OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 15 DECEMBER 1983

My Lords,

These joined applications, under Article 173 of the EEC Treaty, to set aside a Decision of the Commission dated 18 August 1982 (IV/30.696, Official Journal 1982, L 256 p. 20) are made by two subsidiaries of Ford Motor Company, which is incorporated in the United States of America "Ford US". The first applicant is Ford of Europe Incorporated, also incorporated in the United States ("Ford Europe"). The second is Ford-Werke Aktiengesellschaft, which is incorporated in the Federal Republic of Germany ("Ford Germany").

Ford Germany manufactures cars in different models both in Germany and in Belgium; it sells them in Germany and to Ford subsidiaries in other countries, in particular to Ford Motor Company Limited in the United Kingdom ("Ford UK"). Some of these subsidiaries also manufacture cars and Ford Europe coordinates the policies and activities of the various subsidiaries in Europe, though not apparently itself manufacturing or distributing Ford cars.

Ford Germany has set up a selective distribution network in Germany involving a very large number of dealers by means of a standard main dealer agreement. Under the terms of that agreement Ford Germany undertakes to sell its products to the main dealers, "products", including so far as vehicles are concerned, "the normal serial models of passenger cars" as supplied by Ford Germany, and specified by model name in Schedule 1 to the agreement. The main dealer is entitled to sell those vehicles within the European Economic Community to retail customers and to other authorized dealers; he may also set up subsidiary outlets in the dealer area of primary responsibility allotted to him. In return, although subject to exceptions, Ford agrees not to authorize other dealers to distribute Ford vehicles in that area, and the main dealer undertakes not to sell the cars of other manufacturers.

That standard agreement was notified to the Commission on 14 May 1976, and Ford sought negative clearance for it under Article 2 of Council Regulation No 17 (Official Journal English Special Edition 1959 — 1962, p. 87), alternatively for an exemption under Article 85 (3) of the EEC Treaty. At that time it is said by Ford that only left-hand drive cars were supplied to the German main dealers by Ford, though Ford Germany manufactured right-hand drive cars for supply *inter alia* to Ford UK. By April 1982, that position had changed. Right-hand drive cars with German specifications were supplied in larger numbers to the authorized dealers for resale to

customers for use, no doubt, initially in Germany. Of more importance, right-hand drive cars complying with British requirements were manufactured and sold by Ford Germany in increasing numbers. These were destined for British residents who found that the significant price difference between the same model bought in Germany and in the United Kingdom made it worthwhile to buy in Germany, this difference arising substantially, if not wholly, from the change in parity between the pound sterling and the German mark.

Whether these right-hand drive cars were covered by the main dealer agreement is hotly disputed. The Commission says that they are: the two Ford companies say that they are not, since they are not normal series models and they were ordered under a special vehicle ordering system of one kind or another. From the material before the Court, it seems that there may be a distinction between such cars which comply with the German specifications and those which satisfy British requirements. The evidence suggests that the former were sold directly to the German main dealers, were dealt with in the same way as left-hand drive cars and, at any rate on occasion, were subject to terms included in the main dealer agreement, even if under a special vehicle ordering system. The British specification cars were, however, as I understand to be common ground, sold under a scheme known as the "Visit Europe Plan" either direct by Ford Germany to the British customer, or through German dealers. The applicants claim that the dealers acted as agents for the customer and were not buying under the main dealer agreement. The Commission contends that these cars were only supplied to or through the same authorized German main dealers so that they should be treated as falling within the main dealer agreement. For present purposes, it does not seem to be necessary or possible to resolve this dispute. It is right and, I think sufficient, to proceed on the basis that whether or not these cars fell within the agreement there was a link between the operation of the Visit Europe Plan and the main dealer agreement.

