ORDER OF THE COURT (Sixth Chamber)
13 December 2000 *

In Case C-39/00 P,

Services pour le Groupement d'Acquisitions SARL (SGA), in judicial liquidation, a company incorporated under French law, established in Istres, France, represented by J.C. Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of P. Schiltz, 4 Rue Béatrix de Bourbon,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities in Joined Cases T-189/95, T-39/96 and T-123/96 *SGA* v *Commission* [1999] ECR II-3587, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by G. Marenco, Principal Legal Adviser, and F. Siredey-Garnier, a national civil servant on

* Language of the case: French.

secondment to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and N. Colneric, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 11 February 2000, Services pour le Groupement d'Acquisitions SARL ('SGA') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 13 December 1999 in Joined Cases T-189/95, T-39/96 and T-123/96 *SGA* v *Commission* [1999] ECR II-3587 ('the contested judgment') in which that Court, first, dismissed SGA's applications for the annulment of the Commission Decision of 5 June 1996, dismissing a complaint submitted by the applicant under Article 85 of the EC Treaty (now

Article 81 EC), and of an alleged implied decision by the Commission refusing to adopt interim measures following that complaint, and for compensation for damage allegedly suffered by the applicant, and, second, ordered SGA to pay the costs of Cases T-189/95 and T-123/96 and for each party to bear its own costs relating to Case T-39/96.

The facts and procedure before the Court of First Instance

2 The facts and procedure before the Court of First Instance are set out, in paragraphs 1 to 16 and 23 of the contested judgment, in the following terms:

'1 According to the information it has provided, the applicant, Service pour le Groupement d'Acquisitions (hereinafter "SGA"), is an authorised intermediary for final consumers in France under Article 3(11) of Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16), which was replaced, as from 1 October 1995, by Commission Regulation (EC) No 1475/95 of 28 June 1995 (OJ 1995 L 145, p. 25).

2 On 24 June 1994 the applicant lodged a complaint with the Commission under Article 3(2) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, Series I (59 — 62), p. 87). The complaint, which was registered on 4 July 1994, was directed against the manufacturer of Peugeot and Citroën motor vehicles (hereinafter "PSA").

3 In its complaint, the applicant requested the Commission to order PSA provisionally to desist from obstructing the application of Article 3(11) of Regulation No 123/85 by pressurising dealers in other Member States, particularly Belgium, Spain, Italy and the Netherlands, to refuse orders placed with them.

4 In a letter of 11 August 1994 the Commission informed the applicant, *inter alia*, that: "it will not be possible ... to assess whether there is any need to adopt interim measures you have requested ... Your application must contain more detail for such an assessment to be made ...".

5 On 24 April 1995 the applicant sent the Commission a letter of formal notice under Article 175 of the EC Treaty (now Article 232 EC) calling upon it to inform PSA of the potential complaints against it and to grant the application for interim measures.

6 On 9 October 1995 the applicant brought an action against the Commission before the Court for a declaration of failure to act, for annulment of an alleged implied decision by the Commission not to act on the application for interim measures and for compensation for damage (Case T-189/95).

7 On 6 November 1995 the Commission sent to the applicant a letter pursuant to Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition, Series I (63 — 64) p. 47). On 4 December 1995, the applicant submitted its comments thereon.

8 On 8 January 1996 the applicant sent the Commission a further letter of formal notice calling for the adoption of interim measures and for an actionable decision to be adopted.

9 On 15 March 1996, since the Commission had taken no action, the applicant brought another action (Case T-39/96), again for a declaration of failure to act by the Commission, for annulment of a possible refusal to adopt interim measures and for an order against the Commission to pay compensation for damage.

10 By a decision of 5 June 1996 the Commission dismissed the applicant's complaint.

11 By application registered at the Court Registry on 8 August 1996 the applicant brought an action for annulment of that decision and for compensation for damage (Case T-123/96).

