

ORDER OF THE COURT (Fifth Chamber)  
5 July 2001 \*

In Case C-341/00 P,

**Conseil national des professions de l'automobile (CNPA)**, established in Suresnes (France),

**Fédération nationale des distributeurs, loueurs et réparateurs de matériels de bâtiments-travaux publics et de manutention (DLR)**, established in Joinville-le-Pont (France),

**Auto Contrôle 31 SA**, established in Toulouse (France),

**Yam 31 SARL**, established in Toulouse,

**Roux SA**, established in Saint-Denis-de-Saintonge (France),

**Marc Foucher-Creteau**, residing in Paris (France),

**Verdier distribution SARL**, established in Juvignac (France),

represented by C. Bourgeon, avocat, with an address for service in Luxembourg,

appellants,

\* Language of the case: French.

APPEAL against the order of the Court of First Instance of the European Communities (Third Chamber) of 12 July 2000 in Case T-45/00 *Conseil national des professions de l'automobile and Others v Commission* [2000] ECR II-2927, seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by W. Wils, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet, D. A. O. Edward (Rapporteur), P. Jann and L. Sevón, Judges,

Advocate General: J. Mischo,  
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 18 September 2000, the Conseil national des professions de l'automobile ('the CNPA'), the Fédération nationale des distributeurs, loueurs et réparateurs de matériels de bâtiments-travaux publics et de manutention ('the DLR') and five members of those organisations brought an appeal under Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance in Case T-45/00 *Conseil national des professions de l'automobile and Others v Commission* [2000] ECR II-2927 ('the contested order'), by which the Court of First Instance dismissed as inadmissible their application for the annulment of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21).
  
- 2 Regulation No 2790/1999 states that under certain conditions Article 81(1) EC does not apply to agreements or concerted practices entered into between two or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services.

## Procedure before the Court of First Instance

- 3 By application lodged at the Court Registry on 29 February 2000, the appellants brought an action under the fourth paragraph of Article 230 EC for the annulment of Regulation No 2790/1999.
- 4 In support of their action, they claimed essentially that in adopting that regulation the Commission of the European Communities infringed both Article 83(1) EC, by not complying with the essential procedural requirements in respect of consultation provided for in that article, and Article 81(1) EC, by making substantial amendments to the Treaty rules on competition.
- 5 By a separate document, lodged at the Registry of the Court of First Instance on 5 April 2000, the Commission lodged an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The appellants submitted their observations on the objection of inadmissibility on 18 May 2000.
- 6 In the contested order, the Court of First Instance upheld the objection of inadmissibility and dismissed the application as inadmissible.
- 7 On 25 July 2000 the Confédération belge du commerce et de la réparation automobile et des secteurs connexes ASBL ('Federeauto') lodged at the Registry of the Court of First Instance an application to intervene under Article 115 of the Rules of Procedure of the Court of First Instance.

- 8 By letter of 26 July 2000, the Registrar of the Court of First Instance informed Federauto that it was unable to grant its application since the Court had already terminated the proceedings by the contested order.

### The contested order

- 9 In the contested order the Court of First Instance, having recalled in paragraph 15 that it is settled law that the fourth paragraph of Article 230 EC confers on individuals the right to contest any decision which, although in the form of a regulation, is of direct and individual concern to them, and that the criterion for distinguishing between a regulation and a decision is whether the measure at issue is of general application or not, held first, in paragraph 17, that Regulation No 2790/1999 was of general application to undertakings involved in vertical agreements and concerted practices.
- 10 In paragraph 18 it concluded that the regulation was therefore legislative in scope and was not a decision within the meaning of Article 249 EC.
- 11 Secondly, the Court of First Instance considered whether, despite its general scope, Regulation No 2790/1999 could nevertheless be regarded as being of direct and individual concern to the applicants. In paragraph 23 it held that the exemption afforded by Regulation No 2790/1999, which renders inapplicable Article 81(1) EC and, in consequence, the penalty of invalidity established by Article 81(2) EC, affected the applicants in their capacity as economic operators

bound by vertical agreements in the same way as all the other operators who are party to such agreements.

