OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 14 December 1995 *

1. The Tribunal de Commerce, Albi, France, has submitted a question for a preliminary ruling in connection with civil proceedings brought by a number of concessionaires for motor vehicles in the *département* of the Tarn — the companies Grand Garage Albigeois, Ets Marlaud, Rossi Automobiles, Albi Automobiles, Garage Maurel et Fils, Sud Auto, Grands Garages de Castres, Garage Pirola, Grand Garage de la Gare, Mazametaine Automobil, Ets Capmartin, Graulhet Automobiles — against SARL Garage Massol (hereinafter 'Massol'), which they accuse of unfair competition.

2. Specifically, the plaintiffs accuse the defendant of engaging in the business of selling new motor vehicles outside the 'official' distribution network for them, without observing the Community rules they consider to be applicable, and of carrying out unlawful and misleading advertising: conduct amounting to unfair competition which has adversely affected them as exclusive concessionaires for the makes Peugeot, Citröen, Ford, Honda and Renault.

3. The Community legislation at issue is Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreement [1] (hereinafter 'the Regulation'), and Commission Notice 91/C 329/06 of 4 December 1991. [2]

4. The object of the legal proceedings before the French court is to prohibit Massol from continuing (on the present basis) its business of selling new vehicles — a category deemed to include vehicles registered less than three months earlier and those which have completed less than 3 000 km — and to prevent it from advertising such sales. Damages are also sought from Massol.

5. The Tribunal de Commerce, Albi considers that, as a preliminary to analysis of the facts and legal provisions relevant to the proceedings before it, the parties' claims call for a ruling 'on the legality of the business of dealers in new vehicles operating outside the

* Original language: Spanish.

1 — OJ 1985 L 15, p. 16.
2 — OJ 1991 C 329, p. 20.

distribution networks established in France by the manufacturers, having regard to the European legislation and in particular Regulation No 123/85'.

6. Accordingly, it seeks a ruling on the following question:

'May the contracts of French concessionaires (for Peugeot, Renault, Citröen, Ford and Honda) be relied on as against third-party traders in the general context of European law, which is one of freedom, and, in particular, if an independent reseller lawfully succeeds in obtaining new vehicles within a network, does Regulation No 123/85 or the case-law of the European Court of Justice provide justification for the manufacturer or his importer or a member of a network in a Member State to seek to prevent that reseller from importing them and reselling them in a Member State solely because it is not an approved reseller or is not an authorized intermediary?'

The facts

7. Although not all the facts which might be relevant to the answer to be given to that question have been duly proved, it is nevertheless possible to work on the following assumptions, drawn from the submissions of the parties and the order for reference:

(a) The objects of Massol — as recorded in its entry in the commercial registry — are the 'maintenance, repair and hire of all kinds of motor vehicles, and import and export thereof';

(b) Massol is not a concessionaire for motor vehicle manufacturers, and does not form part of the 'official' distribution networks which those manufacturers have set up under the Regulation;

(c) Nevertheless, Massol acts as an independent agent for sales of new vehicles, occasionally describing itself as an 'authorized intermediary' for a final consumer.

Submissions of the parties

8. The plaintiffs in the main proceedings rely on the concession contracts concluded by each of them, according to which they enjoy

exclusive rights to set up business and trade in and sell new vehicles, directly or through agents, in the sector of motor vehicle distribution. In their opinion, Massol, as a vehicle 'dealer' not belonging to the 'official' distribution network, is operating in breach of the concessionaires' exclusive distribution contracts and of Community legislation itself, since it is neither an intermediary nor does it comply with the clear and binding requirements which that legislation imposes on intermediaries.

9. The plaintiffs have produced advertisements which Massol put in the local press in 1993 and 1994, from which they infer that Massol acted as a dealer or reseller offering large stocks of new vehicles with immediate delivery, giving the impression that it receives numerous deliveries. They also refer to statements by 'huissiers de justice' [3] evidencing the existence of a substantial volume of business.

10. In support of their claims the concessionaires submit that under the Regulation, in the interests of consumers and for reasons of road safety, the sale of new vehicles and after-sales service must be guaranteed by a distribution network chosen by the manufacturer to cooperate with it and that, therefore, under the Regulation the concessionaires enjoy 'an exclusive right to set up and engage in the business of selling new vehicles and providing after-sales service'.