12 By order of 30 January 1997 the decision on the plea of inadmissibility raised by the Commission in Case T-189/95 by separate document in accordance with Article 114 of the Rules of Procedure was reserved for the final judgment.

13 By order of 1 February 1999 the President of the First Chamber of the Court of First Instance decided to join the three cases for the purposes of the oral procedure and judgment.

14 The parties were requested by the Court under Article 64 of its Rules of Procedure to produce certain documents before the hearing, which they did.

At the hearing in open court on 2 March 1999 they presented oral argument and answered the questions put to them by the Court.

15 At the hearing, the Commission stated that it had mistakenly included a document with the papers produced at the Court's request. The applicant argued against removal of that document. Following the hearing, the President of the First Chamber decided that it should be removed from the file and returned to the Commission.

16 By letter of 22 March 1999 addressed to the Registrar of the Court the applicant's representative requested that the minutes of the hearing of 2 March 1999 be corrected on the ground that they were not an accurate reflection of his comments concerning that document. Having heard the defendant, the Court decided to rule on that request in its judgment.

...

23 After the applicant had been invited at the hearing to state whether it intended to maintain its claims in Cases T-189/95 and T-39/96, it withdrew its claims for declarations of failure to act by letter of 6 April 1999. By letter of 23 April 1999 the Commission took formal note of those withdrawals but maintained its application for costs to be awarded against the applicant in both cases.'

The contested judgment

3 In paragraph 24 of the contested judgment, the Court of First Instance dismissed the application by SGA for rectification of the minutes of the hearing. The reasons which it gave for dismissing that application were as follows:

'The sentence which the applicant asks to be amended is worded as follows: "The applicant's representative is opposed to removal of the document which the Commission filed by mistake". That sentence accurately sums up the essence of the applicant's representative's statements, namely his objection to the document being removed. The words "which the Commission filed by mistake" merely identify the document concerned, but do not mean that the applicant's representative accepts that they reflect the truth. The Court, on the other hand, having reached the view, in the light of all the Commission's representatives' reactions at the hearing, that the contested document was indeed produced by mistake, was entitled to refer to it in those terms. Finally, the Court considers that it is not necessary that the minutes contain the plea put forward by the applicant's representative to the effect that the rights of the defence were infringed since consideration was given to that plea by the President of the Chamber in his decision ordering removal of the document in question from the file.'

4 In paragraphs 25 to 29, the Court of First Instance dismissed as inadmissible the application for annulment of the alleged implied refusal of the request for interim measures in Cases T-189/95 and T-39/96.

5 Concerning the application for annulment of the decision of 5 June 1996 dismissing SGA's complaint (Case T-123/96), the Court of First Instance first of all rejected SGA's pleas relating to breach of essential procedural requirements and, in particular, procedural guarantees, the inadequacy of the statement of reasons in the decision and the unreasonable time taken between the complaint and the decision.

6 As regards the first two of those pleas, the Court of First Instance found, in paragraphs 44 and 45, that the decision of 5 June 1996 clearly set out the considerations of law and fact which had led the Commission to the conclusion that there was not a sufficient Community interest and that the statement of reasons in that decision also showed that the Commission had carefully considered both the applicant's evidence and, as was necessary in this case for an impartial analysis, the observations it asked PSA to submit on the criticisms in the complaint.

7 As regards the third of those pleas, raised at the hearing relating to the duration of the procedure before the Commission, the Court of First Instance, in paragraph 46 of the contested judgment, declared that plea inadmissible on the basis of Article 48(2) of its Rules of Procedure which prohibits the introduction of new pleas in law in the course of proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure. It added '[N]or is there any need in the circumstances of this case for the Court to examine this plea of its own motion.'

8 In paragraphs 47 to 64, the Court of First Instance also considered another plea relied on by SGA relating to infringement of the Treaty and consisting of three parts.