- 12 In the same paragraph the Court rejected the argument that Regulation No 2790/1999 was of individual concern to the applicants in view of their economic dependence on the large suppliers, stating that that circumstance was not such as to differentiate them from all other economic operators since, as the applicants themselves had claimed in their application, 'several thousand' small and medium-sized enterprises in France and 'several tens of thousands' of small and medium-sized enterprises in Europe were in the same position.
- 13 The Court also held, in paragraph 24, that the CNPA and the DLR were not asserting any procedural right or invoking any interest of their own, as distinct from that of their members allegedly affected by Regulation No 2790/1999.

## The appeal

- 14 In their appeal, the appellants claim that the Court should:

— annul the contested order;



First Instance therefore acted prematurely and was thus unable to take into account Federauto's application to intervene.

17 Secondly, the appellants submit that they claimed before the Court of First Instance that Regulation No 2790/1999 infringed Article 83(1) EC and Article 81(1) EC, and that the Court erred in law in considering that that claim had no effect as regards the admissibility of the application. In the view of the appellants, an act adopted by the Commission cannot escape judicial review if it infringes the express terms of the Treaty.

18 Thirdly, the appellants claim that the Court of First Instance infringed Article 230 EC.

19 Thus, the appellants' main contention is that even though the Commission has classified the contested act as a regulation, and even if the act is of general application, it cannot be regarded as a regulation within the meaning of Article 83(1) EC if it infringes the provisions of Article 81 EC.

20 In the alternative, the appellants contend that they have a direct and individual interest in the annulment of Regulation No 2790/1999 in view of their situation of economic dependency. In that regard, it is irrelevant whether other undertakings are in the same situation as the appellants, since both they and the appellants are differentiated from the vast majority of undertakings in the European Community which are not in that particular situation. Moreover, in addition to their situation of economic dependency, it is also the specific individual abuses of which the appellants are likely to be the victims which give them an interest in bringing proceedings to challenge Regulation No 2790/1999. As regards the CNPA and the DLR in particular, the fact that the Commission failed entirely to take into account the observations they submitted following publication of Regulation No 2790/1999 gives them an interest in bringing proceedings.



- 21 The Commission requests the Court of Justice to uphold the order, to dismiss all the claims made by the appellants and to order them jointly and severally to pay the costs.
- 22 By a document lodged at the Court Registry on 9 November 2000, Federauto applied to intervene in support of the form of order sought by the appellants.

### Findings of the Court

- 23 Article 119 of the Rules of Procedure of the Court of Justice provides that where the appeal is clearly inadmissible or clearly unfounded the Court may at any time, by reasoned order, dismiss it.

### *The plea alleging infringement of Article 230 EC*

- 24 As regards this plea, suffice it to say, first, that the Court of First Instance correctly applied the settled case-law of the Court of Justice to the effect that the criterion for distinguishing between a regulation and a decision lies in the general application or otherwise of the measure in question (see, in particular, the order in Case C-10/95 P *Asocarne v Council* [1995] ECR I-4149, paragraph 28).

- 25 The Court of First Instance did not err in law in finding that Regulation No 2790/1999 is legislative in character in that it applies generally to undertakings involved in vertical agreements and concerted practices and is therefore not a decision within the meaning of Article 249 EC.
- 26 Second, the Court of First Instance correctly applied the settled case-law of the Court of Justice to the effect that natural or legal persons can be considered to be individually concerned only if the measure in question affects them because of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (see, in particular, Case 25/62 *Plaumann v Commission* [1963] ECR 95, 107; Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 20; and the order in Case C-447/98 P *Molkerei Großbraunsbain and Bene Nahrungsmittel v Commission* [2000] ECR I-9097, paragraph 65).
- 27 In the present case, Regulation No 2790/1999 is of concern to the appellants only by reason of their objective capacity as economic operators bound by vertical agreements.
- 28 As regards more particularly the interest of the CNPA and the DLR in bringing their own legal proceedings in their capacity as professional associations which submitted observations following publication of Regulation No 2790/1999, suffice it to say that, as the Court of First Instance stated in paragraph 24 of the order, at no time did the appellants invoke any such interest before the Court of First Instance and hence that plea is manifestly inadmissible.
- 29 It is clear from the case-law of the Court of Justice that to allow a party to submit for the first time before the Court of Justice a plea which it has not submitted

before the Court of First Instance would enable it to refer to the Court of Justice, which has limited jurisdiction on appeal, a broader case than that considered by the Court of First Instance. On appeal the jurisdiction of the Court of Justice is therefore limited to review of the findings of the Court of First Instance with regard to the pleas originally considered by that Court (see, in particular, the order in Case C-111/99 P *Lech-Stahlwerke v Commission* [2001] ECR I-727, paragraph 25).

