

Joined Cases T-185/96, T-189/96 and T-190/96

Riviera Auto Service Établissements Dalmasso SA and Others

v

Commission of the European Communities

(Competition — Article 85 of the EC Treaty — Standard-form exclusive distributorship agreements for motor vehicles — Category exemption — Rejection of complaints lodged by former dealers — Error of law — Manifest error of assessment — Action for annulment — Action for damages)

Judgment of the Court of First Instance (Third Chamber), 21 January 1999 II - 96

Summary of the Judgment

1. *Procedure — Intervention — Plea of inadmissibility not raised by the defendant — Not admissible*
(*EC Statute of the Court of Justice, Art. 37, fourth para.; Rules of Procedure of the Court of First Instance, Art. 116(3)*)
2. *Competition — Agreements, decisions and concerted practices — Prohibition — Category exemptions — Regulation No 123/85 — Scope*
(*EC Treaty, Art. 85(1) and (3); Commission Regulation No 123/85*)

3. *Competition — Administrative procedure — Investigation of complaints — Account to be taken of the Community interest attaching to investigation of a particular case — Criteria to be applied*
(EC Treaty, Art. 85(1))
4. *Competition — Administrative procedure — Investigation of complaints — Obligation on the Commission to rule by decision as to whether an infringement has been committed — No such obligation — Open to the complainant to seek redress in the national courts*
(EC Treaty, Art. 85(1) and (2); Council Regulation No 17, Art. 3)
5. *Non-contractual liability — Conditions — Unlawfulness — Fault*
(EC Treaty, Art. 215)

1. An intervener is not entitled to raise an objection of inadmissibility which was not formulated in the form of order sought by the defendant.

2. Regulation No 123/85 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements does not lay down mandatory provisions directly affecting the validity or content of the clauses of a contract or obliging the parties to adapt their terms; nor, in cases where the conditions laid down in the Regulation are not satisfied in their entirety, does it have the effect of rendering a contract void.

In such cases, the contract in question will be caught by the prohibition laid down in Article 85(1) of the Treaty only if its object or effect is perceptibly to restrict competition within the common

market and it is capable of appreciably affecting trade between Member States.

3. In order to dismiss a complaint on the ground that it lacks sufficient Community interest, the Commission must, in exercising its power of appraisal, weigh the significance of the alleged infringements in relation to the functioning of the common market against the probability of being able to establish the existence of those infringements and the extent of the investigative measures required.

It is for the Commission to gather sufficiently precise and consistent evidence to support a finding that the infringements alleged in a complaint constitute restrictions of competition within the meaning of Article 85(1) of the Treaty. That requirement is not satisfied where it is

possible to give them a plausible explanation which rules out any infringement of the Community rules on competition.

4. Where the Commission does not have exclusive competence to find contractual clauses incompatible with Article 85(1) of the Treaty — the national courts also having such competence, owing to the fact that the provision in question has direct effect — a complainant does not have the right to obtain from the Commission a decision within the meaning of Article 189 of the Treaty regarding the existence or otherwise of the infringements alleged.

In the context of standard-form contracts for the exclusive distribution of motor vehicles, the Commission may be all the

more justified in urging complainants to seek redress in the national courts since it is for those courts to examine the actual conditions under which such agreements are to be performed by the parties and to assess, in the light of the applicable national law, the scope and consequences of any automatic nullity of certain contractual provisions pursuant to Article 85(2) of the Treaty, with particular regard to all the other matters covered by the agreement.

5. In the absence of evidence that a decision to dismiss a complaint lodged under Article 3 of Regulation No 17 is unlawful and where no separate allegation of unlawfulness has been made by the applicant, the Court can find no Commission fault of such a nature as to render the Community liable.