9 As regards the first part of that plea, alleging failure to take account of the probative value of the evidence submitted by SGA, the Court of First Instance found, in paragraph 47, that SGA had produced, annexed to its complaint and during its subsequent correspondence with the Commission, on the one hand, various documents demonstrating the difficulties it encountered in obtaining delivery of vehicles from PSA dealers established in other Member States, particularly Italy and the Netherlands, and, on the other hand, documents designed to show that PSA was attempting to partition the markets by placing its foreign dealers under pressure so as to dissuade them from supplying cars to authorised agents.

10 The Court of First Instance also found, in paragraph 48, that to the extent that those documents were annexed to the complaint, PSA commented on them in detail in order to refute SGA's claims and, in particular, denied impeding the activities of intermediaries acting in conformity with Article 3(11) of Regulation No 123/85.

11 Finally, in paragraph 51, the Court of First Instance rejected as unfounded the complaint that there was a manifest error of appraisal in regard to the probative value of the evidence submitted by SGA, after having found as follows:

'49 In its assessment of the probative value of the evidence submitted by the applicant, the Commission did not express a view as to the difference of opinion between the applicant and PSA in relation to the interpretation of those documents. It considered that both cases were arguable, namely that the refusals to sell on the part of PSA's network could have applied to authorised agents or only to independent resellers. That assessment is not manifestly erroneous. In addition, PSA provided a plausible explanation of the matters put forward by the applicant, namely that PSA was merely opposing the activities of independent resellers, which is not contrary to competition law. The Commission was therefore not entitled to consider that a breach was established in this case (see Joined Cases T-185/96, T-189/96 and T-190/96 *Riviera Auto Service and Others* v *Commission* [1999] ECR II-93, paragraph 47).

50 Nor is the contested decision vitiated by manifest error as to the applicant's activities. The reason for the Commission's dismissal of the complaint was not that it found the applicant to be acting not only as an authorised intermediary but also as an independent reseller. It merely considers that both are possible. The applicant's explanations at the hearing of its relationship with Sodima are not sufficient to show that it acts as an authorised agent only, since those factors were only presented at the hearing and merely through statements by its lawyer; they do not emerge from the documents submitted to the Court.'

12 As regards the second part of the plea, alleging an error on the part of the Commission in its evaluation of the Community interest in investigating the complaint, the Court of First Instance found, in paragraph 54, that 'the contested decision contains nothing to suggest that the Commission failed to appreciate that the conduct alleged against PSA in this case, namely conduct seeking to impede parallel imports of vehicles by authorised agents, would, if proven, amount to a particularly serious interference with competition'.

13 The Court of First Instance added, in paragraph 55, that '[T]he Commission's finding that it would have to deploy substantial resources to carry out the investigations necessary to enable it to rule on the existence of the infringements alleged by the applicant in this case does not appear to be manifestly erroneous'.

14 The Court of First Instance also found, in paragraph 58, that the fact that the Commission 'in the *Volkswagen* case (see Commission Decision 98/273/EC of 28 January 1998 relating to a proceeding under Article 85 of the EC Treaty (Case IV/35.733 — VW, OJ 1998 L 124, p. 60),... took action against conduct which at first sight appears similar to that which the applicant alleges against PSA and its network and which implicated another car manufacturer does not prove that it erred in its assessment of the Community interest in this case'.

15 It held, in paragraph 59, that, 'where the Commission is faced with a situation where numerous factors give rise to a suspicion of anti-competitive conduct on the part of several large undertakings in the same economic sector, the Commission is entitled to concentrate its efforts on one of the undertakings concerned, whilst at the same time indicating to the economic operators who may have suffered damage as a result of the anti-competitive conduct of the other parties concerned that it was open to them to bring an action in the national courts.'

16 It concluded, in paragraph 60, that 'the fact that the Commission preferred to investigate the complaints which led to its decision in the *Volkswagen* case rather than the complaints brought against PSA, which included that of the applicant, is not a ground for finding that it failed in its duty to examine on a case-by-case basis the seriousness of the alleged infringements and the Community interest in its taking action or that it committed an error of assessment'.

