

JUDGMENT OF THE COURT (Sixth Chamber)
30 April 1998 *

In Case C-230/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Cour d'Appel, Douai, France, for a preliminary ruling in the proceedings pending before that court between

Cabour SA and Nord Distribution Automobile SA

supported by

Automobiles Peugeot SA and Automobiles Citroën SA,

and

Arnor 'SOCO' SARL,

on the interpretation of Article 85(1) of the EC Treaty and certain provisions of 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 vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16), and of Commission Regulation (EC) No 1475/95 of 28 June 1995 (OJ 1995 L 145, p. 25),

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen (Rapporteur), G. F. Mancini, P. J. G. Kapteyn and G. Hirsch, Judges,

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Arnor 'SOCO' SARL, by Henri-Patrick Bednarski, of the Lille Bar, Pierre Demolin and Yves Brulard, of the Mons and Paris Bars, and Miguel Troncoso Ferrer, of the Brussels and Pamplona Bars,
- Automobiles Peugeot SA and Automobiles Citroën SA, by Xavier de Roux and Marie-Pia Hutin, of the Paris Bar, and Jacques Loesch of the Luxembourg Bar,
- the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Régine Loosli-Surrans, Chargé de Mission in the same directorate, acting as Agents,
- the Commission of the European Communities, by Francisco Enrique González Diaz, of its Legal Service, and Guy Charrier, a national civil servant on secondment to that service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Arnor 'SOCO' SARL, Automobiles Peugeot SA and Automobiles Citroën SA, the French Government and the Commission at the hearing on 25 September 1997,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1997,

gives the following

Judgment

- 1 By judgment of 20 June 1996, received at the Court on 8 July 1996, the Cour d'Appel (Court of Appeal), Douai, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Article 85(1) of the EC Treaty and certain provisions of 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 vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16), and of Commission Regulation (EC) No 1475/95 of 28 June 1995 (OJ 1995 L 145, p. 25).
- 2 Those questions were raised in unfair competition proceedings brought by Cabour SA ('Cabour') and Nord Distribution Automobile SA ('NDA'), supported by Automobiles Peugeot SA ('Peugeot') and Automobiles Citroën SA ('Citroën'), against Arnor 'SOCO' SARL ('Arnor').

The dispute in the main proceedings

- 3 Cabour and NDA are sole dealers in Douai for Citroën and Peugeot cars respectively. Considering that Arnor, which does not belong to any car manufacturer's

distribution network, had engaged in unfair competitive practices and in unlawful and misleading advertising, in that it too sold new cars of those makes, Cabour and NDA brought an action before the Tribunal de Commerce (Commercial Court), Douai, seeking an order that Arnor pay them damages and an injunction restraining it from carrying on its business.

- 4 By judgment of 16 June 1994, the Tribunal de Commerce, Douai, found against the appellants, the applicants in the main proceedings, on the ground that the exclusive Peugeot and Citroën dealership contracts were incompatible with Regulation No 123/85, and thus could not be relied on as against Arnor.
- 5 Cabour and NDA appealed against that judgment, claiming that the acts of unfair competition alleged against Arnor were subject to penalties under national law.
- 6 Arnor replied that the unfair competition proceedings should be dismissed since the dealers had not established that their distribution networks were lawful under Community law.
- 7 Taking the view that resolution of the dispute pending before it required interpretation of Community law, the Cour d'Appel, Douai, stayed proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Can Commission Regulation No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty be interpreted as meaning that an exclusive

dealership agreement binding a car manufacturer to a dealer qualifies for the exemption under Article 1 of that regulation where that contract:

- (a) does not exemplify the “objectively valid reasons” referred to in Article 5(2)(1)(a) and (b) and Article 5(3) of that regulation;