11. They concede, however, that the Regulation allows final consumers to obtain new vehicles outside the 'official' distribution network, by giving written authority to an intermediary. Under the Commission Notice of 4 December 1991 mentioned earlier, intermediaries are merely providers of services, acting on behalf of a purchaser, who is the final consumer, but they may not hold stocks or mislead the public, as in the present case, or become independent sellers outside the distribution network.

12. In their opinion, an independent reseller of vehicles may not compete with concessionaires, within an exclusive distribution system, whatever his source of supply. In the present case, moreover, such supplies would necessarily be unlawful since the vehicles acquired by Massol can only come either from an 'official' concessionaire who has come to a fraudulent arrangement with that company or from car rental companies which, for their part, buy the vehicles without any intention to use them for that purpose but, rather, in order to make them available, as new vehicles, to other companies.

13. Massol did not submit observations to this Court within the prescribed period. In

3 — Holders of a 'public office' involved in the administration of justice who may, among other things, prepare official records at the request of individuals or by order of the courts within whose jurisdiction they operate.

its defence before the Tribunal de Commerce, Albi, it contended that its business was lawful and did not constitute unfair competition.

14. In its view, it is apparent from the Citröen, Peugeot, Ford and Honda concession contracts that they grant exclusive rights only with regard to the manufacturer's business methods and use of its logo, name and trade mark. The exclusive selling rights are merely notional since they depend on the will of the manufacturer alone to ensure that its network is watertight, which is not the case, since the manufacturer sells 40% of its production outside its concessionaire network.

15. Massol adds that, by virtue of the principle of the circumscribed effect of contracts embodied in Article 1165 of the French Civil Code, exclusivity contracts are binding only on the parties to them and cannot be relied upon against third parties. It maintains that no contract, granting a concession or otherwise, may prohibit a third party, unconnected with the contract, from engaging in or carrying on a business which is not specifically prohibited by any laws or regulations. It refers both to the Regulation and to the Civil Code, contending that no provision prevents a dealer who has lawfully acquired new vehicles from selling them on at a profit.

16. It considers that the concessionaires cannot rely upon the Regulation, since their concession contracts do not meet the *de minimis* requirements imposed by that Regulation, owing to the almost discretionary powers, not provided for by the latter, which are vested in the manufacturer by those contracts. In that connection, it refers to a complaint made to the Commission of the European Communities concerning the 12 plaintiff concessionaires.

17. Rejecting the accusation of unfair competition, Massol adds that its method of acquiring new vehicles is entirely legal and that their availability outside the distribution network depends exclusively on the policy of manufacturers as to whether or not to make their networks watertight. It focuses on the watertight nature of the network and the way manufacturers use it in practice as evidence of the fact that distribution through concessionaires is merely one of several distribution methods.

18. In its observations, the Commission takes the view that a business like that of Massol cannot be regarded as contrary to the Regulation since, first, the Regulation does not prohibit vehicle manufacturers from selling vehicles otherwise than through exclusive distribution networks and, secondly, it does

not prevent unilateral activities or agreements distinct from those covered by the exempting regulations.

19. The French Government considers that, as Community law stands, any assessment concerning the circumscribed effect of contracts is a matter to be dealt with by the national court in accordance with its own legal order: the Regulation itself does not prevent an independent reseller from importing and selling new vehicles outside the official distribution network, even if he does not have the status of intermediary within the meaning of Article 3(11).

20. Finally, the Greek Government expresses the view in its observations that the question raised by the national court — namely, whether or not exclusive vehicle distribution contracts may be relied upon against third parties — is not a matter of Community law, and should be dealt with under national law.

Community provisions on vehicle distribution

21. The Regulation defines a category of agreements for which the conditions laid down by Regulation No 19/65/EEC of the Council of 2 March 1965 [4] may be considered satisfied, so that the otherwise unavoidable prohibition which it imposes is inoperative. It comprises agreements for a definite or an indefinite period, by which the supplying undertaking entrusts to another party the task of promoting the distribution and servicing of the products; thus, one party (the manufacturer or, in general, the supplier) entrusts to the other (the distributor or concessionaire) the task of promoting within a specific territory the distribution, sale and after-sales servicing of certain products of the motor vehicle industry. Under such agreements, the supplier gives an undertaking to the distributor that it will supply the contract goods for resale within the contract territory only to the dealer, or only to a limited number of undertakings within the distribution network.