Troubledby the effect of these sales, and even more by the potential effect if the number of sales increased, on the financial position of the British dealers and on the incentive to the German dealers to concentrate on selling left-hand drive cars in Germany, Ford Germany took action. A circular dated 27 April 1982 was sent to German dealers who had ordered right-hand drive cars. They were told that Ford Germany would no longer supply right-hand drive cars in Germany, and that only orders taken prior to 1 May 1982 would be accepted. All other right-hand drive cars would have to be purchased from a Ford subsidiary, or from authorized dealers, in the United Kingdom. This refusal to sell further cars in Germany does not distinguish between those having British, and those having German specifications; it should be read as covering both.

This circular prompted the Bureau Européen des Unions de Consommateurs

("BEUC") on 12 May 1982 to make a formal complaint to the Commission and a request for interim measures to be taken. Apparently the Commission received complaints also from customers in the United Kingdom and possibly from some of the German dealers. In the result, a statement of objections was sent to Ford Germany on 2 July; after receiving that company's reply on 21 July, a hearing was held on 23 July and the contested decision adopted on 18 August 1982. That decision, which was addressed to Ford Germany, required the company within 10 days to withdraw its circular and to inform German Ford dealers that right-hand drive vehicles still formed part of the company's agreed delivery range. Measures having the same effect as the circular were prohibited and a fine of 1 000 ECU per day was imposed in respect of delay in withdrawal of the circular and the issue of the notification to the German dealers. That decision was expressed to apply until a final decision on the case was adopted.

In broad terms, the Commission's decision, based on Articles 3 (1) and 6 (1) of Regulation No 17 accepts that before the circular was issued the main dealer agreement would probably have been exempted under Article 85 (3). Although the circular is not in itself an agreement or concerted practice caught by Article 85, it is of such a nature that had an exemption been granted, it would probably have constituted an abuse of the exemption within the meaning of Article 8 (3) (d), of Regulation No 17 and the exemption would probably have been withdrawn retroactively. Since the conditions for the grant of interim measures referred to by the Court in Case 792/79 R *Camera Care Ltd* v *Commission* [1980] ECR 119, have been satisfied, the Commission can and should require the circular to be withdrawn by exercising its discretion in a way analogous to the use of the power conferred by Article 8 (3) (d).

Following applications to the Court, the President on 29 September 1982, suspended the Commission's decision entirely as far as right-hand drive cars constructed to British specifications are concerned and imposed a ceiling on the obligation to sell German specification right-hand drive cars. In these proceedings before the Court, two dealers have intervened in support of the applicant (James A Laidlaw (Holdings) Ltd and Stormont Ltd); the Commission is supported by BEUC. Since the hearing in the application, the Commission, by Decision dated 16 November 1983 (Official Journal L 327/31) has ruled that the main dealer agreement affects trade within the meaning of Article 85 (1), has refused an exemption under Article 85 (3) and revoked its Decision of 18 August 1982.

The applicants have attacked the decision on a number of substantive and procedural grounds. They say that there was no power to make this order and that the conditions for the award of

interim measures indicated in *Camera Care* have not been satisfied. Some of the arguments canvassed, particularly in the Reply and the Rejoinder, seemed to me to belong more to a debate on a hypothetical adverse decision in the main proceeding. It is, in my view, inappropriate to deal with them since nothing concluded or ruled on at this stage should prejudice, either way, issues which have to be decided if an application is made to the Court in respect of the Commission's more recent decision.

The Commission has raised a preliminary question as to whether the action brought by Ford Europe is admissible. It is suggested that the decision is not of direct and individual concern to that company for the purposes of Article 173, in that it is only the business of Ford Germany which is affected. The Court has already accepted in the Japanese ballbearing cases (e. g. Case 113/77 *NTN Toyo Bearings* ([1979] ECR 1185 and Cases 119/77-121/77 reported in the same volume) that the connection between a parent company and its subsidiary may be such they should both the treated as sufficiently concerned by a contested decision. In the present case, Ford Germany is not the subsidiary of Ford Europe. Nonetheless, its interest in the effect of the decision is quite different from that of consumers and dealers. Its role as overseer of the policies of the European subsidiaries of Ford US, no doubt on behalf of the parent company, seems to me sufficient to satisfy the test laid down by the Court as to what is of direct and individual concern. I am, accordingly, of the view that both applications are admissible.

In *Camera Care* the Court indicated the necessary prerequisites to the making of an interim order. As I read the judgment, the Court's approach was primarily influenced by a desire to ensure that decisions under Article 3 should be taken "in the most efficacious manner best suited to the circumstances of each given situation" (para. 17). Preliminary measures might accordingly be taken to prevent this right of decision from being frustrated, but they must be "indispensable to avoid the exercise of the power to take decisions given by Article 3 from becoming ineffectual or even illusory because of the action of certain undertakings" or "indispensable for the effective exercise of its functions" by the Commission and in particular for ensuring the effectiveness of any decisions requiring undertakings to bring to an end infringements which it has found to exist. The Commission must, however, at the same time take account of the legitimate interests of the undertakings concerned and only make an order in cases which are urgent to avoid a situation likely to cause serious and irreparable damage to the person seeking their adoption or which is intolerable in the public interest. The measures must be temporary and conservatory, and be limited to what is required (i.e. necessary) in the given situation. Finally the Commission must observe essential

procedural safeguards, not least the making of an order in a form which can be challenged before the Court of Justice.

Although not said in terms, it is inherent in these conditions and of the essence of the power to grant interim relief, that at least a *prima facie* case is shown to justify the exercise of the power. There must be a sufficient sub-stratum of facts, and a sufficiently clear case in law to justify the order. The Commission rightly accepts that a strong *prima facie* case must be shown.

In view of the extensive arguments advanced and the positions taken at the hearing, it seems to me, in this case, convenient to summarize briefly the stance of the parties on the major points. In the first place, it is agreed that Ford Germany is not a dominant supplier so that Article 86 is not involved. It is also agreed that a refusal to deliver the cars in question is not itself a violation of Article 85 (1). Such a refusal in the present case does not make the main dealer agreement unlawful. In the Commission's view the agreement is within Article 85 (1) for other reasons; the refusal to deliver would justify the withdrawal of an exemption by virtue of Article 8 (3) (d) of Regulation 17. Accordingly, by analogy the Commission can order interim measures as indeed it claims that it could do in similar terms where an agreement falling within Article 85 (1) was not notified, or was notified but where no claim for exemption was made.

The Commission adopts a broad approach. Its starting point (in which it is supported by BEUC) is that no exemption can be granted for an agreement if a manufacturer stops supplying goods in one Member State with the object of preventing inter-brand competition in another Member State, where the goods sold are more expensive. Such a refusal to supply is equal to an export ban and anti-competitive acts of this nature violate the essential aims of the common market. To maintain the availability of cheaper goods and to prevent customers suffering losses in having to pay higher prices, interim measures, of the kind adopted here, are not only justified but are the only way of protecting the customer. It is irrelevant whether the cars sold were sold under the agreement and whether the failure to supply was itself unlawful, since the economic reality is that these cars formed an integral part of the overall Ford market. The Commission does not contend that a manufacturer must make all his products available to every dealer; it goes no further than saying that an act which is in effect a prohibition of parallel imports and the cutting off of goods formerly available for anti-competitive reasons can be stopped by interim measures. Here the Commission did nothing more than to maintain the *status quo:* it did nothing to make Ford con-

tractually bound to supply cars and the effect of the order is no different from what could have been achieved in a final order.

The applicants, in summary, contend that a unilateral decision by a non-dominant supplier to supply only certain of his products to a dealer cannot fall within Article 85 (1), and that a manufacturer cannot as a condition of the grant of an exemption be required to supply all the goods he makes. The policy of the Treaty is that a manufacturer must not impose restrictions on a dealer's ability to compete in respect of goods already supplied; it does not require, which is wholly different, that a manufacturer can be compelled to take positive steps to enable his dealers to be competitive by supplying goods to them. Accordingly, since the Commission has not suggested that the agreement would not otherwise qualify for exemption, there can be no grounds for making an order unter Article 3. The present order was not indispensable to ensure that a final order was complied with and there was no causal nexus between the main dealer agreement and the decision not to supply these particular cars. Moreover, there was no serious or irreparable damage to customers so that a decision was not urgent. Conversely, the decision did not take account of the damage done to the Ford Group and in particular, to Ford UK and its dealers. It went beyond what was required to conserve the position by requiring Ford to supply an unlimited number of cars. There was no strong *prima facie* case; the arguments relied on are not only wrong but novel. Procedural safeguards were disregarded, including those contained in Articles 2 and 4 of Regulation No 99/63 and, not least, the applicants had no chance to deal with the suggestion that the interim order was to be made under Article 3 of Regulation 17 since only Article 6 was in issue.

A preliminary question to be considered is whether in an interim order the Commission can ever order that which it could not in terms order in a final decision. The fact that the Court can do so does not mean that the Commission can do so since the function and competence of the two institutions are different. I do not consider that it can be said absolutely that it may not do so, since in order to preserve the Commission's power to make a final order it may be necessary temporarily to forbid acts or to require steps to be taken which could not in terms be included in a final order. Yet there must be some limitation on what can be ordered in an interim order. It seems to me that, although an order may be different in form in an interim decision from a final order, what is ordered must not exceed in substance what the Commission could

do in a final order. There may be situations where the distinction is not entirely clear, but it seems to me to flow from the ancillary nature of interim relief, ancillary that is to the limited powers conferred on the Commission. The fact that in form an order may be different does not enable it to become in fact a permanent order which could not validly be made, since, if the Commission unjustifiably fails to get on with the main proceedings, an application can be made to the Court to set aside the interim order.

This limitation to the substance of what can be done seems to me implicit in the Court's requirement in the *Camera Care* case, that interim measures should be "indispensable for the effective exercise of its functions" by the Commission.

It assume for present purposes, as the Commission contends, that in this case in a final order the Commission could, if every legal and factual criterion was satisfied, do one of three things. It could declare the agreement to be within Article 85 (1) and refuse an exemption under Article 85 (3) on the grounds that Ford Germany was refusing to supply right-hand drive cars. It could make the grant of an exemption conditional on Ford Germany restoring the supply of those cars. Alternatively, it could require Ford Germany not to operate the agreement whilst right-hand drive cars were not being supplied. What, however, it could not do, as I see it, was to require in positive terms that Ford Germany should supply right-hand drive cars to its dealers.

It may well be that, as a result of one of the final orders which could be made, Ford would be driven commercially to renew supply. The essential difference, however, is that it would have the choice, however difficult in practice to operate, of abandoning the agreement, persuading its dealers to modify it or renewing the supply. The present order does not give any such choice. If in a final order, Ford cannot be ordered to supply these cars, I do not consider that it is "indispensable" to require Ford Germany to supply them meanwhile in order to make a final decision effectual. Moreover, such an order seems to me to go beyond the substance of the Commission's powers in a final order.

If this approach is not correct then, in my view, the power of the Commission to do what it did at the time the Commission took its decision was at the least very doubtful. Moreover, even if under Article 8 (3) (d) an exemption can be refused because of a unilateral act, it cannot in my opinion be said that it was clearly, or even *prima facie,* the law that Article 8 (3) can be applied by analogy to agreements which have not yet been exempted. Even more controversial between the parties is the proposition that such an action can be taken if the unilateral act relates primarily or wholly to goods which are not or may not have

been covered by the main dealer agreement, namely the British specification cars. Short of a ruling by a national court as to the extent of the contract under its proper law, there is clearly doubt as to whether the main dealer agreement covered these right-hand drive cars.

Accordingly, it does not seem to me that there was sufficiently firm ground in law for the Commission to make the interim order on the basis which it adopted. A *prima facie* case justifying that order did not exist. This conclusion in no way prejudices any ultimate decision as to the merits of the final order when these matters have to be resolved.

Although I would reject the applicant's argument that the order made was so imprecise that it should not stand (since in my view it clearly required Ford to continue to supply such cars as were ordered by dealers who had previously ordered them on the same terms as before, adjusted for price on the same basis *mutatis mutandis* as other price changes were made in the Ford range) I consider that its effect goes beyond what is merely conservatory. The number of cars ordered was expected at that stage to increase substantially; the effect on the dealers of Ford UK was feared to be serious if not destructive in part of the existing network. It seems to me, on this aspect of the case, that at most an order requiring not less than the current number to be supplied would have been sufficient as a temporary conservatory measure.

Then it is said that this order goes beyond what is necessary because the same result would have been achieved by a provisional decision based on Article 15 (6) of Regulation 17. Removal of immunity from fines, it is said, would have been a less severe decision than the present order. That Article only applies so far as relevant, where an agreement has been notified. It does not seem to me that it can be right that, if an agreement is notified, interim measures cannot be ordered if a fine is less severe, and in *Camera Care* itself the agreement had been notified (my Opinion in Case 86/82 *Hasselblad GB*). In any event, the result sought by the Commission, had it been otherwise capable of achievement, would not have been achieved and German dealers would have been affected by Ford's failure to supply. I would therefore, reject this argument.

The applicants also argued that the order was too restrictive because it did not give Ford Germany the option of taking the agreement outside Article 85 (1) altogether. I agree, despite the Commission's arguments, that it did not do so. The positive order is not subject to a term that, if the agreement is altered, the obligation to supply ceases so that that obligation would continue. I do not, however, consider that a provision giving the option to alter the agreement would

have been conservatory in nature in any event, even if Ford Germany could have complied with it.

I accept the Commission's argument, supported by BEUC, that individual purchasers would suffer damage if they were no longer able to buy Ford cars in Germany at the lower price. Proportionally to the price of the car and to the average customer's assets, that loss is serious. In practical terms it is not reparable. Theoretically proceedings might be possible in national courts to recover the difference. The cost and evidentiary problems involved in such proceedings make it an unreal remedy. In addition, German dealers would, as I see it, be likely to suffer a loss of profits which in practical terms would be impossible or difficult to recover. In my opinion, therefore, the condition of urgency was satisfied in this case.

The applicant's counter argument that the damage to Ford interests is great and that the disruption and losses to Ford UK and its dealers and the losses of some German dealers ought to be taken into account is plainly right though I am not satisfied that the Commission ignored Ford's legitimate interests. It is, in any event, a factor which has to be balanced against other factors. If the case for granting relief were otherwise overwhelming, both in fact and in law, then that loss might have to be borne. In a weak case it might tilt the balance the other way and indicate that no measures should be taken.

In the result, however, it is my opinion that the Commission's order should be annulled on the grounds that it was not within the Commission's competence, was not "indispensable" or "conservatory" and was not supported by a sufficiently clear case in law.

The applicants have also claimed that the order should be annulled on the basis of procedural irregularities.

The first is that Ford was denied the opportunity to address the Commission on the use of Article 3, since only Article 6 (1) was mentioned. Whilst I do not accept that Articles 2 and 4 of Regulation No 99/63 are in point, Ford is entitled to rely on the principle of *audi alteram partem.* The Statement of Objections and the stance taken by the Commission at the hearing before the decision were somewhat equivocal. Yet I am not satisfied that the applicants did not realize that interim measures were under consideration. The applicants themselves pointed out in their Reply to the Statement of Objections that they could only be made under Article 3. I am not satisfied by the applicants that Ford was deprived of the opportunity of addressing the Commission on Article 3.

Secondly, Ford maintains that the decision should be annulled because the Commission failed to consult the Advisory Committee as it was required to do by Article 10 of Regulation 17. The Commission replies that it is not bound to consult the Advisory Com-

mittee with respect to interim measures. The relevant limb of Article 10 (3) requires the Commission to consult the Advisory Committee "prior to the taking of any decision following upon a procedure under paragraph (1)". Article 10 (1) refers to decisions "establishing the existence of infringements of Article 85 or 86 of the Treaty or of obtaining negative clearance" and to decisions "in application of Article 85 (3)". The only relevant phrase here is "establishing the existence of infringements of Article 85". Although an interim decision does not finally "establish" such an infringement, it is based on a *prima facie* finding to that effect. The question to be decided then is: is a *prima facie* finding of fact to be regarded as a finding of fact at all? My view is that it is. In other words a decision which establishes a fact on a provisional basis must be regarded as a decision "establishing" that fact. Consequently for the purposes of Article 10 (3) an interim decision "follows upon" a procedure establishing the existence of an infringement. I conclude from this that Article 10 requires the Commission to consult the Advisory Committee before adopting an interim decision.

However, that does not exhaust the matter. The Decision imposed a periodic penalty payment on Ford-Werke in the event that it failed to comply with the order within the period stipulated. Article 16 of Regulation 17, which relates to periodic penalty payments, states in paragraph 3 that "Article 10 (3) to (6) shall apply". This clearly means that the Advisory Committee must be consulted with respect to a draft decision imposing a periodic penalty payment. At the hearing Counsel for the Commission was asked to explain the Commission's views on this point. His answer was to the effect that it is the Commission's practice to proceed in two stages with respect to such penalties. The first decision, like that in the present case, orders an undertaking to take a certain course of action under pain of paying a periodic penalty payment which is fixed in the decision. He described it as a mere threat. If the undertaking fails to comply with that order, a second decision is adopted by which the penalty is actually imposed.

The Commission does not regard the initial decision as being subject to the obligation to consult the Advisory Committee at all. I would reject that argument. The fact that it is the Commission's practice to adopt a second decision cannot alter the clear wording of a decision such as that in issue in this case. Article 2 provides: "In respect of the measures set out in Article 1 a periodic penalty payment of 1 000 ECU per day shall be payable by Ford-Werke AG for each day of delay". The Commission's view also flies in the face of the express wording of Article 16 (1) according to which "the Commission may by decision impose on undertakings ... periodic penalty payments ... in order to compel them: (a) to put an end to an infringement of Article 85 or 86 of the Treaty ..." The wording of that provision therefore covers decisions of a

prospective nature in the sense that they seek to regulate the future conduct of the undertaking concerned. Accordingly, in my view, the Advisory Committee should have been consulted with respect to the decision in this case by virtue of Article 16.

In the seventh recital to the decision it is said that the Committee was "given the opportunity to deliver its Opinion" on 23 July 1982, the day of the hearing. It is not said that an opinion was given, although obviously it may have been, or that there was any other consultation. There may be cases which are so urgent that a very brief consultation with the Advisory Committee is justified. Taking the time scale in this case I consider that Ford is justified in saying that on the evidence available no reasonable opportunity was given for the Advisory Committee to be consulted prior to the adoption of the decision. This is clearly an important procedural requirement and it does not seem to me that it is right to rely on any presumption that all was properly done.

Ford's third procedural complaint is that the Commission failed to hear interested parties who applied to be heard. This is said to contravene Article 19 (2) of Regulation 17 and Article 5 of Regulation 99/63. These provisions taken together stipulate that third parties who apply to the Commission to be "heard" in writing and who show "sufficient interest" must be given an opportunity of making their views known in writing before the Commission adopts certain categories of decision, including those under Article 3 of Regulation 17. They must do so within the period of time fixed by the Commission "having regard to the time required for preparation of comments and to the urgency of the case" (Article 11, Regulation 99/63). The time limit may in no case be less than two weeks (ibid).

The right to be "heard" in writing must be distinguished from the right to an oral hearing (Article 7 (1) of Regulation No 99/63) and Ford does not claim that there was any violation of the latter Article.

On 22 July 1982 an article appeared in the *Times* newspaper reporting that the Commission had initiated proceedings against Ford with respect to its restrictions on the sale of right-hand drive cars in Germany and that there was to be a hearing the following day. On reading this article a number of Ford dealers in Britain sent telexes to the Commission expressing their concern. In 3 or 4 short paragraphs, each of these telexes sets out the following: a reference to the article in the *Times;* a brief description of the applicant's business as a Ford dealer; and a request to be heard. In view of their importance I quote one by way of example:

"We ask your Commission not to take immediate action on your proposals without giving us the opportunity to put our case to you, especially as our company employs over 1 000 people and the viability of our company and the future employment of our staff is severely threatened by such action."

From the information before the Court it seems likely that none of those dealers received any reply whatsoever from the Commission until after the decision was adopted. What is certain is that Stormont Ltd and James A. Laidlaw (Holdings) Ltd, both of whom sent telexes and intervened before the Court to support Ford on this point, did not receive replies — even by way of acknowledgement — until September 1982. They were not given an opportunity to give their views in writing.

The Commission seeks to counter Ford's argument in three ways. Firstly, it claims that the dealers "did not simply ask to be heard". That seems to me to be contrary to what is said in the telexes. Secondly, it argues that "the dealers made written submissions which the Commission has considered". I take this to mean that the Commission officials concerned read the telexes and that the Commission thereby did afford the dealers the opportunity of making their views known in writing in accordance with Article 5. Yet there can be no doubt that the telexes merely constituted applications to be heard and were not themselves the expression of views within the meaning of that provision.

I now turn to the Commission's third argument. This is to the effect that "even if the dealers are entitled to make written submissions in the main procedure, they had no right to insist on causing delay by making written submissions in the interim procedure". There may be cases of such urgency that a truncated procedure and time for only brief comments are justified in relation to interim as opposed to final proceedings. In this case, however, the dealers concerned did have sufficient interest to comment in writing and therefore should have been so heard. Stormont and Laidlaw claim that they each stood to make losses running into several hundreds of thousands of pounds as a result of the decision. Moreover, it is beyond question that the various dealers concerned were linked to Ford in the closest possible way and constituted an integral part of the system. I find it hard to see how the Commission can justify its refusal to hear third parties in such a position on the grounds that the decision was of an interim nature, particularly in view of its terms. Nor would I accept that the urgency of this case was so great that it was not even possible to give the dealers two weeks, the minimum time allowed by Article 11 of Regulation No 99/63, to present their observations. Ford's circular was issued on 27 April and became operative on 1 May. BEUC sent its complaint to the Commission on 12 May, but it was not until 2 July that the Commission sent its Statement of Objections. The hearing was held on 23 July and the decision was adopted on 18 August. Thus, the time taken by the Commission itself indicated that the urgency was not such that the proceedings could not be extended by two weeks or so.

It is beyond doubt that failure to give a fair hearing to an undertaking to which a

decision based on Article 3 of Regulation No 17 is addressed constitutes the infringement of an essential procedural requirement for which the decision can be annulled. The same must apply to the failure to hear interested third parties who are entitled to be heard. I conclude that the decision must be annulled on these grounds.

Ford's fourth and final procedural argument is that the decision may been adopted without authority duly conferred by the Commissioners acting as a collegiate body. It adduces no evidence in support of this allegation which should in my view be dismissed.

Ford Germany asks for its costs. Ford Europe asks for "Ford Germany's" costs to be paid. I assume that this a clerical slip for "Ford Europe". Although it can be said that some costs could have been saved if one application had been made by both parties, perhaps even that one party could have advanced all the arguments, I consider that in all the circumstances it was reasonable for both parties to make the application and that the costs should not be divided.

For the above reasons I conclude that the Commission's order should be annulled and that the Commission should pay both applicants' costs and the costs of Stormont Ltd and James A. Laidlaw (Holdings) Ltd. The Commission and BEUC should bear their own costs.