17 As regards the third part of the same plea, alleging a manifest error as regards the location of the centre of gravity of the infringement, the Court of First Instance found first of all, in paragraph 61, that 'the contested decision cannot be construed to the effect that the Commission considered that there was no Community interest in its taking action on the sole ground that the centre of gravity of the conduct complained of was located in one Member State only.'

18 It found, next, in paragraph 62, that, in the decision of 5 June 1996, the Commission did not fail to appreciate the cross-border nature of the transactions in point but considered, rightly, that the main protagonists in this case, that is to say the manufacturer, SGA and the consumers who were SGA's customers, were based in France and that the French courts and administrative authorities had competence to deal with the dispute between SGA and PSA and its network.

19 It concluded, in paragraph 64, that the Commission's assessment of the Community interest in pursuing SGA's complaint was not vitiated by manifest errors as regards the places where material facts arose.

20 As regards the plea of manifest error of assessment by the Commission in relation to the application for interim measures, the Court of First Instance found, in paragraph 67, that SGA had confined itself to requesting interim measures

without indicating the reason for which the requirements for the grant of such measures were satisfied; therefore there could be no finding that the Commission made an error of assessment.

21 In paragraph 68, the Court of First Instance also dismissed as inadmissible the final plea relating to the misuse of powers, on the ground that the plea did not meet the requirements of Article 19 of the EC Statute of the Court of Justice or of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

22 The Court of First Instance concluded, in paragraph 69, that the claim for annulment of the decision of 5 June 1996 was unfounded.

23 As regards the claims for compensation submitted in the three cases, the Court of First Instance found as follows:

'72 It is settled case-law that an application for compensation for damage must be dismissed where there is a close connection between it and an application for annulment which has itself been dismissed (*Tribunal Riviera Auto Service and Others* v *Commission*, paragraph 90 and Case T-150/94 *Vela Palacios* v *ESC* [1996] ECR II-877, paragraph 51). In any event it has consistently been held that where the Commission receives a complaint under Article 3 of Regulation No 17 it is not obliged to take a decision regarding the existence or otherwise of the alleged infringement unless the complaint falls within the exclusive purview of the Commission, which is not the case here (see, for example, [Case T-5/93] *Tremblay and Others* v *Commission* [[1995] ECR II-185], paragraph 59). It follows that the conduct on the part of the Commission to which this claim for compensation relates does not amount to a wrongful act capable of causing the Community to incur liability.

73 In those circumstances, the claim for compensation must be rejected, and it is not necessary to consider whether the applicant's submissions on the nature and scope of the damage and the causal link between the conduct with which the Commission is charged and that damage are sufficient for the purposes of the requirements of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.'

24 Finally, as regards costs, the Court of First Instance held as follows:

'75 As regards Case T-189/95, it must be observed that the action for failure to act which the applicant withdrew was brought out of time, since the applicant called upon the Commission to act on 24 April 1995, but its action was not brought until 9 October 1995. Since the other pleas in that action are inadmissible, it is appropriate to order the applicant to pay the costs.

76 In Case T-39/96, the action for failure to act withdrawn by the applicant has become otiose owing to the Commission's decision of refusal, and the other claims for relief put forward by the applicant are inadmissible. In those circumstances, it seems proper that the parties should bear their own costs.

77 Since the applicant has been unsuccessful in Case T-123/96, it must be ordered to pay the costs, as applied for by the Commission.'

The appeal

25 In its appeal, SGA contends that the Court of Justice should set aside the contested judgment and order the Commission to pay all the costs.

26 The Commission contends that the Court should dismiss the appeal in entirety and order SGA to pay the costs.

Findings of the Court of Justice

27 Under Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time, by reasoned order dismiss the appeal without opening the oral procedure.