- (b) rules out any possibility for the dealer to sell new vehicles other than those offered for supply by the manufacturer, even at commercial premises separate from those at which contract goods are offered for sale, except where objectively valid reasons not existing at the time when the contract was concluded are proved, a stipulation which has to be considered in relation to the interpretation of Article 3(3) and Article 5(2) of the regulation;

- (c) lays down a sales target whereby the dealer undertakes to use its best endeavours to sell during each annual period a quantity of contract vehicles which, if not specified by agreement between the parties, is fixed by the manufacturer on the basis of forecasts made by it or criteria determined by it, and specifies that, in the event that 90% of 7/11ths of the sales objective has not been achieved on 31 August in the current annual period and the “aggregate percentage penetration” of contract vehicles in the territory to which the concession relates, assessed on 31 July of the current annual period, is 15% to 45% — depending on where the territory is located — lower than the national average penetration of contract vehicles, the manufacturer may, on giving three or six months’ notice, alter the contract territory and/or withdraw from the dealer its exclusivity in the territory, or terminate the dealership contract, which stipulations should be considered in relation to the interpretation of Article 4(1)(3), Article 5(2)(2) and Article 5(2)(3) of the regulation?

2. Can Commission Regulation No 1475/95 of 28 June 1995 replacing the aforementioned Regulation No 123/85 be interpreted as meaning that an exclusive dealership contract containing clauses of the sort referred to in Question 1(b) and (c) qualifies for the exemption under Article 1 of that regulation, having regard respectively to Article 3(3) and Article 4(1)(3) of Regulation No 1475/95 in conjunction with Article 5(2)(2), Article 5(2)(3) and Article 5(3)?

3. If Regulations Nos 123/85 and 1475/95 cannot be interpreted as conferring the benefit of the exemption for which they provide on dealership contracts of the kind referred to in the first two questions, must Article 85(1) of the EEC Treaty be interpreted as meaning that an exclusive distribution network of a motor vehicle manufacturer which is based, throughout the territory of a Member State, on such dealership contracts is caught by the prohibition set out in that provision?

The relevant provisions

- 8 By virtue of Article 1 of Regulation No 123/85 and Article 1 of Regulation No 1475/95, which replaced Regulation No 123/85 from 1 October 1995, agreements by which a supplier makes an authorised reseller responsible for promoting the distribution of the contract goods within a defined territory and agrees to reserve the supply of vehicles and spare parts, within that territory, to that dealer, are exempted from the prohibition laid down in Article 85(1) of the Treaty.
- 9 In accordance with Article 3(3) of Regulation No 123/85, the exemption under Article 85(3) of the Treaty also applies where the obligation described in Article 1 is combined with an obligation on the dealer 'neither to sell new motor vehicles which compete with contract goods nor to sell, at the premises used for the

distribution of contract goods, new motor vehicles other than those offered for supply by the manufacturer'.

10 Article 4(1)(3) of that regulation provides that the exemption also covers any obligation imposed on the dealer to 'endeavour to sell, within the contract territory and within a specified period, such minimum quantity of contract goods as may be determined by agreement between the parties or, in the absence of such agreement, by the supplier on the basis of estimates of the dealer's potential sales'.

11 Article 5 of Regulation 123/85 provides, *inter alia*:

'2. In so far as the dealer has (...) assumed obligations for the improvement of distribution and servicing structures, the exemption referred to in Article 3, points 3 and 5 shall apply to the obligation not to sell new motor vehicles other than those within the contract programme or not to make such vehicles the subject of a distribution and servicing agreement, provided that

(1) the parties

(a) agree that the supplier shall release the dealer from the obligations referred to in Article 3, points 3 and 5 where the dealer shows that there are objectively valid reasons for doing so;

(b) agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory or to alter the contract territory only where the supplier shows that there are objectively valid reasons for doing so;

(2) the agreement is for a period of at least four years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least one year for both parties, unless

— the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or

— the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer.

(3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period.

3. A party may only invoke particular objectively valid grounds within the meaning of this Article which have been exemplified in the agreement if such grounds are applied without discrimination to undertakings within the distribution system in comparable cases.