22. In principle, such agreements would be void, since they generally have the object or effect of preventing, restricting or distorting competition in the common market and may, in general terms, affect trade between Member States. Nevertheless, the prohibition of such agreements, which would follow directly from Article 85(1) of the EC Treaty, is the subject of an exemption under Article 85(3) where it is expressly declared inapplicable to such agreements, albeit only in limited circumstances, by means of a specific measure such as the Regulation.

4 — OJ, English Special Edition 1965-1966, p. 35.

23. As far as these proceedings are concerned, it is precisely the subjective scope of the Regulation which raises the problems involved. Although there is no doubt as to the validity of the distribution system as such (limited in time until 30 September 1995, its expiry date, and renewed by Commission Regulation (EC) No 1475/95 of 28 June 1995), [5] the national court does have doubts as to its scope in relation to other traders involved in the marketing of motor vehicles.

24. Specifically, Article 3(11) of the Regulation allows agreements of this kind to contain clauses under which the distributor or concessionaire undertakes:

'to sell motor vehicles within the contract programme or corresponding goods to final consumers using the services of an intermediary only if that intermediary has prior written authority to purchase a specified motor vehicle and, as the case may be, to accept delivery thereof on their behalf'.

25. In other words, a distributor may refuse to sell vehicles to unauthorized intermediaries unless the latter, for their part, have received written authority from the final consumers to buy the vehicles on their behalf and at their expense, this constituting an exception to the principle that distribution is to be limited to the network.

26. Article 3(10) of the Regulation enables agreements of this kind to include clauses under which the concessionaire or distributor agrees 'to supply to a reseller ... contract goods or corresponding goods only where the reseller is an undertaking within the distribution system ...'.

27. The difficulty of interpreting the terms 'intermediary' and 'reseller' prompted the Commission to issue two Notices, one dated 12 December 1984 [6] and the one dated 4 December 1991, mentioned earlier, which sought to clarify certain aspects of the Regulation in question.

28. Specifically, the 1991 Notice sought to 'clarify the scope of the activities of the intermediaries mentioned in that Regulation', defining them as providers of services acting for the account of a purchaser and final user, without assuming risks normally associated

5 — OJ 1995 L 145, p. 25.

6 — OJ 1984 C 17, p. 4.

with ownership, and being given prior written authority by an identified principal.

29. In the Commission's view, although an intermediary is entitled freely to organize his business, use by him of a network of undertakings with common emblems or other distinctive signs should not give the impression that he has an authorized distribution system. The function of the intermediary must be entirely transparent as regards the services offered and the payment required for them. His advertising must not create in potential purchasers' minds any confusion between him and resellers or undertakings belonging to the distribution network of the manufacturer or manufacturers of the vehicles in question. Finally, with regard to supplies, he may not maintain with authorized concessionaires a privileged relationship contrary to the contractual obligations accepted by the latter in accordance with the Regulation.

30. According to the Notice, if the activities of an intermediary do not conform to those guidelines and criteria, he may be deemed to be 'acting beyond the limits set by Article 3(11) of Regulation No 123/85, or creating confusion in the mind of the public ... by giving the impression that he is a reseller'.

The position of independent traders outside the vehicle distribution networks

31. The facts referred to by the plaintiffs (large number of vehicles in stock, advertisements by Massol offering immediate deliveries and fresh supplies of vehicles) do not in themselves make it possible to decide in all certainty whether Massol is in fact a reseller of vehicles outside the 'official' network or just an intermediary with authority from final purchasers. That decision is in principle to be taken by the national court after it has analysed the evidence produced by the parties, but, as far as the preliminary question is concerned, the answer to be given will not differ significantly as between the two hypotheses.

32. It is quite possible that an undertaking habitually engaged in the business of marketing new vehicles is an 'authorized intermediary' within the meaning of the Regulation, without factors such as the existence of a large number of vehicles in stock, a substantial turnover, the charging of commission, the granting of credit to customers to buy vehicles, advertising to promote services and other similar operations in themselves undermining that legal classification.

