

Judgment of the Court (Third Chamber) of 30 November 2006 (reference for a preliminary ruling from the Bundesgerichtshof, Germany) — A. Brünsteiner GmbH (C-376/05), Autohaus Hilgert GmbH (C-377/05) v Bayerische Motorenwerke AG (BMW)

(Joined Cases C-376/05 and C-377/05) ⁽¹⁾

(Competition — Distribution agreement relating to motor vehicles — Block exemption — Regulation (EC) No 1475/95 — Article 5(3) — Termination by the supplier — Reorganisation of the network — Entry into force of Regulation (EC) No 1400/2002 — Article 4(1) — Hardcore restrictions — Consequences)

(2006/C 331/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: A. Brünsteiner GmbH, Autohaus Hilgert GmbH

Defendant: Bayerische Motorenwerke AG (BMW)

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of the first indent of Article 5(3) of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1995 L 145 p. 25) and of Article 4 of Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ 2002 L 203, p. 30) — Termination of a distribution agreement by the supplier, due to the need to re-organise the whole of the network because of a change in Community legislation

Operative part of the judgment

1) *The entry into force of Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article [81](3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector did not, of itself, require the reorganisation of the distribution network of a supplier within the meaning of the first indent of Article 5(3) of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article [81](3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements. However, that entry into force may, in the light of the particular nature of the distribution network of each supplier, have required changes that were so significant that they must be regarded as representing a true reorganisation within the*

meaning of that provision. It is for the national courts or arbitrators to determine, in the light of all the evidence in the case before them, whether that is the position.

2) *On a proper construction of Article 4 of Regulation No 1400/2002, once the transitional period provided for by Article 10 of that regulation has expired, the block exemption under that regulation did not apply to contracts satisfying the conditions for block exemption under Regulation No 1475/95 which had as their object at least one of the hardcore restrictions listed in Article 4, with the result that all the contractual terms restrictive of competition contained in such contracts were liable to be caught by the prohibition laid down in Article 81(1) EC, if the conditions for exemption under Article 81(3) EC were not satisfied.*

⁽¹⁾ OJ C 10, 14.1.2006.

Judgment of the Court (Eighth Chamber) of 14 December 2006 — Commission of the European Communities v Hellenic Republic

(Case C-390/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Regulation (EC) No 2037/2000 — substances that deplete the ozone layer)

(2006/C 331/27)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and M. Konstantinidis, Agents)

Defendant(s): Hellenic Republic (represented by: N. Dafniou, Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 16(5) and (6) and 17(1) of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ 2000 L 244, p. 1) — Recovery, recycling, reclamation and destruction of controlled substances — Failure to determine minimum qualification requirements for the personnel responsible — Failure to report to the Commission on the programmes related to the level of qualification required