28 On this point, it must be noted at the outset that it follows from Article 225 EC and the first paragraph of Article 51 of the EC Statute of the Court of Justice that an appeal is limited to points of law and must be based on the grounds of lack of competence of the Court of First Instance, breach of procedure before it which adversely affects the interests of the appellant, or infringement of Community law by the Court of First Instance (see, *inter alia*, Case C-284/98 P *Parliament* v *Bieber* [2000] ECR I-1527, paragraph 30).

29 The first subparagraph of Article 112(1)(c) of the Rules of Procedure of the Court of Justice provides that an appeal is to contain the pleas in law and legal arguments relied on.

30 It follows from those provisions that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal. That requirement is not satisfied by an appeal which, without even including an argument specifically directed to identifying the error of law allegedly vitiating the contested judgment, simply repeats or reproduces verbatim the pleas in law and arguments already submitted to the Court of First Instance. Such an appeal merely seeks, in reality, reconsideration of the application submitted before the Court of First Instance, which, under Article 49 of the EC Statute of the Court of Justice, falls outside the jurisdiction of the Court of Justice (see, *inter alia*, order in Case C-317/97 P *Smanor and Others* v *Commission* [1998] ECR I-4269, paragraphs 20 and 21 and judgment in Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 34 and 35).

31 SGA's appeal must be considered in the light of those principles.

32 It is possible to divide the appeal into six separate pleas, to be considered in turn.

The first plea

33 By its first plea, namely breach of procedural guarantees and fundamental rights, SGA complains that the Court of First Instance failed to have regard to the requirements of a fair hearing, respect for the rights of defence and observation of the *audi alteram partem* rule, in excluding, after the hearing and before the judgment, a document produced voluntarily by the Commission and discussed before the Court (the 'contested document'), and in not raising of its own motion the issue whether the time taken to deal with the complaint and conclude the procedure was unreasonable.

34 As regards the first part of that plea, SGA argues that, in holding that the contested document had been produced in error and excluding it from the file, the President of the First Chamber of the Court of First Instance did so without having carried out, as he should have done, an analysis of its nature, its content and the appropriateness of producing it.

35 In that respect, it should be noted that it is apparent from paragraph 14 of the contested judgment and the documents before the Court that the contested document was produced following a measure of organisation of procedure, prescribed by the Court of First Instance under Article 64 of its Rules of Procedure, under which the Court requested that the Commission produce PSA's comments relating to SGA's complaint.

36 Moreover, it is clear from paragraph 24 of the contested judgment that, following the Commission's representatives' reactions at the hearing, the Court of First Instance had reached the view that the contested document had been produced by mistake.

37 As the document in question was one whose production had been requested neither by the Court of First Instance nor by one of the parties, the Court of First Instance properly decided that it was to be removed from the file and returned to the Commission. It would, for that matter, have been entitled to make the same decision without first sending a copy of the document in question to SGA.

38 It also follows from the actual terms of the appeal and from a letter dated 8 February 1999 sent to the Registry of the Court of First Instance by SGA and produced by it as an annex to its appeal, that the contested document amounted to a '[F]irst assessment' of SGA's complaint, which did not prima facie appear to have emanated from the Commission or PSA, and which consisted of a specific analysis, document by document, of the evidence produced by SGA and the comments made by PSA on each item.

39 In those circumstances, and regardless of the fact that, as a rule, measures of internal organisation of the Court of First Instance cannot be reviewed by the Court of Justice (see, to that effect, order in Case C-173/95 P *Hogan* v *Court of Justice* [1995] ECR I-4905, paragraph 15), it must be recognised that, on any view, the contested document could not have bound the Commission as an institution as regards the response to be given to SGA's complaint and consequently was thus not capable of affecting the decision of the Court of First Instance regarding the substance of the case.