- 30 The Court of First Instance did not therefore err in law in finding that the regulation at issue was not of individual concern to the appellants.

*The plea alleging that the Court of First Instance erred with regard to the effects of the alleged infringement of Article 83 EC and Article 81 EC on the admissibility of the application*

- 31 With regard to this plea, it is sufficient to say that the Court of First Instance rightly held that the appellants' allegation that Regulation No 2790/1999 was adopted in breach of Article 83(1) EC and Article 81(1) EC related to the substance of the case and had no bearing on the admissibility of the application.

- 32 The condition laid down in the fourth paragraph of Article 230 EC that proceedings brought by a natural or legal person against a decision addressed to another person are admissible only if the decision is of direct and individual concern to the former raises an absolute bar to proceeding which the Community judicature may consider at any time, even of its own motion. The seriousness of the alleged infringement by the institution concerned cannot, in any event, render inapplicable the rules on admissibility expressly laid down by the Treaty (see the

order in Case C-345/00 P *FNAB and Others v Council* [2001] ECR I-3811, paragraphs 39 and 40).

*The plea alleging infringement of the Rules of Procedure of the Court of First Instance*

- 33 Article 111 of the Rules of Procedure of the Court of First Instance provides that where it is clear that an action is manifestly inadmissible the Court may give a decision on the action, by reasoned order, without taking further steps in the proceedings. Article 114(4) of those Rules provides that the Court may also decide on an objection of inadmissibility lodged by one of the parties without going into the substance of the case.
- 34 Article 37 of the EC Statute of the Court of Justice, which, pursuant to Article 46 thereof, also applies to the Court of First Instance, provides that any person establishing an interest in the result of a case submitted to the Court may intervene in cases before the Court, and also that submissions made in an application to intervene must be limited to supporting the form of order sought by one of the parties.
- 35 In addition, Article 116(3) of the Rules of Procedure of the Court of First Instance provides that the intervener must accept the case as he finds it at the time of his intervention.
- 36 Where the application in the main proceedings is such that it must be declared inadmissible without going into the substance of the case, a third party could not be held to be in a position to establish an interest in the result of the case or intervene in support of the form of order sought by one of the parties.

- 37 It follows that there is nothing to prevent the Court of First Instance from closing a case by ruling it to be inadmissible before an application to intervene has been allowed, even where the time-limit for making such an application has not yet expired.
- 38 The Court of First Instance did not therefore err in law as regards the application of the Rules of Procedure.
- 39 It follows from all those considerations that the appeal must be dismissed as clearly unfounded and clearly inadmissible under Article 119 of the Rules of Procedure, so that it is not necessary to rule on the application to intervene made by Federauto.

### Costs

- 40 Under Article 69(2) of the Rules of Procedure, applicable to the procedure on appeal 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 the appellants to pay the costs and the latter have been unsuccessful in their appeal, they must be ordered jointly and severally to pay the costs.
- 41 Under Article 69(6) of the Rules of Procedure, applicable to the procedure on appeal by virtue of Article 118, where a case does not proceed to judgment the costs are to be in the discretion of the Court. In the circumstances of the present case, Federauto, the prospective intervener, must bear its own costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby orders:

1. The appeal is dismissed.
2. There is no need to decide on the application to intervene.
3. The Conseil national des professions de l'automobile (CNPA), the Fédération nationale des distributeurs, louers et réparateurs de matériels de bâtiments-travaux publics et de manutention (DLR), Auto Contrôle 31 SA, Yam 31 SARL, Roux SA, Marc Foucher-Creteau and Verdier distribution SARL are ordered jointly and severally to pay the costs.
4. The Confédération belge du commerce et de la réparation automobile et des secteurs connexes ASBL (Federauto) is ordered to bear its own costs.

Luxembourg, 5 July 2001.

R. Grass

Registrar

A. La Pergola

President of the Fifth Chamber

