

Joined Cases T-9/96 and T-211/96

Européenne Automobile SARL

v

Commission of the European Communities

(Competition — Distribution of motor vehicles — Examination of complaints — Action for a declaration of failure to act, for annulment and for compensation)

Judgment of the Court of First Instance (First Chamber), 13 December 1999 II-3642

Summary of the Judgment

- 1. Competition — Administrative proceedings — Investigation of complaints — Order of priority assigned by the Commission — Account taken of the Community interest in the investigation of a case — Discretion enjoyed by the Commission — Commission obliged to state reasons for a decision not to investigate a complaint further — Decision subject to judicial review*
(EC Treaty, Art. 190 (now Art. 253 EC); Council Regulation No 17, Art. 3)
- 2. Actions for annulment — Pleas in law — Breach of essential procedural requirements — Court may consider that question of its own motion*
(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC))

3. *Competition — Administrative proceedings — Investigation of complaints — Account to be taken of the Community interest in the investigation of a case — Factors to be taken into account — Need to clarify the legal position relating to the sector concerned — Motor vehicle distribution sector — Commission entitled, where several complaints allege similar unlawful conduct on the part of several undertakings, to investigate one complaint only — Open to the other complainants to apply to the national courts*
 (Council Regulation No 17, Art. 3)

1. Where the Commission assigns different priorities to complaints submitted to it under Article 3 of Regulation No 17, it is entitled not only to decide the order in which the complaints are to be examined but also to reject a complaint for lack of a sufficient Community interest in further investigation of the case.

The discretion enjoyed by the Commission for that purpose is not unlimited, however. Accordingly, the Commission is under an obligation to state reasons if it declines to continue with the examination of a complaint, and the reasons stated must be sufficiently precise and detailed to enable the Court of First Instance effectively to review the Commission's use of its discretion to define priorities.

That review may not lead the Court of First Instance to substitute its assessment of the Community interest for that of the Commission, but focuses on

whether the contested decision is based on materially incorrect facts, or is vitiated by an error of law, a manifest error of appraisal or misuse of powers.

2. The Court of First Instance may of its own motion consider the question of infringement of essential procedural requirements and, in particular, of the procedural guarantees conferred by Community law.
3. In order to evaluate the Community interest in investigating a complaint submitted to it pursuant to Article 3 of Regulation No 17, the Commission must balance the significance of the alleged infringement as regards the functioning of the common market, the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required for it to perform, under the best possible conditions, its task of making sure that Articles 85 and 86 of the Treaty (now Articles 81 EC and 82 EC) are complied with.

To that end, it is legitimate for the Commission to take account not only of the seriousness of the alleged infringement and of the extent of the measures of investigation required in order to prove it, but also of the need to clarify the legal position relating to conduct alleged in the complaint and to define the rights and obligations under Community law of the various economic operators affected by that conduct.

When investigating a complaint alleging infringement of Article 85 of the Treaty in the motor vehicle distribution sector, since the respective rights and obligations of the authorised agents, car manufacturers and dealers have been defined and set out in the block exemption regulations, by a Commission communication and by judgments of both the Court of Justice and the Court of First Instance, the Commis-

sion is entitled to reach the conclusion — and commits no manifest error in so doing — that the national courts and administrative authorities were capable of dealing with the infringements alleged in the complaint and of protecting the complainant's rights under Community law.

Thus, where the Commission is faced with a situation where numerous factors give rise to a suspicion of anti-competitive conduct on the part of several large undertakings in the same economic sector, it is entitled to concentrate its efforts on one of the undertakings concerned, whilst at the same time indicating to the economic operators who may have suffered damage as a result of the anti-competitive conduct of the other parties concerned that it was open to them to bring an action in the national courts.