40 The first part of the first plea must therefore be rejected as clearly unfounded.

41 As regards the second part of the first plea, SGA claims that the issue whether the time taken to deal with the procedure before the Commission was unreasonable, as an issue relating to the breach of a fundamental right, should have been raised by the Court of First Instance of its own motion. SGA adds that not only was the duration of the procedure before the Commission, namely two years, unreasonable in itself, but that the total period of five and a half years, covering the proceedings before the Court of First Instance, must be considered equally unreasonable.

42 By those arguments, not only does SGA complain that the Court of First Instance has not raised of its own motion the issue as to whether time taken for the procedure before the Commission was unreasonable, but it also calls on the Court of Justice to set aside the judgment of the Court of First Instance on the ground that the proceedings before that court took longer than was reasonable.

43 As regards the first point, it follows from the case-law of the Court of Justice that the Commission's definitive decision rejecting a complaint brought under Article 3(2) of Regulation No 17 must be adopted within a reasonable time after the Commission has received the complainant's observations under Article 6 of Regulation No 99/63 (see, to that effect, Case C-282/95 P *Guérin Automobiles* v *Commission* [1997] ECR I-1503, paragraphs 33 to 39).

44 However, in the context of such a procedure, the excessive amount of time it may have taken to deal with a complaint cannot, as a rule, affect the actual content of the final decision adopted by the Commission. It cannot, save in exceptional circumstances, alter the substantive matters which, according to the case, determine whether or not the existence of an infringement of the competition rules is established or give the Commission good reason not to conduct an investigation.

45 In those circumstances, the decision of the Court of First Instance, expressed at paragraph 46 of the contested judgment, not to examine of its own motion the issue whether the time taken for the procedure before the Commission was unreasonable was a proper one for it to make.

46 As regards the period for the proceedings before the Court of First Instance, it must be noted that, as the Court of Justice held in its judgment in *Baustahlgewebe* v *Commission* (Case C-185/95 P [1998] ECR I-8417, paragraph 49), in the absence of any indication that the unreasonable length of the proceedings affected their outcome in any way, that length of time cannot justify setting aside the judgment of the Court of First Instance in so far as it rules on the legal characterisation of the facts before that court in the light of the applicable rules.

47 In the present case, no indication of that kind has come to light on examination of the documents before the Court and, moreover, SGA has not submitted that there is any such indication. It is unnecessary therefore to assess whether or not the length of the proceedings before the Court of First Instance was unreasonable in relation to the particular circumstances of the case.

48 Accordingly, the second part of the first plea is also unfounded.

49 The first plea must therefore be rejected in its entirety as clearly unfounded.

The second plea

50 By its second plea, SGA criticises the Court of First Instance for having committed a 'manifest error regarding the probative force of the evidence produced by the complainant'. In support of that plea, SGA cites and comments on certain passages of the document entitled '[F]irst Assessment' produced by the Commission, but excluded from the file by the President of the First Chamber of the Court of First Instance, from which it is clear, according to SGA, that the evidence submitted by it was 'substantial' and that its complaint was 'well documented', as acknowledged by the Commission as early as 1994.

51 It must be observed, however, that, in basing those assertions on the document properly excluded from the file by the Court of First Instance, SGA gives no precise indication either of the points in the contested judgment to which it takes exception or of the legal arguments specifically supporting its plea.

52 For the reasons set out at paragraph 30 of the present order, the second plea must therefore be rejected as clearly inadmissible.

The third plea

53 By its third plea, SGA complains that the Court of First Instance committed a manifest error in its assessment of the question whether there was no Community interest and of the discretion to refrain, on the pretext of establishing priorities, from ordering the cessation of serious infringements.

54 SGA submits that, under Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC), the Commission is required to ensure that the competition rules are applied and therefore cannot plead the weakness of the evidence submitted in

a complaint as a ground for refusing to investigate that complaint. The Court of First Instance was therefore wrong in holding that the Commission was entitled not to pursue the infringements committed by PSA, and to choose to deal instead with the Volkswagen case, and to treat the assessment of the centre of gravity of the conduct complained of as a matter of secondary importance, while at the same time it concurred with the Commission in considering that the centre of gravity was located in France.

