OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 8 July 1986 *

Mr President,
Members of the Court,

1. In October 1980 BL Public Limited Company (hereinafter referred to as 'BL'), a company governed by English law, launched a new model, the 'Metro'.

From 1981 that model was marketed in the other Member States at a considerably lower price than that charged on the British market. As a result there developed a trade in the re-importation, particularly from Belgium, of left-hand-drive Metros manufactured by BL for the continental market.

BL supplied right-hand-drive vehicles on the continent only exceptionally to diplomatic or military personnel with United Kingdom nationality stationed in the other Member States. In 1981 it closed its Belgian assembly line. Thereafter the re-importation of left-hand-drive Metros, now exclusively manufactured in the United Kingdom and intended for export, proved to be a means of taking advantage of the lower prices. The viability of such an operation lay in the difference which existed between British and continental prices, largely as a result of the high rate of inflation in the United Kingdom and the need to take account of the lower level of prices on the continent. According to BL, in January 1981 that price difference reached almost 45% for vehicles marketed in Belgium so that re-importation remained attractive notwithstanding the cost of the conversion of the vehicle to right-hand-drive, which was necessary, although not compulsory, for its use in the United Kingdom. By way of example, Mr Merson, who has intervened in the proceedings, informed the Commission that for a Metro, the price difference was approximately UKL 1 000, from which it was necessary to deduct UKL 300 for the cost of conversion and UKL 70 for the importation.

The Commission accuses BL of having attempted to restrain the trade in parallel imports which had developed as a result of the different prices which it charged, by abusing its dominant position with regard to the technical approval procedure for British vehicles. It is therefore necessary to consider the national rules applicable.

2. Council Directive No 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type approval of motor vehicles and their trailers (Official Journal, English Special Edition 1970 (I), p. 96), which was intended to introduce an EEC type approval in each Member State, valid throughout the Community, is not yet effective. Thus the type approval of vehicles is governed by the provisions adopted by each Member State.

In Great Britain the approval of all new types or models of vehicles, whatever their origin, is effected in accordance with an administrative procedure which is intended to ensure their conformity with various standards relating to their design and construction and to environmental protection (National Type Approval, hereinafter referred to as 'NTA').

* Translated from the French.

The relevant rules are laid down in the Road Traffic Act 1972, as amended in 1974, and in the Motor Vehicles (Type Approval) Regulations 1979 contained in Statutory Instrument No 1092 of 1979 (hereinafter referred to as 'the NTA regulations'). It is an offence to use on the road or to offer for sale vehicles which do not comply with those provisions (sections 51 (1) and 62 of the Road Traffic Act 1972).

There are two possible approval procedures. Only the first is at issue in these proceedings, since under the second, as a result of the costs involved, it is not possible to take advantage of the price differential to which I have referred.

(a) The British National Type Approval Certificate (hereinafter referred to as the 'NTA certificate') is requested by a manufacturer for each vehicle type that he intends to market and for its variants, the specifications of which are appended to the certificate. Right-hand-drive and left-hand-drive vehicles are regarded as two different versions of the same model.

The approval is granted by the Secretary of State for Transport following an examination of the model to ensure that it complies with the relevant type approval requirements and an inspection of the places of manufacture to ascertain that future vehicles will be identical to the type vehicle (sections 47 (4) and 48 (1) of the 1972 Act).

Once the approval has been obtained, in accordance with the provisions of section 48 (1) (b) of the 1972 Act and as is stated in Condition 2 (2) of the NTA certificate issued for Metros, the manufacturer is required to notify to the Department of Transport any alterations to the 'design, construction, equipment and marking' which he intends to make to the type vehicle as soon as such alterations are envisaged 'at any time after the issue of this certificate'. BL has stated that the notifiable alterations are consolidated annually in new information documents for the versions concerned. In respect of the Metro, the new information documents were required to be submitted to the Department of Transport by 1 October 1981.

On the basis of the NTA certificate for the model in question, the manufacturer is authorized to issue for each vehicle manufactured by him certificates of conformity stating that the vehicle in question conforms to the type vehicle (section 47 (5) of the 1972 Act).

(b) The other possible method of obtaining approval, which is open to any person, is to request a Primary Minister's Approval Certificate (hereinafter referred to as a 'PMAC'). Subsequent Minister's Approval Certificates (hereinafter referred to as 'sub-MACs') are issued to the holder of the PMAC in respect of any other vehicle which is identical to the type vehicle (section 47 (8) and (11)).

The cost of obtaining a PMAC is high. With the inspection costs the fee amounts to approximately UKL 20 000, unless the manufacturer provides all the necessary information for each of the vehicle parts which are to be approved, thus making it unnecessary for the officials of the Department of Transport to undertake a systematic technical verification of their conformity with British standards. The manufacturer's cooperation therefore makes it possible to reduce the cost of obtaining a PMAC to UKL 800.

For the sake of completeness, it is worth noting that, by way of exception to all those provisions, persons who import into the United Kingdom vehicles exclusively for their 'personal use' are, subject to certain conditions, exempted from the formalities which I have described (NTA Regulation No 3 (2) (e)).

3. In the light of those provisions, a private individual or dealer who wishes to benefit from the price advantage to be derived from importing a left-hand-drive Metro from the continent has in principle a choice between four methods of importation, the advantages of which are not all the same.

He may import the vehicle solely for his personal use. However, although that dispenses him from the requirements governing the approval of the imported vehicle, he must satisfy the specific conditions which restrict the category of persons who may benefit from that dispensation. In addition to the requirement relating to the sole purpose of the importation, the vehicle must have already been purchased and used outside Great Britain by its importer for his personal use and the importer must remain in Great Britain for not less than 12 months.

The procedure for obtaining a PMAC is, even where the manufacturer cooperates, costly for a private individual, so that any price advantage would be negated. The procedure could conceivably prove viable for a dealer, provided that it concerned a sufficient number of vehicles and the manufacturer supplied him with all the necessary information. BL admitted at the hearing that it does not communicate that type of information.

It is also possible that where there is no NTA certificate for the left-hand-drive version the importer may request a certificate of conformity for a re-imported vehicle which has first been converted to right-hand-drive, thus taking advantage of the approval for that version. Moreover, BL has stated that, unlike other manufacturers, it complies with that type of request subject to a complete inspection of the vehicle. In reality, as was confirmed at the hearing, that procedure, the legality of which is doubtful — can such a vehicle be regarded as conforming 'in all respects or with any permitted variation' to the type vehicle as is required under section 47 (4) of the 1972 Act? —, is not particularly advantageous, since the additional cost of the inspection greatly reduces the advantage derived from the continental price.

In fact there is a much more attractive method which is open to any importer, whether a private individual or a motor-vehicle dealer; he may request a certificate of conformity for the registration of a re-imported left-hand-drive vehicle.

For the launch of the Metro, on 17 July 1980 BL requested and obtained from the Department of Transport an NTA certificate for the right-hand-drive and left-hand-drive versions. BL states that it sought approval for left-hand-drive versions in order to dispose of 'frustrated stocks' of Metros, intended for export but unsold or damaged, on the British market. Thus it was possible to re-import into the United Kingdom left-hand-drive Metros from the beginning of 1981, when they were first marketed in the other Member States. In fact only two conditions had to be met before such vehicles could be registered and used on the road.

In the first place, largely because the United Kingdom drives on the left, those vehicles had to undergo four minor alterations, relating to the direction of the headlight beam, the positioning of the wing mirror and rear foglamp and the addition of a speedometer calibrated in miles per hour.

Once it had been verified that those alterations had been carried out, a certificate of conformity had to be issued on payment of a fee. It is not disputed that the subsequent

conversion to right-hand-drive, effected in almost all cases, in no way affected the validity of the certificate of conformity.

4. In those circumstances, it is scarcely surprising that a trade in parallel imports involving both individual importers and non-approved distributors began to develop as early as March 1981.

By the contested act — Decision No 84/379/EEC of 2 July 1984 (Official Journal 1984, L 207, p. 11) — the Commission found that individual importers and dealers who wished to take advantage of the price difference between right-hand-drive Metros in the United Kingdom and left-hand-drive Metros imported from the continent were prevented or deterred from so doing by BL, which, according to the decision, employed three different methods for that purpose.

In spite of the fact that an NTA certificate was in force during that period, it refused to supply certificates of conformity between June 1981 and April 1982 in six individual cases identified by the Commission, including that of Mr Merson whose complaint gave rise to the procedure and who has intervened in these proceedings.

Furthermore, in October 1981 BL decided not to renew the NTA certificate for the left-hand-drive Metro.

