without being contradicted by the applicants, the absence of cross-border transactions may have been attributable to Volkswagen's ability to offer its distributors all models within short delivery periods on the basis of a supplier credit.

59 It has not therefore been established that the Commission committed a manifest error in deciding to abandon the investigation of the complaints in the light of the alleged restriction of competition, notwithstanding its objective seriousness in regard to attainment of a single market between the Member States (Joined Cases 56/64 and 58/64 *Consten and Grundig* v *Commission* [1966] ECR 429).

— Restriction of access by distributors to *extra* network supplies of spare parts

60 The applicants maintain that the standard-form agreement restricted access by distributors to spare parts supplied from outside the network, inasmuch as distributors were required to buy predetermined quantities from Volkswagen and to obtain contractual warranties from third-party manufacturers having a period of validity at least equal to that of the Volkswagen warranty.

61 Moreover, owing to the rate of resupply of Volkswagen spare parts under the automated stock management system introduced by Volkswagen, a distributor belonging to this system had to order from Volkswagen a considerable percentage of parts, which were, however, available from third parties, and take on surplus stocks of components having a low turnover.

62 The Court observes that, as is clear from an examination of its terms, the standard-form agreement expressly allowed network distributors, except in the case of repairs under warranty and recalls of contractual products, to obtain from third parties of their choice supplies of parts of a quality equivalent to that of parts distributed by Volkswagen.

63 It does not seem from the evidence in the case that the level of stock commitments was fixed otherwise than on the basis of estimated forecasts or that distributors were not free to choose between Volkswagen premium prices and the possibly lower prices charged by other suppliers, in a situation where the concentration of purchases with Volkswagen could be accounted for by the objective interest of the distributor (paragraph 58 above).

64 Moreover, the Court finds that it cannot regard as manifestly erroneous the Commission's reasoning that the uniformisation sought by Volkswagen of quality control of parts of various origins obviously served the interest of the final consumer in obtaining the widest possible warranty, at least equivalent to that given by the manufacturer.

65 Finally, irrespective of the number of its users within the network, it has not been proven that the system of automated stock management was mandatory for distributors or that it imposed an automatic requirement to obtain fresh supplies on distributors who had opted for that system, which could, on the contrary, be presumed to involve a simplification and therefore an improvement in the profitability of the distributorships.

66 It does not therefore appear that the Commission was manifestly wrong in closing the investigation of the complaints concerning the conditions under which distributors could obtain supplies of spare parts.

— Obligation not to compete outside the contractual sales territory

67 The applicants maintain that the Commission was wrong not to find unlawful the prohibition imposed on the distributor restraining him from distributing outside his sales territory new vehicles competing with vehicles supplied under the distributorship agreement, although such a course would not in itself compromise the commercial effectiveness of the person concerned in his sales area.

68 The Court observes that, as the Commission itself accepts, the case-file shows that one distributor was in fact dismissed from the network on the ground that he had agreed to distribute vehicles of other makes outside his sales territory. None the less, it does not appear that dismissals on this ground occurred systematically.

69 Under those circumstances, the Commission was entitled to take the view that the national courts could effectively give a decision on the lawfulness of the contested provision under Article 85(1) of the Treaty in order to assess, under the national law applicable, the scope and consequences, particularly in the matter of compensation, of its possible nullity in respect of refusals to sell which might have been imposed on distributors outside the network under the standard-form agreement.

70 Thus, on this point there is no evidence that the Commission committed a manifest error which would entail annulment of the decisions rejecting the complaints.

— Extension of the standard-form agreement to second-hand cars

71 The applicants claim that the Commission was wrong not to characterise as anti-competitive the provisions in the standard-form agreement restricting the distributor's right to obtain supplies of spare parts from third-party suppliers when acting as a dealer in second-hand vehicles which are no longer contractual products, and to do business with other traders offering warranties analogous to those offered by Volkswagen. They also claim that the contested provision is such as to disqualify the distributorship agreement from exemption under the new regulation.

72 It appears, on the contrary, that the Commission was entitled to find, without investigating the matter further, that the conditions applicable to supplies of spare parts for second-hand vehicles did not restrict distributors' freedom of action beyond the requirements inherent in maintaining the brand image of both the manufacturer and the network as a whole. It is in fact apparent from the file that Volkswagen contended, without being contradicted by the applicants, that development of sales of new vehicles requires an increasing degree of control over sales of second-hand vehicles.

73 It does not therefore appear that the Commission manifestly misused its discretionary power.

— Standard-term contracts for financing customer loans

74 The applicant in Case T-189/96 points out that the requirement, imposed on distributors by the standard-term contracts for the financing of customer loans, to propose to their customers finance packages offered by Volkswagen's subsidiary made the amount of credit or the terms on which the distributor could obtain

credit for contract products dependent on the volume of customer credit attracted by the distributor. The applicant claims that this is directly contrary to Article 85(1)(c) of the Treaty and likely to restrict competition by independent credit companies and to harm the consumer.