55 In support of that plea, SGA argues, first, that the discretion enjoyed by the Commission in establishing the order of priority in which complaints before it are to be examined and in rejecting a complaint for lack of a Community interest does not allow it to permit the perpetuation of 'a particularly serious interference with competition', which it acknowledged was constituted by the conduct alleged against PSA in this case, as is clear from paragraph 54 of the contested judgment.

56 SGA submits, second, that nothing in the documents before the Court justifies the assertion that the complaints concerning Volkswagen predated the numerous complaints against PSA, including that of SGA.

57 Third, SGA denies that the centre of gravity of the infringement could have been located in France alone, inasmuch as pressure had been put on foreign dealers in other Member States.

58 Referring to the judgment in *Ufex and Others* v *Commission* (Case C-119/97 P [1999] ECR I-1341) SGA argues, fourthly, that the Commission could not be unaware that the anti-competitive effects of the conduct alleged against PSA were continuing and that this persistence gave SGA's complaint a Community interest.

59 It must be observed at the outset that, although they do not constitute a mere reproduction or repetition of the pleas and arguments which SGA had already submitted before the Court of First Instance, not one of the various grounds of challenge directly concerns the contested judgment.

60 To the extent that, through those grounds of challenge, SGA's intention is to criticise the Court of First Instance for having endorsed the errors allegedly committed by the Commission, it must first be pointed out that it cannot under any circumstances be inferred from paragraph 54 of the contested judgment that the Commission and the Court of First Instance acknowledged that the conduct alleged against PSA amounted to a particularly serious interference with competition. It is clear from that paragraph in the contested judgment that that conduct could be considered to be a 'particularly serious interference with competition' only if it were proved, which neither the Commission nor the Court of First Instance found to be the case.

61 It should next be observed that, in rejecting, in paragraphs 58 to 60 of the contested judgment, the arguments alleging that the Commission preferred to investigate the complaints which led to its decision in the Volkswagen case rather than those directed against PSA, the Court of First Instance did not in any way base itself on the fact that the complaints against Volkswagen predated those brought against PSA. The criticism alleging that the complaints against PSA, including that of SGA, were earlier than those against Volkswagen, is therefore irrelevant.

62 The same is true as regards the criticism that the Commission and the Court of First Instance failed to appreciate the fact that the anti-competitive effects of the conduct complained of were continuing and that this persistence gave SGA's complaint a Community interest.

63 It is true that, in paragraph 95 of the judgment in *Ufex and Others* v *Commission*, the Court of Justice held that the Commission cannot, merely for the reason that practices allegedly contrary to the Treaty have ceased, decide to discontinue

consideration, on the ground of lack of a Community interest, of a complaint against those practices without having ascertained that there were no longer any anti-competitive effects and, as the case may be, that the seriousness of the alleged interferences with competition or the persistence of their effects were not such as to give the complaint a Community interest.

64 Apart from the fact that no ground of challenge based on *Ufex and Others* v *Commission* had been raised before the Court of First Instance, it must be noted that neither the Commission nor the Court of First Instance based their respective decisions, dismissing, in the first case, SGA's complaint, and, in the second case, its action, on the fact that the practices allegedly contrary to the Treaty had ceased.

65 Finally, the criticism that the Court of First Instance attached only secondary importance to the location of the centre of gravity of the alleged infringements and failed to have regard to the cross-border nature of the infringements cannot be upheld either.

66 SGA has failed to show that the Court of First Instance committed an error in law in finding, in paragraphs 61 and 62 of the contested judgment, that the fact that the centre of gravity was located in one Member State only was only one of the factors, amongst others, which the Commission had taken into consideration in assessing the Community interest in proceeding further with the examination of SGA's complaint.

