

Case T-24/90

Automec srl

v

Commission of the European Communities

(Competition — Obligations of the Commission
when a complaint has been submitted to it)

Opinion of Judge Edward, acting as Advocate General, delivered on 10 March
1992 II - 2226
Judgment of the Court of First Instance, 18 September 1992 II - 2250

Summary of the Judgment

1. *Competition — Administrative procedure — Termination of infringements — Power of the Commission — Infringement of Article 85 of the Treaty — Order requiring an undertaking to enter into contractual relations — Precluded*
(EEC Treaty, Art. 85(1) and (2); Council Regulation No 17, Art. 3)
2. *Competition — Administrative procedure — Examination of complaints — Setting of priorities by the Commission — Obligation to conduct an investigation and give a decision on the existence of an infringement — None — Statement of reasons for closing the file — Review by the Court*
(EEC Treaty, Art. 190; Council Regulation No 17, Art. 3; Commission Regulation No 99/63, Art. 6)
3. *Competition — Administrative procedure — Examination of complaints — Taking into account the Community interest in investigating a case — Assessment criteria*
(EEC Treaty, Arts 85 and 86)

4. *Competition — Administrative procedure — Examination of complaints — Decision to close the file justified by the possibility for the complainant to approach the national courts — Legality — Condition*

1. Among the civil-law consequences which an infringement of the prohibition laid down in Article 85(1) of the Treaty may have, only one is expressly provided for in Article 85(2), namely the nullity of the agreement. The other consequences attaching to an infringement of Article 85 of the Treaty, such as the obligation to make good the damage caused to a third party or a possible obligation to enter into a contract are to be determined under national law. It is therefore the national courts which, where appropriate, may, in accordance with the rules of national law, order one trader to enter into a contract with another.

So far as the Commission is concerned, since freedom of contract must remain the rule, it cannot in principle be considered to have — among the powers to issue orders which it has for the purpose of bringing to an end infringements of Article 85(1) of the Treaty — the power to order an undertaking to enter into contractual relations, since in general it has appropriate means at its disposal for requiring an undertaking to terminate an infringement.

In particular, there cannot be held to be any justification for such a restriction on freedom of contract where there are several ways of bringing an infringement to an end. This is true of infringements of Article 85(1) of the Treaty arising from the application of a distribution system. Such infringements can also be eliminated by the abandonment or amendment of the

distribution system. Consequently, the Commission undoubtedly has the power to find that an infringement exists and to order the undertakings concerned to bring it to an end, but it is not for the Commission to impose upon them its own choice from among all the various potential courses of action which are in conformity with the Treaty.

2. Where a complaint has been submitted to the Commission under Article 3 of Regulation No 17, it is not bound either to give a decision on the existence of the alleged infringement unless the subject-matter of the complaint falls within its exclusive purview, as in the case of the withdrawal of an exemption granted under Article 85(3) of the Treaty, or to conduct an investigation. Since the Commission has been entrusted with an extensive and general supervisory and regulatory task in the field of competition, it is consistent with its obligations under Community law for it to apply different degrees of priority to the cases submitted to it.

However, on the one hand, the procedural safeguards provided for in Article 3 of Regulation No 17 and Article 6 of Regulation No 99/63 oblige it to examine carefully the factual and legal particulars brought to its notice by the complainant in order to assess whether they disclose conduct of such a kind as to distort competition in the common market and affect trade between Member States and, on the other, every decision closing the file relating to a complaint must state reasons, so

that the Community judicature is able to carry out a review of its legality.

possible conditions, its task of ensuring that Articles 85 and 86 of the Treaty are complied with.

3. The Commission is entitled to refer to the Community interest in order to determine the degree of priority to be applied to a case brought to its notice. In assessing the Community interest, it should take account of the facts of the case in question, and in particular of the legal and factual considerations which have been adduced. In particular, it should balance the significance of the alleged infringement as regards the functioning of the common market, the probability of establishing the existence of the infringement and the scope of the investigation required in order to fulfil, under the best
4. Where the Commission gives as its reason for closing, without taking action, the file on a complaint from an undertaking alleging infringement of the Community competition rules the fact that the complainant can assert his rights before the national courts, the Community court called on to review the legality of the decision closing the file should check whether the extent of the protection which national courts can provide in respect of the complainant's rights under provisions of the Treaty was properly assessed by the Commission.