

Case T-186/94

Guérin Automobiles

v

Commission of the European Communities

(Competition — Complaint — Notification under Article 6  
of Regulation No 99/63/EEC — Action for failure to act — Action for annulment)

Judgment of the Court of First Instance (Third Chamber, Extended Composition), 27 June 1995 ..... II - 1756

Summary of the Judgment

1. *Competition — Administrative procedure — Examination of complaints — Obligation of the Commission to rule by way of a decision in accordance with Article 189 of the Treaty on whether a breach exists — None — Right of complainant to obtain a decision on its complaint capable of forming the subject-matter of an action*  
(Council Regulation No 17, Art. 3(2))
2. *Competition — Administrative procedure — Examination of complaints — Stages of the procedure — Culmination in a definitive decision capable of forming the subject-matter of an action for annulment*  
(Council Regulation No 17, Art. 3(2); Commission Regulation No 99/63, Art. 6)

3. *Action for failure to act — Institution formally notified — Definition of its position under Article 175, second paragraph, of the Treaty — Meaning — Letter addressed pursuant to Article 6 of Regulation No 99/63 to author of a complaint of breach of competition rules (EC Treaty, Art. 175, second para.)*
4. *Action for annulment — Measures against which an action may be brought — Definition — Measures producing binding legal effects — Holding letters addressed to the author of a complaint of breach of the Community competition rules — Preparatory measures (EC Treaty, Art. 173; Council Regulation No 17, Art. 3(2); Commission Regulation No 99/63, Art. 6)*

1. Unless the subject-matter of the complaint falls within the exclusive competence of the Commission, Article 3 of Regulation No 17 does not confer on a complainant under that article the right to obtain a decision of the Commission, within the meaning of Article 189 of the Treaty, regarding the existence or otherwise of a breach of Article 85 and/or Article 86 of the Treaty.

There is nothing in that approach to prevent the applicant from obtaining a Commission decision on its complaint capable of forming the subject-matter of an action for annulment, in accordance with the general principle that there is a right of access to effective judicial review.

it will take on it. That stage may include an informal exchange of views between the Commission and the complainant in order to clarify the issues of fact and of law with which the complaint is concerned and to give the complainant an opportunity to expand his arguments and allegations, where appropriate in the light of any initial reaction from the Commission. The second stage starts with the notification to the complainant provided for in Article 6 of Regulation No 99/63 in which the Commission indicates the reasons for which, if such is the case, it considers that there are insufficient grounds for granting the application and invites the applicant to submit further comments within a stipulated time. The final rejection of the complaint constitutes the third stage in the procedure. It constitutes a decision within the meaning of Article 189 of the Treaty and is therefore a measure against which an action for annulment may be brought.

2. The procedure governed by Article 3(2) of Regulation No 17 and Article 6 of Regulation No 99/63 comprises three successive stages. During the first of those stages, following the submission of a complaint, the Commission examines the complaint in order to decide what action
3. An act which itself is not open to an action for annulment may nevertheless constitute a 'definition of position' terminating the failure to act if it is the

prerequisite for the next step in a procedure which is to culminate in a legal act which is itself open to an action for annulment under the conditions laid down in Article 173 of the Treaty.

A letter addressed by the Commission in accordance with Article 6 of Regulation No 99/63 to the author of a complaint under Article 3(2) of Regulation No 17, to the effect that on the information available to it the Commission does not consider that the complaint can be dealt with individually for the moment, constitutes a 'definition of its position' within the meaning of Article 175 of the Treaty, even though it is not open to an action for annulment.

4. Acts or decisions against which an action for annulment may be brought under Article 173 of the Treaty are measures

which produce binding legal effects capable of affecting the applicant's interests and clearly altering his legal position. More specifically, in the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, an act is open to challenge only if it is a measure definitively laying down the position of the institution on the conclusion of that procedure, and not a provisional measure intended to pave the way for that final decision.

Mere holding letters addressed by the Commission at the very beginning of the procedure governed by Article 3(2) of Regulation No 17 and Article 6 of Regulation No 99/63 to the author of a complaint of breach of the Community competition rules are therefore not capable of forming the subject-matter of an action for annulment.