67 In this respect, it is important to point out that it follows from paragraph 79 of the case of *Ufex and Others* v *Commission* that as the assessment by the Commission of the Community interest presented by a complaint depends on the circumstances of each case, the number of criteria of assessment the Commission may refer to should not be limited, nor conversely should it be required to have recourse exclusively to certain criteria.

68 The third plea must therefore be rejected in its entirety as clearly unfounded.

The fourth plea

69 By its fourth plea, SGA submits that the Court of First Instance committed a manifest error in refusing to declare unlawful the Commission's decision not to allow the interim measures which SGA had requested. That plea, it submits, must *a fortiori* be upheld as the other pleas, examined above, will also have been upheld.

70 It must be observed that, in that plea, SGA is merely reproducing, without modification, a plea which it had already raised before the Court of First Instance. In so doing, SGA has not commented in any way on the considerations which, in paragraph 67 of the contested judgment, led the Court of First Instance to dismiss the same plea contesting the refusal of the Commission to adopt interim measures.

71 On the grounds stated in paragraph 30 of this order, the fourth plea must therefore be rejected as clearly inadmissible.

The fifth plea

72 By its fifth plea, SGA argues that the Court of First Instance was wrong in dismissing the claim for damages solely on the grounds that the claim for annulment had been dismissed and that the Commission was not obliged under Article 3 of Regulation No 17 to take a decision as to the existence of the alleged

infringement. That reasoning has, moreover, no connection with the rejection of a request for interim measures, which does not require a decision first to be taken as to the existence of the infringement.

73 It must be observed that this plea is not substantiated by any legal argument capable of showing that the Court of First Instance infringed Community law by dismissing the claims for damages on the basis of the foregoing considerations, which, moreover, are based on settled case-law, as is clear from paragraph 72 of the contested judgment.

74 As SGA does not maintain that the Court of First Instance wrongly dismissed as inadmissible the claim for annulment of the implied decisions refusing to adopt interim measures, which it raised in the actions in Cases T-189/95 and T-39/96, the case-law according to which a claim for damages must be dismissed in so far as it is closely linked to the claim for annulment, which has itself been dismissed, also constituted a sufficient ground for dismissing the claims for damages brought on the basis of the aforesaid implied decisions.

75 The fifth plea cannot therefore be upheld.

The sixth plea

76 By its sixth plea, SGA submits, first, that the Court of First Instance wrongly ordered it to pay the costs in Case T-189/95, since its failure to comply with the time-limit for bringing the action finds an excuse in the legitimate expectation which the Commission had caused it to entertain. Nor, secondly, can it be ordered to pay the costs in Case T-123/96 nor to bear its own costs in Case T-39/96.

77 In this respect, it need merely be observed that it is settled case-law that where all the other pleas in an appeal have been rejected, a plea concerning the alleged illegality of a decision of the Court of First Instance as to costs must be rejected as inadmissible, pursuant to the second paragraph of Article 51 of the EC Statute of the Court of Justice, according to which no appeal is to lie regarding only the amount of the costs or the party ordered to pay them (see, *inter alia*, judgment in Case C-396/93 P *Henrichs* v *Commission* [1995] ECR I-2611, paragraph 66, and order in Case C-140/96 P *Dimitriadis* v *Court of Auditors* [1997] ECR I-5635, paragraph 56).

78 It follows from all of the foregoing considerations that the pleas submitted by SGA in support of its appeal are in part clearly inadmissible and in part clearly unfounded.

79 The appeal by SGA must therefore be dismissed under Article 119 of the Rules of Procedure.

Costs

80 Under Article 69(2) of the Rules of Procedure, which is applicable to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and SGA has been unsuccessful, SGA must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. **Services pour le Groupement d'Acquistions SARL (SGA) shall pay the costs.**

Luxembourg, 13 December 2000.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber