JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

13 December 1999 *

In Joined Cases T-190/95 and T-45/96,

Société de Distribution de Mécaniques et d'Automobiles (Sodima), a company incorporated under French law in judicial liquidation, established in Istres, France, represented by Dominique Rafoni, liquidator, and, in these proceedings, by Jean-Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

applicant,

v

Commission of the European Communities, represented initially by Giuliano Marenco, Legal Adviser, and Guy Charrier, a national civil servant on secondment to the Commission, and, subsequently, by Mr Marenco and Loïc Guérin, a national civil servant on secondment 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,

* Language of the case: French.

APPLICATION for, first, a declaration that the Commission unlawfully failed to adopt a position following a complaint by the applicant under Article 85 of the EC Treaty (now Article 81 EC) and 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) and, secondly, annulment of an alleged implied refusal to provide the applicant with the information on the file and, thirdly, annulment of an alleged implied decision to join the applicant's complaint with other complaints and, fourthly, compensation for damage,

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

composed of: B. Vesterdorf, President, J. Pirrung and M. Vilaras, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 2 March 1999,

gives the following

Judgment

1 The applicant, Société de Distribution de Mécaniques et d'Automobiles (hereinafter 'Sodima'), has been a concessionaire of Peugeot cars since 1984. The distribution agreement was terminated by Automobiles Peugeot SA, the manufacturer of Peugeot and Citroën cars (hereinafter 'PSA'), on a date which is not clear from the file. On 17 December 1992 the applicant filed a declaration of suspension of payments. On 24 July 1996 it was put into judicial liquidation.

2 Proceedings are pending before the French courts between the applicant and PSA in which the applicant has applied for PSA to be ordered to meet its liabilities of FRF 14 million.

3 On 1 July 1994 the applicant lodged a complaint with the Commission against PSA under Article 3(2) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, First Series 1959-62, p. 87, hereinafter 'Regulation No 17'). The applicant claimed that the distribution agreement entered into by it was, in regard both to its wording and implementation, incompatible with Article 85 of the EC Treaty (now Article 81 EC) and Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to

certain categories of motor vehicles distribution and servicing agreements (OJ 1985 L 15, p. 16). The applicant asked the Commission to withdraw the benefit of the block exemption in accordance with Article 10 of Regulation No 123/85 of 12 December 1984, cited above, and Article 8 of Regulation No 17, and to adopt interim measures.

4 On 5 August 1994 the Commission sent Sodima's complaint, together with a list of the documents produced by Sodima as evidence, to PSA for comment. On 26 October 1994, having received several similar complaints, the Commission sent PSA a request for information under Article 11 of Regulation No 17.

5 PSA asked to be sent all the documents submitted by Sodima, upon which the Commission asked the applicant if it had any business-secrecy objection to that. The applicant consented, subject to its documents not being supplied to third parties or used in other procedures being dealt with by the Commission.

6 By letters of 13 December 1994 and 16 January 1995 and then of 23 January, 7 February and 1 March 1995, the applicant asked the Commission to send it the request for information sent to PSA and PSA's comments on its complaint, but it received no reply.

7 On 15 February 1995 PSA replied to the Commission's request for information, but refused permission to send its replies to the complainant on grounds of business confidentiality. On 27 February 1995 PSA sent the Commission its comments on the applicant's complaint.

8 In a letter of 14 March 1995 the applicant formally called upon the Commission to adopt a position under Article 175 of the Treaty as soon as possible.

9 On 12 October 1995 the applicant brought the action in Case T-190/95, which was followed by a supplementary pleading of 17 May 1996. By separate document of 8 December 1995 the Commission raised a plea of inadmissibility; a decision on that plea was, by order of 30 January 1997, reserved for final judgment.

10 By letter of 4 January 1996 the applicant again formally called upon the Commission to notify PSA of the complaints.

11 On 27 March 1996 the applicant brought the action in Case T-45/96.

12 On 27 January 1997 the Commission notified the applicant under Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition First Series 1963-64, p. 47, hereinafter 'Regulation No 99/73') of its intention to dismiss the complaint. Under cover of that letter, the Commission sent the applicant the information provided by PSA not covered by business secrecy. On 13 March 1997 the applicant replied that it was not in a position validly to submit its observations because only part of the file had been disclosed to it.

13 By decision of 5 January 1999 the Commission dismissed the complaint. The applicant brought an action against that decision (Case T-62/99).

14 By order of 21 January 1999 the President of the First Chamber of the Court of First Instance decided to join Cases T-190/95 and T-45/96 for the purposes of the hearing and judgment.

15 The parties presented oral argument and replied to the questions of the Court at the hearing of 2 March 1999.

16 By a letter which reached the Registry of the Court on 25 March 1999, the applicant requested that Case T-62/99 be joined to these two joined cases. It stated that it would withdraw its application for a declaration of failure to act if these two cases were joined with Case T-62/99.

17 Since these cases are ready to be determined, the Court considers it inappropriate to grant the application for joinder.

Forms of order sought

18 In Case T-190/95, the applicant claims that the Court should:

— declare that the Commission failed to act;

— annul the implied refusal to notify;

— annul the implied decision to join the cases;

— find the Commission liable for damages and declare it bound to pay compensation for damage suffered in the amount of EUR 200 000 per annum from 14 March 1995;

— order the Commission to pay the costs.

19 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— in the alternative, declare the application

  — devoid of purpose and, furthermore, unfounded as regards the failure to act and invocation of the Commission's non-contractual liability;

  — unfounded as regards the application for annulment of the alleged implied refusal to send the documents and join the cases;

— order the applicant to pay the costs.

20 In Case T-45/96, the applicant claims that the Court should:

— declare that the Commission failed to act;

— annul the implied refusal to notify;

— annul the implied decision to join the cases;

— find the Commission to be liable in damages and declare it bound to pay compensation in the amount of EUR 200 000 per annum from 14 March 1995;

— order the Commission to pay the costs.

21 The Commission contends that the Court should:

— dismiss the actions for a declaration of failure to act and annulment as inadmissible and, in the alternative, as unfounded;

— order the applicant to pay the costs.

Admissibility of the action in Case T-190/95

Application for a declaration of failure to act

Arguments of the parties

22 The Commission contends that the action for a declaration of failure to act is out of time and, in the alternative, that it has become devoid of purpose given that the Commission has written to the applicant under Article 6 of Regulation No 99/63.

23 The applicant claims that its action must be declared admissible by virtue of the principle of the protection of legitimate expectations. Moreover, the act by the Registry of the Court of First Instance of notifying the Commission of the action could be considered to amount to a new letter of formal notice such that the preconditions for the second paragraph of Article 175 of the EC Treaty (now the second paragraph of Article 232 EC) to apply are met.

Findings of the Court

24 The letter of formal notice sent by the applicant to the Commission is dated 14 March 1995. It is not clear from the file when the Commission received that letter but the applicant does not dispute that the total period of four months provided for in the second paragraph of Article 175 of the Treaty had expired when it brought its action.

25 The applicant cannot rely on the principle of the protection of legitimate expectations in order to avoid application of the second paragraph of Article 175 of the Treaty, by reference to the contact it had with the Commission after the letter of formal notice. The time-limits for initiating proceedings are a matter of public policy and are not subject to the discretion of either the Court or the parties (see, for example, order in Case T-68/96 *Polyvios* v *Commission* [1998] ECR II-153, paragraph 43). Therefore, neither statements by the Commission in its correspondence with the applicant nor public declarations of its position can affect the admissibility of the action.

26 In any event, the statements relied on by the applicant in this case relate to the manner in which the Commission intended to deal with the complaint and the Commission's activities in the automobile sector in general, but contain no information which might be capable of creating confusion in relation to the time-limits for initiating proceedings laid down in the second paragraph of Article 175 of the Treaty.

27 Nor does the judgment in Case C-107/91 *ENU* v *Commission* [1993] ECR I-599 assist the applicant's case. That judgment does not relate to the time-limit at issue here, but to the quite different question whether the letter of formal notice was sent to the Community institution concerned within a reasonable time (see paragraphs 23 and 24 of the judgment).

28 Finally, both the wording and the scheme of Article 175 of the Treaty preclude viewing mere notification of the action as a letter of formal notice.

29 Accordingly, the application for failure to act must be dismissed as inadmissible.

Admissibility of the action for annulment

Arguments of the parties

30 The applicant claims that the Commission's silence following its letter of 14 March 1995 amounts to an implied decision constituting an actionable measure and that the Commission also took an implied decision to join the various complaints.

Findings of the Court

31 It must be borne in mind that acts or decisions against which an action for annulment may be brought under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) are measures which produce binding legal effects capable of affecting the interests of the applicant by bringing about a significant change in his legal position (see judgment of the Court in Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9). Mere silence on the part of an institution cannot produce such effects other than where that result is expressly contemplated by a provision of Community law.

32 Community law provides that, in certain specific instances, silence on the part of an institution is deemed to constitute a decision where the institution has been called upon to express its view and has not done so by the end of a given period.

Where there are no such express provisions laying down a deadline by which an implied decision is deemed to have been taken and prescribing the content of the decision, an institution's inaction cannot be deemed to be equivalent to a decision without calling into question the system of remedies instituted by the Treaty.

33 Regulations Nos 17 and 99/63 do not provide that silence on the part of the Commission following a request for documents constitutes an implied refusal. If no action is taken following its request, the complainant may either give the Commission formal notice under Article 175 of the Treaty and, if appropriate, bring an action for failure to act, or invoke any illegality arising as a result in an action for annulment of the decision ultimately adopted by the Commission at the close of the procedure.

34 It follows that the Commission's failure to grant the applicant's request to be supplied with certain documents cannot be deemed to constitute an actionable decision.

35 Nor was there, at the time when this action was brought, any act in this case capable of being interpreted as a partial refusal, by analogy with the solution adopted in Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319, paragraphs 28 and 29 and by the Court of First Instance in Case T-16/91 RV *Rendo and Others* v *Commission* [1996] ECR II-1827. It is true that the applicant obtained some of the documents it had requested by way of attachment to the letter under Article 6 of Regulation No 99/63 written in January 1997. None the less, since it received those documents after it had brought the actions which are the subject of this judgment, their disclosure cannot be challenged in this action.

36 As regards, next, the alleged implied decision to join the cases, it need merely be observed that the applicant has not shown that such a decision was taken, or demonstrated how joining the cases could adversely affect it. In particular, the

criticism that the Commission sent documents submitted by the applicant to other complainants has not been corroborated by anything on the case-file.

37 It follows that the application for annulment is inadmissible.

Admissibility of the application for compensation

Arguments of the parties

38 The Commission contends that the inadmissibility of the action for compensation follows from the inadmissibility of the action for failure to act. Furthermore, it considers that the action does not comply with the requirements of Article 19 of the EC Statute of the Court of Justice, which applies to the Court of First Instance by virtue of the first paragraph of Article 46 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance. Finally, since the action for failure to act has become devoid of purpose, the same is true of the action for damages.

39 The applicant relies on the autonomy of remedies. It submits that it cannot be assumed from the case-law of the Court, according to which an action for failure to act becomes devoid of purpose when the defendant institution has adopted a position in the course of proceedings, that there was no failure to act before. Accordingly, the action for damages has not become devoid of purpose.

40 The applicant accuses the Commission of having dealt with its complaint in a dilatory manner, notwithstanding its having provided comprehensive evidence. It claims that the Commission's failure to act is causing it damage by delaying the proceedings brought before the French courts against PSA for payment of the applicant's liabilities of FRF 14 million. The damage caused by the Commission's failure to act can be assessed as the interest on FRF 14 million at a rate of 10%, that is to say EUR 200 000 per annum. It adds that it is not entitled to claim compensation for that damage in the national courts.

Findings of the Court

41 Under Article 19 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, all applications must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court of First Instance to decide the case, if appropriate without further information. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible, the essential facts and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible (see, for example, the order made by the Court of First Instance in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 21 and the judgment in Case T-195/95 *Guérin Automobiles* v *Commission* [1997] ECR II-679, paragraph 20).

42 In order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers there is a causal link between that conduct, the damage it

claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 107).

43 In this case, in its pleadings the applicant accuses the Commission of having dealt with its complaint in a dilatory manner and claims that the delay caused it damage.

44 However, as regards the nature and scope of that damage and the causal link, the applicant merely alludes, without further particulars, to an action for damages which it has brought against PSA in the French courts. The applicant also refers, in this context, to 'payment of its liabilities' without, however, specifying the basis of its action in national law. Nor does it give any detail as to the stage the proceedings have reached or the defence raised by PSA. It is true that it claims that its action for damages in the national courts will be delayed until the Commission has ruled on its complaints, but it gives no concrete indication as to the influence of any decision by the Commission on the decision to be taken by the national court. Furthermore, it mentions an application for a stay of proceedings made by PSA but provides no detail as to the date of, or grounds for, that application, or as to its actual or possible outcome.

45 The application therefore does not identify the nature and scope of the harm which the applicant alleges it has suffered or the causal link between that alleged harm and the conduct of which it accuses the Commission. It does not therefore enable the Community judicature to exercise judicial review or the Commission to defend itself.

46 It follows that the requirements of Article 19 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance have not been fulfilled.

47 Accordingly, the action for damages is inadmissible.

Case T-45/96

Application for a declaration of failure to act

48 This action for a declaration of failure to act has become devoid of purpose since, first of all, the Commission, on 27 January 1997, sent the applicant a letter under Article 6 of Regulation No 99/63 and, secondly, a final decision dismissing the applicant's complaint was adopted on 5 January 1999.

49 There is therefore no need to rule on the application for a declaration of failure to act.

The applications for annulment and damages

50 In Case T-45/96 and T-190/95, the applicant seeks exactly the same relief in relation to the same alleged decisions and compensation for the same damage. In support of those claims, it relies on the same pleas in law and arguments.

51 It follows that the claims for annulment and damages in Case T-45/96 are inadmissible for the same reasons as those given in Case T-190/95.

Costs

52 Since the applicant has been unsuccessful in Case T-190/95, it must be ordered to pay the costs pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance.

53 In Case T-45/96, there is no further need to determine the application for failure to act, so that the Court is free to rule on costs, in accordance with Article 87(6) of the Rules of Procedure. However, the applicant has been unsuccessful in its application for annulment and damages. In those circumstances, the Court of First Instance considers it appropriate to apply Article 87(3) of the Rules of Procedure and to order each party to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Dismisses the application in Case T-190/95 as inadmissible;**

2. **Finds that there is no longer any need to adjudicate on the application for a declaration for failure to act in Case T-45/96;**

3. **Dismisses the remainder of the application in Case T-45/96 as inadmissible;**

4. **Orders the applicants to pay the costs in Case T-190/95 and orders the parties to bear their own costs in Case T-45/96.**

Vesterdorf Pirrung Vilaras

Delivered in open court in Luxembourg on 13 December 1999.

H. Jung B. Vesterdorf

Registrar President