75 The Court finds that no evidence has emerged to show that distributors were legally bound to sign the standard-term contracts in question. Moreover, even though Volkswagen admitted that it may in the past have linked the amount of investment premiums to a certain level of performance in terms of applications for finance by distributors who had signed those contracts, there is no evidence that this is still the case.

76 Under those circumstances, it has not been demonstrated that the Commission was manifestly wrong in concluding that the Community interest no longer dictated that the complaints on this point should be investigated.

— Access by Volkswagen to the distributor's files and computer management

77 The applicant in Case T-185/96 takes the view that, contrary to the analysis in the decisions rejecting the complaints, it has refuted Volkswagen's contentions that its computer management system was not compulsory, that flows of information from distributors to Volkswagen could not have happened without the distributor's knowledge, and that their customer databases were excluded from files transmitted to Volkswagen.

78 It does not appear from the evidence before the Court that use of the system was a contractual requirement. Moreover, in the absence of proof of Volkswagen's abuse of the system, the Court finds that the Commission's conclusion that investigation of the complaints did not enable it to separate the rationalisation of the

management of distributorships, objectively pursued by the contested system, from its possible anti-competitive consequences was not plainly wrong.

79 The Court cannot therefore find the Commission guilty of any manifest error of assessment in this regard.

— Unilateral termination and alteration of the sales territory granted

80 The applicants observe that no investigation was necessary for the Commission to assess the anti-competitive effect of the unilateral right for Volkswagen to alter the licensed territory and to terminate the agreement on exceptional grounds. The Commission, it is alleged, did not react to Volkswagen's assertion that no termination on exceptional grounds had occurred for non-attainment of a minimum percentage of the sales target, when that assertion has been refuted in one case at least, which does not exclude the possibility of other terminations.

81 It may be inferred from the framing of this plea that Volkswagen cannot be accused of systematically applying the contested provisions, which on their face are not restrictive of competition.

82 Thus, it does not appear that the Commission's decision not to conduct further additional investigations in order to determine the effect of the clause at issue was clearly unjustified.

83 It has not therefore been demonstrated that the Commission was guilty of a manifest error of assessment in deciding not to pursue the investigation of the objections initially raised against the provisions examined above, particularly since at

the hearing the intervener stated, without being contradicted on this point by the applicants, that the standard-form agreement has in the meantime been replaced by new contractual provisions in conformity with the new regulation.

84 The second plea must therefore be dismissed as unfounded.

The third plea: deficient statement of reasons for the decisions to reject the complaints

85 The applicants further allege that on certain points the decisions lack an adequate statement of reasons.

86 In so far as these sparse allegations may be treated as a genuine plea for annulment, it is sufficient to point out that, as is clear from an examination of the first two pleas, the decisions to reject the complaints are not so deficient in reasoning as to preclude the applicants from challenging their validity and the Court of First Instance from reviewing their lawfulness.

87 The third plea must therefore be rejected as unfounded.

88 It follows that the claims for annulment in Cases T-185/96, T-189/96 and T-190/96 must be rejected as unfounded.

The claims for compensation (Cases T-189/96 and T-190/96)

89 In support of their claim for compensation, the applicants in Cases T-189/96 and T-190/96 essentially allege that in their case the Commission committed a serious fault arising from its factual and legal errors of assessment and the dismissal of their complaints.

90 In the absence of evidence that the decisions to dismiss the complaints were unlawful and since no separate allegation of this unlawfulness has been made by the applicants, the Court can find no Commission fault of such a nature as to render the Community liable.

91 It follows that the claims for compensation in Cases T-189/96 and T-190/96 must be dismissed as unfounded.

92 It follows from all the foregoing that the three actions must be dismissed in their entirety.

Costs

93 Under the first subparagraph of Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, the first subparagraph of Article 87(3) provides that the Court may order the parties to bear their own costs where the circumstances are exceptional. The third subparagraph of Article 87(4) provides that the Court may order a party which has intervened, other than a Member State or an institution, to bear its own costs.

94 It is clear from the history of the cases that the radical change in the Commission's view was likely to prompt the applicants to bring it before this Court to explain the reasons which led it to abandon its initial analysis of the provisions of the standard-form agreement.

95 In those circumstances, the only costs which should be borne by the applicants are those incurred by themselves.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the action in Case T-185/96;

2. Dismisses as inadmissible the second head of claim in Cases T-189/96 and T-190/96;

3. Dismisses the remainder of the actions in Cases T-189/96 and T-190/96;

4. Orders each of the main parties and the intervener to bear their own costs.

Tiili Potocki Cooke

Delivered in open court in Luxembourg on 21 January 1999.

H. Jung V. Tiili

Registrar President