33. In that connection, particular importance is to be attached to the considerations set out in the judgment of the Court of First Instance of 22 April 1993, [7] in an action for annulment brought by Automobiles Peugeot and Peugeot SA against the Commission Decision of 4 December 1991, according to which a circular sent by Automobiles Peugeot SA to its concessionaires, asking them to suspend deliveries of vehicles to an undertaking which acted as an intermediary on behalf of final purchasers, was contrary to Article 85(1) of the Treaty.

34. The judgment of the Court of Justice of 16 June 1994 in *Peugeot* v *Commission*, [8] dismissing an appeal against the abovementioned judgment of the Court of First Instance, stated:

'... the existence of a written authorization is the only condition which, according to the actual wording of Article 3(11) of Regulation No 123/85, a person must satisfy in order to be characterized as an intermediary.

... As to the argument concerning the alleged failure to take into account the *Binon* judgment [Case 243/83 [1985] ECR 2015], the Court of First Instance was right in holding that that judgment, which concerns the application of Article 85 of the Treaty to relations between an undertaking and a commercial agent, did not apply to the case of an agent acting on behalf of a final consumer and that the number of authorizations received by a professional intermediary was not the sole factor determining the change in the nature of the intermediary's involvement'.

35. It is thus possible, in the absence of more precise evidence, the appraisal of which logically is a matter for the national court, that the business activity engaged in by the defendant company is such that it might be regarded as that of an intermediary who, on receipt of written authority from final consumers, arranges to obtain vehicles for third parties. According to this first hypothesis, therefore, Massol's business activity is covered by the Regulation, so that neither the vehicle manufacturers nor the concessionaires within their distribution networks would be entitled to take action to put an end to that business.

36. On the other hand — this being the second hypothesis mentioned in the order from the Tribunal de Commerce, Albi — if Massol's business ought to be legally classified not as that of an intermediary but rather as that of an independent reseller (because it initially acquires ownership of the goods which it later sells on and because it assumes the risks associated with resellers rather than those associated with intermediaries, and the

7 — Case T-9/92 *Peugeot* v *Commission* [1993] ECR II-493.
8 — Case C-322/93 P [1994] ECR I-2727.

related guarantee obligations), then we have a situation which falls outside the objective scope of the Regulation, since in principle the latter does not envisage the existence of professional traders who, outside the 'official distribution networks', habitually engage in the marketing of new vehicles.

37. However, Community law does not regard such traders as acting improperly. To do so would be to undermine the meaning and purpose of the Regulation, which does not seek to harmonize or impose binding rules on the vehicle distribution sector, but merely to lay down the conditions under which certain anti-competitive agreements, which in principle are unlawful, may, exceptionally, be regarded as acceptable. [9]

38. In other words, the Regulation confines itself — by means of the legal device of block exemptions, which in this case applies more particularly to sectors of economic activity — to removing the nullity which would otherwise invalidate certain distribution agreements between manufacturers and distributors of motor vehicles — they would be intrinsically void as inimical to free competition — but the Regulation does not seek to lay down binding guidelines for all traders in the sector.

9 — Regarding the need not to adopt an extensive interpretation of the exceptions contained in the Regulation, see the judgments in Case C-266/93 *Volkswagen* [1995] ECR I-3477 and Case C-70/9/3 *Bayerische Motorenwerke* [1995] ECR I-3439.

39. That view was set out in the judgment of the Court of Justice in *VAG France*, [10] in the following terms:

'12. ... Regulation No 123/85, as a regulation applying Article 85(3) of the EEC Treaty, is limited to providing economic agents in the motor vehicle industry with certain possibilities enabling them to remove their distribution and servicing agreements from the scope of the prohibition contained in Article 85(1) despite the inclusion in those agreements of certain types of exclusivity and no-competition clauses. However, the provisions of Regulation No 123/85 do not compel economic agents to make use of those possibilities. Nor do those provisions have the effect of amending the content of such an agreement or of rendering it void where all the conditions laid down in the Regulation are not satisfied.

...

16. ... Regulation (EEC) No 123/85 does not lay down any mandatory provisions directly affecting the validity or the content of contractual provisions or oblige the contracting parties to adapt the content of their agreement but merely lays down conditions which, if they are satisfied, exclude certain contractual provisions from the prohibition and consequently from the automatic nullity provided for in Article 85(1) and (2) of the EEC Treaty ...'.

10 — Case 10/86 [1986] ECR 4071, paragraphs 12 and 16.

40. It is clear from those considerations that if an undertaking operates outside the 'official' distribution network and engages on its own account in the purchase and sale of cars, whether new or used, no objection thereto can be based on the Regulation.

The enforceability of distribution agreements against third parties

41. According to the philosophy of the Regulation, distribution contracts signed between manufacturers and concessionaires or 'official' distributors of vehicles do not in any way affect, and cannot be relied on to prevent, the pursuit of a business such as the one mentioned. That independent activity of buying and selling cannot be prohibited under the Regulation, since the latter does not impose binding guidelines for the competitive behaviour of undertakings not parties to the agreements, but merely lifts the prohibition of certain anti-competitive conduct on the part of the parties to those agreements.

42. This does not mean, however, that distribution agreements between the manufacturers of vehicles and concessionaires have no effect on third parties whatsoever: they have very specific effects, stemming for example from the power to use such contracts to refuse to supply to undertakings outside the authorized distribution network vehicles, components or spare parts. Such a refusal would be lawful, in so far as the Regulation allows an exception to be made for such a practice, which is in itself contrary to the rules governing freedom of competition.

43. The Court of Justice has upheld the validity of a refusal to supply undertakings outside distribution networks not only with products but also with services, such as the provision of guarantees. In *Cartier*, [11] it stated:

'32. In that regard, it should be noted that a contractual obligation to restrict the guarantee to dealers within the network and to refuse to grant it in respect of goods sold by third parties leads to the same result and has the same effect as contractual terms which reserve the right to sell to members of the network. Like such terms, the restriction of the guarantee is a means whereby the manufacturer can prevent persons outside the network from marketing products covered by the system.

33. Where contractual terms whereby the manufacturer undertakes to sell only through authorized dealers and whereby those dealers themselves undertake to resell

11 — Case C-376/92 [1994] ECR I-15, paragraphs 32 and 33.

only to other authorized dealers or to consumers are lawful, there are no grounds for applying stricter treatment to arrangements for restricting the guarantee by contract to products sold through authorized dealers ...'.

44. The lawfulness of refusals of that kind is thus a first and important effect on third parties, deriving from the agreements entered into between manufacturers and their approved concessionaires in the vehicle sector, both being entitled under the Regulation to enforce such agreements as a way of defending their own distribution network.

45. As an immediate consequence of that fact, the same legal process operates in reverse, so that the effect on third parties extends also to the possibility of validly using such contracts as a defence against accusations by third parties who accuse the parties to the contracts of anti-competitive practices. That is an example of the 'defensive' aspect of the effect of agreements, which can be relied upon against undertakings outside the distribution network seeking to obtain free access, as resellers, to products within the network.

46. That consequence was expressly envisaged in the judgment of the Court of Justice in *L'Oréal*, [12] which dealt specifically with the enforceability against third parties of the exemptions granted by the Commission under Article 85(3) of the Treaty. In it, the Court stated that:

'... decisions to grant exemption under Article 85(3) of the EEC Treaty give rise to rights in the sense that the parties to an agreement which has been the subject of a decision may rely on that decision against third parties who claim that the agreement is void on the basis of Article 85(2) ...'.

47. To summarize, distribution agreements signed under the Regulation render lawful, vis-à-vis third parties, a refusal by the signatories to provide other undertakings outside the distribution network with products or services covered by such agreements; they also provide a basis for the signatories to resist claims or complaints from third parties who allege that the agreements are void by virtue of the general principle of freedom of competition. But they cannot be relied upon to prohibit third parties outside the

12 — Case 31/80 [1980] ECR 3775, paragraph 23.

distribution network from engaging in the independent business of buying and selling new vehicles outside that network.

The impact of independent dealers on distribution networks

48. The national court states, in the grounds of its order for reference, that 'the issue in these proceedings is particularly serious: the court cannot disregard either the constraints to which the concessionaires are subject and for which there must be a proper *quid pro quo* or the fact that the survival of a non-network dealer is at stake'. That view appears to be based on the premiss that the admission of independent dealers might in practice undermine the system provided for in the Regulation, in that it would allow third parties who were not subject to the more burdensome obligations of the 'official' distributors to compete with the latter on advantageous terms.

49. That objection might be supplemented by the assertions of the plaintiffs as to the — in their opinion — necessarily unlawful origin of the cars acquired by sellers or resellers outside the network. To allow such dealers to operate would, in the concessionaires' view, fraudulently undermine the distribution contracts between them and the manufacturers: the conduct of independent dealers is unfair, since they can only obtain their vehicles by persuading an authorized distributor to act in breach of his contract or simply by taking advantage of such a breach.

50. However, neither of those objections carries sufficient weight to justify abandoning the interpretation of the Regulation which I propose here.

51. As far as the first is concerned, it is of course doubtful whether official distributors would, merely because of the existence of independent dealers, be put in a less advantageous position. In the normal course the contrary would be the case, in view of the importance attached by final consumers, when dealing with a particular distributor belonging to the official network, to the fact that a dealer has the direct support of a manufacturer. Furthermore, authorized distributors enjoy a privileged relationship with the manufacturer, benefiting from the latter's commercial policy, and its privileged connections with the manufacturer place it in an objectively more favourable situation than an independent dealer. The problems which might arise in that area relate rather to misleading advertising by independent dealers; but, in any event, if cases of unfair competition of that kind arise — a matter to be appraised by the national court — that does not overturn the general principle that independent dealers should be allowed to exist outside the network.

52. As regards the second objection, it could only be upheld if the Regulation required motor vehicle distribution networks to be 'watertight', that is to say impervious to penetration by outsiders, as is the case in certain legal systems. But, just as it must be emphasized that the Regulation does not purport to describe a compulsory distribution 'system', the requirement of 'watertightness' cannot be seen as a precondition for the valid existence of the network under the Regulation.

53. That was made clear in *Cartier*, cited above, [13] a reference for a preliminary ruling concerning a distribution network — in that case, a selective network — in which certain supplies were obtained externally. The Court stated that:

'26. ... as the Commission has correctly perceived, to make the validity of a selective distribution system under Article 85(1) of the Treaty conditional on its'imperviousness" would lead to the paradoxical result that the most inflexible and most tightly sealed distribution systems would be treated more favourably under Article 85(1) of the Treaty than distribution systems that are more flexible and more open to parallel transactions.

27. Finally, recognition of the validity of a selective distribution network in the common market cannot depend on the manufacturer's ability to ensure that the network is "impervious" everywhere, given that the legislation of certain Member States may hinder or even prevent the achievement of that objective.

28. It follows from those observations that the "imperviousness" of a selective distribution system is not a condition of its validity under Community law.'

54. The possibility cannot be excluded that the sources of supply of independent dealers are also lawful. Indeed, that possibility is taken into account by the national court, since its question is based on the premiss that 'an independent reseller is able *lawfully* to obtain new vehicles within the network'. That is a matter which the national court should consider on the basis of the facts proved in the main proceedings, after analysing the way in which supplies were obtained in each case.

55. The legality of the supplies of cars obtained by independent dealers is not, therefore, a problem but rather a question of fact to be treated as settled in the present proceedings. It is unnecessary therefore for

13 — See footnote 11 above.

the Court of Justice, in answering the questions submitted, to go into detail as to the methods which may be or are in fact used by the defendant in the main proceedings. That would call for an analysis of parallel imports, [14] the diversion to individuals of 'new' vehicles originally intended for hire, or any other possible alternative source of supply, all of which matters fall outside the scope of a ruling by the Court of Justice on a question formulated in precise terms by the national court in relation to the case of vehicles already lawfully obtained by an independent reseller.

Conclusion

56. In view of the foregoing considerations, I suggest that the Court of Justice give the following answer to the question referred to it by the Tribunal de Commerce, Albi:

Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements allows such agreements to be relied on by the parties to them against third parties to justify their refusal to supply to undertakings outside the distribution network products or services covered by such agreements, or as a defence against actions or complaints by third parties who allege that such agreements are void by virtue of the general principle of freedom of competition. But that Regulation cannot be relied upon to prohibit undertakings outside the distribution network, even those not acting for final consumers as 'authorized intermediaries', from engaging in the independent business of buying and selling vehicles, whether new or used, outside that network. It is for the national courts to consider, in each case, the legality of the methods used by independent dealers to obtain the motor vehicles in which they deal.

14 — The acceptability of parallel imports, by intermediaries and resellers, is the subject of a preliminary question from the Tribunal de Commerce, Lyons, in Case C-309/94 *Nissan France* [1996] ECR I-677, on which another Opinion is published today.