ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
19 October 2000 *

In Case T-58/00,

Bond van de Fegarbel-Beroepsverenigingen, whose registered office is in Brussels (Belgium),

Jules Appeltants, resident in Grâce-Hollogne (Belgium),

Benny Corbeels, resident in Louvain (Belgium),

represented by J. Van Hoof, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of F. Brouxel, 6 Rue Zithe,

applicants,

v

Commission of the European Communities, represented by W. Wils, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Dutch.

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),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Azizi, President, K. Lenaerts and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Background to the dispute

1 Article 2 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, 'the contested Regulation') states that, under certain conditions, Article 81(1) EC shall 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 ('the vertical agreements').

2 The aim of the Bond van de Fegarbel-Beroepsverenigingen ('the BFB') is to safeguard the interests of regional associations of garage owners, in the broad sense of the term, and those of the members of those associations. It is said to represent thus 2 500 small and medium-sized Belgian enterprises ('the SMEs'). According to the pleadings the other two applicants are economic operators working in the same sector as the members of the BFB, and the SMEs, represented by the BFB, and the other two applicants are bound by vertical agreements falling within the scope of the contested Regulation.

Procedure and forms of order sought by the parties

3 By application lodged at the Court Registry on 14 March 2000, the applicants brought this action.

4 The applicants claim that the Court should:

— annul the contested Regulation;

— in the alternative, set aside the consultation procedure and order that it be recommenced;

— order the Commission to bear the costs.

5 By a separate document, lodged at the Court Registry on 29 May 2000, the Commission lodged an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

6 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicants to bear the costs.

7 The applicants did not submit observations on the objection of inadmissibility within the time-limit set for that purpose by the Court.

Admissibility

8 Under Article 114(3) of the Rules of Procedure, proceedings relating to the objection of inadmissibility are oral, unless the Court takes a decision to the contrary. In this instance, the Court considers that an examination of the documents in the case has clarified the situation sufficiently and that there is no need to open the oral procedure.

Arguments of the parties

9 The Commission explains that the contested Regulation cannot be regarded as a decision which, although in the form of a regulation, is of direct and individual concern to the applicants, within the meaning of the fourth paragraph of Article 230 EC. It is, in fact, a measure of purely general scope. The application is therefore inadmissible.

10 The applicants maintain that the contested Regulation is of direct and individual concern to them. They explain, in that regard, that they either are or represent SMEs which, as distributors, are economically dependent on the large suppliers, especially the car manufacturers or importers and suppliers of petroleum products. As a result of the application of the contested Regulation, the vertical agreements which impose that state of economic dependence fall outside the scope of Article 81(1) EC and escape the penalty of automatic invalidity established by Article 81(2) EC.

Findings of the Court

11 Under the fourth paragraph of Article 230 EC, natural or legal persons may institute proceedings against a decision addressed to them or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to them.

12 It should be noted that the contested Regulation states that, under certain conditions, Article 81(1) EC does not apply to vertical agreements. The

Regulation, which applies where the objective legal or factual circumstances defined by the measure in relation to its own aims are present, is of general application to undertakings involved in vertical agreements and concerted practices.

13 Accordingly, owing to its general scope the contested Regulation is of a legislative nature and is not a decision within the meaning of Article 249 EC (see Case T-45/00 *Conseil National des Professions de l'Automobile and Others* v *Commission* [2000] ECR II-2927, paragraph 18).

14 However, the fact that the contested Regulation is of a legislative nature does not preclude it from being of direct and individual concern to certain natural or legal persons within the meaning of the fourth paragraph of Article 230 EC (see Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19, Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 66, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50).

15 As regards, first of all, whether the applicants are individually concerned by the contested Regulation, it must be borne in mind that natural or legal persons can be considered to be individually concerned by a measure of general application 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 (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95 at 107; order in Case T-122/96 *Federolio* v *Commission* [1997]

ECR II-1559, paragraph 59, and order in Case T-120/98 *Alce* v *Commission* [1999] ECR II-1395, paragraph 19).

16 In that regard, the applicants state that they, or in the case of the BFB its members, are economically dependent on the large suppliers and that it is impossible, because of the effect of the contested Regulation, to invoke the penalty of automatic invalidity established by Article 81(2) EC for vertical agreements falling within the sphere of application of the contested Regulation.

17 It is settled case-law that applications may be declared admissible when made by associations representing the interests of their members who would themselves be entitled to act *(Exporteurs in Levende Varkens*, cited in paragraph 14 above, paragraph 64; order in *Federolio*, cited in paragraph 15 above, paragraph 61).

18 In this case, the exemption granted by the contested Regulation, which prevents application of Article 81(1) EC and, consequently, of the penalty of invalidity established by Article 81(2) EC, affects the applicants — other than the BFB — and the BFB's members, in their objective capacity as economic operators bound by vertical agreements, in the same way as all the other operators who are party to such agreements. As regards the state of economic dependence to which attention is drawn by the applicants, that circumstance is not such as to differentiate them from all other economic operators.

19 Finally, the BFB, although it alleges that there were deficiencies in the consultation procedure which preceded the adoption of the contested Regulation, does not assert any specific procedural right or invoke any interest of its own, as distinct from that of its members, which was affected by the contested Regulation

(Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21 to 24, and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 28 to 30; order in *Federolio*, cited in paragraph 15 above, paragraph 61).

20 It follows from all of the above that the applicants cannot be considered to be individually concerned by the contested Regulation. The applicants fail to satisfy one of the conditions for admissibility under the fourth paragraph of Article 230 EC, and therefore this application must be dismissed as inadmissible.

21 However, whilst the applicants cannot bring an application for the annulment of the contested Regulation, they may still plead before the national courts, adjudicating in accordance with Article 234 EC, that the Regulation is unlawful (Case C-70/97 P *Kruidvat* v *Commission* [1998] ECR I-7183, paragraphs 48 and 49).

Costs

22 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has asked for costs and the applicants have been unsuccessful, the latter must be ordered to bear the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicants are ordered to bear the costs.**

Luxembourg, 19 October 2000.

H. Jung
Registrar

J. Azizi
President