4. The conditions for exemption laid down in this Article shall not affect the right of a party to terminate the agreement for cause.'

12 The wording of the corresponding articles in Regulation No 1475/95 is not the same as that of Regulation No 123/85.

13 Thus, pursuant to Article 3(3) of Regulation No 1475/95, the exemption still applies to the obligation not to sell new motor vehicles offered by persons other than the manufacturer on the same commercial premises, but the sale of new cars of a different make is to be allowed if it takes place 'on separate sales premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes'.

14 Article 4(1)(3) of the same regulation provides that the exemption is to apply notwithstanding any obligation whereby the dealer undertakes to 'endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties by common agreement or, in the event of disagreement between the parties as to the minimum number of contractual goods to be sold annually, by an expert third party, account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level'.

15 Article 5 of Regulation No 1475/95 provides:

'2. Where the dealer has, in accordance with Article 4(1), assumed obligations for the improvement of distribution and servicing structures, the exemption shall apply provided that:

...

(2) the agreement is for a period of at least five years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least two years for both parties; this period is reduced to at least one year where:

— the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or

— the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer;

(3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period.

3. The conditions for exemption laid down in (1) and (2) shall not affect;

— the right of the supplier to terminate the agreement subject to at least one year's notice in a case where it is necessary to reorganise the whole or a substantial part of the network,

— the right of one party to terminate the agreement for cause where the other party fails to perform one of its basic obligations.

In each case, the parties must, in the event of disagreement, accept a system for the quick resolution of the dispute, such as recourse to an expert third party or an arbitrator, without prejudice to the parties' right to apply to a competent court in conformity with the provisions of national law.'

Admissibility

- 16 The French Government, the Commission, Peugeot and Citroën have cast doubt on the relevance of the questions to a settlement of the dispute in the main proceedings, having regard to the judgments given on 15 February 1996 in Case C-226/94 *Grand Garage Albigeois and Others v Garage Massol* [1996] ECR I-651, and Case C-309/94 *Nissan France and Others v Dupasquier and Others* [1996] ECR I-677, from which it is clear that, whilst Regulation No 123/85 concerns the contractual relations between suppliers and their approved distributors, it does not serve to regulate the activities of third parties who may operate in the market outside the framework of distribution agreements.
- 17 The same conclusion holds good in this instance, they submit, since the case in the main proceedings concerns not a dispute between a supplier and its dealer but an action brought by approved dealers against a reseller independent of the official networks.
- 18 The French Government adds that, in any event, there is no need to answer the second question on the interpretation of Regulation No 1475/95, because the facts giving rise to the request for a preliminary ruling occurred while Regulation No 123/85 alone was in force.
- 19 So far as concerns the interpretation of Regulation No 123/85, the Cour d'Appel, Douai, considers that the outcome of the case before it depends on whether the

clauses challenged by the defendant in the main proceedings are compatible with that regulation. In the first place, the judgment appealed against considered this question, and concluded that the clauses were incompatible with the regulation. Second, the question whether the dealers' situation is legally protected vis-à-vis non-approved resellers may be decisive when determining whether the exclusive dealership agreements may be relied on as against third parties. If there were no such protected situation, an action for unfair competition would be unlikely to succeed.

20 It is also necessary to interpret Regulation No 1475/95, the Cour d'Appel, Douai, considers, because the action for unfair competition seeks not only compensation for loss suffered while Regulation No 123/85 was applicable but also an injunction restraining the activity of the independent reseller for the period after Regulation No 1475/95 entered into force.

21 With a view to ruling on the admissibility of the questions, it must be borne in mind that, as the Court has consistently held, it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court. A request for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action (see, *inter alia*, Case C-143/94 *Furlanis v Anas and Itinera* [1995] ECR I-3633, paragraph 12). But that is not the case here.

22 First, the national court has adequately explained that, even if the exclusive motor vehicle dealership contracts cannot be relied on as against third parties, by virtue of the judgments in *Grand Garage Albigeois* and *Nissan France*, cited above, the outcome of an action for unfair competition under national law may depend on the validity of those contracts in the light of Regulation No 123/85.

- 23 Second, the fact that it may be necessary to order the defendant in the main proceedings to cease its activities in the future provides sufficient justification for interpreting the relevant provisions of Regulation No 1475/95 (see, to that effect, Case C-408/95 *Eurotunnel and Others v Seafrance* [1997] ECR I-6315, paragraph 24).
- 24 In those circumstances, the questions referred by the national court must be answered.

Question 1

- 25 By its first question, the national court is in substance asking whether, on a proper construction of Regulation No 123/85, the exemption which it grants applies to a contract which (i) does not exemplify the objectively valid reasons for which the contracting parties may be released from the obligation not to compete, (ii) prevents the dealer from selling new cars of any other make, even at commercial premises separate from those at which the contract goods are offered for sale and (iii) imposes on the distributor a fixed sales target set by the manufacturer, failure to achieve which is penalised by alteration of the territory conceded, withdrawal of the exclusive dealership or termination of the dealership agreement.
- 26 As regards the first part of this question, it must be borne in mind that under Article 5(2)(1)(a) and (b) of Regulation No 123/85, exemption in respect of an obligation not to sell new vehicles other than those within the contract programme or not to make such vehicles the subject of a distribution and servicing agreement is subject to the condition that the parties provide that it is possible for them to be released from their respective obligations by adducing objectively valid reasons.

- 27 As the Advocate General has rightly stressed at point 22 of his Opinion, those provisions do no more than lay down the principle that the parties must state in the agreement that it is possible for them to be released from the obligation not to compete by advancing evidence of such objectively valid reasons, but the agreement need not necessarily contain an exhaustive list of the reasons which may be put forward.
- 28 On a proper construction of Article 5(2)(1)(a) and (b) of Regulation No 123/85, therefore, the exemption granted by the regulation applies to a clause in an exclusive dealership agreement which does no more than provide that the parties may, in order to be released from their respective obligations not to compete, put forward objectively valid reasons, without indicating specifically what those reasons may be.
- 29 As regards the second part of the first question, it must be noted that Article 3(3) of Regulation No 123/85 allows a manufacturer to require a dealer neither to sell new vehicles which compete with the contract goods nor to sell, at the premises used for the distribution of the contract goods, new vehicles offered for supply by other manufacturers.
- 30 Having regard to the general principle prohibiting anticompetitive agreements laid down in Article 85(1) of the Treaty, provisions in a block exemption regulation which derogate from that principle cannot be interpreted widely and cannot be construed in such a way as to extend the effects of the regulation beyond what is necessary to protect the interests which they are intended to safeguard (Case C-70/93 *BMW v ALD* [1995] ECR I-3439, paragraph 28).

31 Accordingly, the exemption referred to in Article 3(3) of the regulation does not cover an obligation imposed on a dealer not to sell new vehicles other than those offered for supply by the manufacturer at commercial premises other than those at which the contract goods are offered for sale.

32 That interpretation applies even if the dealer may put forward objectively valid reasons as provided for in Article 5(2). As the Advocate General rightly observed at point 25 of his Opinion, the possibility for a dealer to put forward objectively valid reasons merely permits dealers, where they can show good reason, to sell vehicles of a different make, but not competing with the contract goods, even at the premises where those are sold. It cannot, however, mean that it is necessary to adduce evidence of objectively valid reasons in order to be able to sell vehicles other than those offered for supply by the manufacturer at commercial premises other than those at which the contract goods are sold.

33 On a proper construction of Article 3(3) and 5(2) of Regulation No 123/85, therefore, the exemption granted by the regulation does not apply to a clause in a contract which, unless there are objectively valid reasons, prevents the dealer from selling new vehicles of any other make, even at commercial premises separate from those at which the contract goods are offered for sale.

34 With regard to the third part of the first question, it must be borne in mind that Article 4(1)(3) of Regulation No 123/85 allows manufacturers to require dealers to endeavour to sell a minimum quantity of contract goods within the contract territory.

35 It follows, first, that Regulation No 123/85 expressly provides for the possibility of fixing sales targets and, second, that the obligation imposed on the dealer to attain such a target can be no more than an obligation to use its best endeavours.

36 Article 5(2) of Regulation No 123/85, furthermore, prescribes time-limits for terminating contracts and Article 5(4) allows the parties to terminate the agreement for cause.

37 It follows that, where a dealer has failed to meet the sales target set because it is in breach of its duty to use its best endeavours, Regulation No 123/85 does not prohibit penalties, which may extend to termination of the agreement.

38 On a proper construction of Articles 4(1)(3) and 5(2)(2) and (3) of Regulation No 123/85, therefore, the exemption granted by the regulation applies to a clause in a contract which imposes on a dealer a fixed sales target and provides for penalties extending to termination of the contract if the target is not met, provided, however, that determination of the sales target represents simply an obligation to use best endeavours.

Question 2

39 By its second question, the national court seeks in essence to ascertain whether the answers to the second and third parts of the first question also hold good for the corresponding provisions of Regulation No 1475/95.

40 As regards the first part of this question, it suffices to note that Article 3(3) of Regulation No 1475/95 expressly states that the exemption applies to the obligation not to sell new motor vehicles of a different make except on separate sales

premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes.

- 41 On a proper construction of Articles 3(3) and 5(2) of Regulation No 1475/95, therefore, the exemption granted by the regulation does not apply to a clause in a contract which, unless there are objectively valid reasons, prevents the dealer from selling new vehicles of any other make, even at commercial premises separate from those at which the contract goods are offered for sale.
- 42 As regards the second part of the second question, it must first be borne in mind that although Article 5(3) of Regulation No 1475/95 provides, like Article 5(4) of Regulation No 123/85, that a party is entitled to terminate the agreement for cause, the article in the new regulation specifically states that that right arises where the other party fails to perform one of its basic obligations.
- 43 Next, Article 4(1)(3) of Regulation No 1475/95 lays down one more condition than the same provision in Regulation No 123/85. If sales targets are to be covered by the provision, they must not only represent simply an obligation to use best endeavours, but must also be determined by common agreement between the parties or, where they disagree, by an expert third party.
- 44 It follows that Regulation No 1475/95 does not permit the manufacturer to fix sales targets unilaterally.

- 45 On a proper construction of Articles 4(1)(3) and 5(2) and (3) of Regulation No 1475/95, the exemption granted by the regulation applies to a clause in a contract which imposes on a dealer a fixed sales target and provides for penalties, which may extend to termination of the contract if the target is not met, provided, however, that the sales target represents simply an obligation to use best endeavours and is determined by common agreement between the parties or, where they disagree, by an expert third party.

Question 3

- 46 By its third question, the national court is in substance asking whether the prohibition laid down by Article 85(1) of the Treaty applies to a motor vehicle dealership contract if that contract is not covered by the block exemption.
- 47 Regulation No 123/85, like Regulation No 1475/95, as regulations applying Article 85(3) of the Treaty, are limited to providing economic agents in the motor vehicle industry with certain possibilities enabling them to remove their distribution and servicing agreements from the scope of the prohibition contained in Article 85(1) despite the inclusion in those agreements of certain types of exclusivity and no-competition clauses. However, the provisions of the exempting regulations do not compel economic agents to make use of those possibilities. Nor do they have the effect of amending the content of such an agreement or of rendering it void where all the conditions laid down in the regulation are not satisfied (see Case 10/86 *VAG France v Magne* [1986] ECR 4071, paragraph 12).
- 48 Where an agreement does not satisfy all the conditions provided for by an exempting regulation, it will be caught by the prohibition laid down by 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 Case 56/65 *Société Technique Minière v Maschinenbau Ulm* [1966] ECR 235, and Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299).

- 49 It is for the national court to determine, on the basis of all the evidence at its disposal and in the light of the economic and legal context surrounding the agreement, whether in the case pending before it those conditions are satisfied.
- 50 However, an agreement cannot be examined in isolation from the factual or legal circumstances causing it to prevent, restrict or distort competition. In that context, the existence of similar contracts is a circumstance which, together with others, is capable of being a factor in the economic and legal context within which the contract must be judged (see Case 23/67 *Brasserie de Haecht v Wilkin* [1967] ECR 407).
- 51 If the national court should declare one or more of the clauses in the contract void, it must be added that, as the Court has held (see *VAG France*, cited above, paragraph 14), the consequences, for all other parts of the agreement or for other obligations flowing from it, of the fact that those contractual provisions which are incompatible with Article 85(1) are automatically void are not a matter for Community law. It is therefore also for the national court to determine, in accordance with the relevant national law, the extent and consequences, for the contractual relation as a whole, of the nullity of certain contractual provisions by virtue of Article 85(2).
- 52 The answer to be given to the third question must therefore be that the prohibition set out in Article 85(1) of the Treaty applies to clauses in a motor vehicle dealership contract which are not covered by the block exemption if, having regard to

the economic and legal context, their object or effect is perceptibly to restrict competition within the common market and they are capable of affecting trade between Member States.

Costs

- 53 The costs incurred by the French Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Sixth Chamber),

in answer to the questions referred to it by the Cour d'Appel, Douai, by judgment of 20 June 1996, hereby rules:

1. On a proper construction of Article 5(2)(1)(a) and (b) of 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 vehicle distribution and servicing agreements, the exemption granted by the regulation applies to a clause in an exclusive dealership agreement which does no more than

provide that the parties may, in order to release themselves from the obligation not to compete, put forward objectively valid reasons, without indicating specifically what those reasons may be.

On a proper construction of Article 3(3) and 5(2) of Regulation No 123/85, the exemption granted by the regulation does not apply to a clause in a contract which, unless there are objectively valid reasons, prevents the dealer from selling new vehicles of any other make, even at commercial premises separate from those at which the contract goods are offered for sale.

On a proper construction of Articles 4(1)(3) and 5(2)(2) and (3) of Regulation No 123/85, the exemption granted by the regulation applies to a clause in a contract which imposes on a dealer a fixed sales target and provides for penalties, extending to termination of the contract if the target is not met, provided, however, that the sales target represents simply an obligation to use best endeavours.

2. On a proper construction of Articles 3(3) and 5(2) 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, the exemption granted by the regulation does not apply to a clause in a contract which, unless there are objectively valid reasons, prevents the dealer from selling new vehicles of any other make, even at commercial premises separate from those at which the contract goods are offered for sale.

On a proper construction of Articles 4(1)(3) and 5(2) and (3) of Regulation No 1475/95, the exemption granted by the regulation applies to a clause in a contract which imposes on a dealer a fixed sales target and provides for penalties, which may extend to termination of the contract if the target is not

met, provided, however, that the sales target represents simply an obligation to use best endeavours and is determined by common agreement between the parties or, where they disagree, by an expert third party.

3. The prohibition set out in Article 85(1) of the Treaty applies to clauses in a motor vehicle dealership contract which are not covered by the block exemption if, having regard to the economic and legal context, their object or effect is perceptibly to restrict competition within the common market and they are capable of affecting trade between Member States.

Ragnemalm

Schintgen

Mancini

Kapteyn

Hirsch

Delivered in open court in Luxembourg on 30 April 1998.

R. Grass

H. Ragnemalm

Registrar

President of the Sixth Chamber