For the issue of certificates of conformity it charged a fee of UKL 150 for dealers between August and April 1982, and of UKL 100 for any importer, after 16 March 1983, when the NTA certificate for the left-hand-drive version was renewed.

In the Commission's view, BL occupies in Great Britain, which is a 'substantial part' of the common market within the meaning of Article 86 of the EEC Treaty, a dominant position in the 'market for the supply of information relating to national type approval certification', and has abused its legal monopoly in the three respects described above.

By its action it sought to isolate the United Kingdom market in right-hand-drive Metros from the competition of re-imported continental Metros available at substantially lower prices.

In view of the gravity of those acts, which were committed 'intentionally', and their duration, the Commission, finding that Article 86 of the EEC Treaty had been infringed, imposed on BL a fine of ECU 350 000, an amount which took into account BL's 'cooperative attitude' in the course of the procedure.

In support of its action for the annulment of that decision and its alternative claim for a reduction of the fine, BL submits essentially that:

It does not occupy a dominant position on the market in question (I. Dominant position and the relevant market);

None of the three complaints laid against it to establish the abuse can be sustained (II. Abuse); and

In the course of the procedure which led it to adopt the contested decision the Commission failed to respect BL's right to be heard, breached the principle of good administration and misused its powers (III. Conformity of the procedure).

I — Dominant position and the relevant market

5. The Commission states in its decision that BL, which, by virtue of an administrative delegation of powers, is alone in a position to approve the vehicles which it manufactures and to issue the appropriate

certificate of conformity, must be regarded as occupying a dominant position in the 'market for the supply of information relating to national type approval certification needed by an importer' in the United Kingdom.

In order to dispute the Commission's analysis and the applicability to this case of the principles laid down by the Court in the *General Motors* decision, BL puts forward the following arguments.

In the first place, it considers that the difference in this case is the possibility of importing vehicles for personal use without having to comply with the rules governing type approval. Comparative statistics for imports into the United Kingdom of Metros in 1982-83 and 1983-84 show that there were more registrations of that version in the period when there was no type approval for left-hand-drive Metros than after its re-establishment in March 1983.

Secondly, BL argues that the issue of certificates of conformity cannot be regarded as a 'market'. Since in issuing such certificates it is fulfilling a function arising under public law imposed by the legislature, the compatibility of such a function with Community law should be assessed in the light of Article 30 of the EEC Treaty and therefore a procedure against the United Kingdom would have been more appropriate. In any event, in BL's view, the Commission's separation of the decision to issue certificates of conformity from BL's commercial policy regarding the supply of vehicles is artificial. Since BL does not occupy a dominant position on the motor-vehicle market, it is free to refuse to export a particular model or to approve it in the United Kingdom, without infringing Article 86 of the EEC Treaty. By concentrating on an administrative function imposed on BL the Commission seeks in reality to alter BL's policy with regard to the motor-car market by forcing it to take a decision which is contrary to its commercial interests.

Thirdly, BL claims that it does not occupy any dominant position in relation to trade importers where the latter have merely intended to carry out importations. They can be regarded as economically dependent on BL only once the importation has been carried out, since the supply of information is then essential to them because without it they cannot put the vehicles on the road.

6. None of those arguments can be accepted; there is no doubt that BL occupies a dominant position.

As the Court observed in its judgment of 3 October 1985 in Case 311/84 (*Centre belge d'études de marché — Tele-marketing SA* v *Compagnie luxembourgeoise de télédiffusion SA* [1985] ECR 3261, 3270),

'... an undertaking occupies a dominant position for the purposes of Article 86 where it enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable exent independently of its competitors and customers and ultimately of consumers'.

The Court added, referring *inter alia* to its decision in Case 26/75 (*General Motors* [1975] ECR 1367), that:

'The fact that the absence of competition or its restriction on the relevant market is brought about or encouraged by provisions laid down by law in no way precludes the application of Article 86 ...' (Case 311/84, paragraph 16 of the decision).

The reasoning set out in the Court's judgment in *General Motors* concerning the position conferred on an undertaking by provisions entirely comparable to those in

question can be applied to the circumstances of this case.

In that case the Court considered the position of General Motors, the manufacturer's sole agent in Belgium, to which the Belgian State had delegated the task of verifying, for a fee which it was free to fix, the conformity of new vehicles with the type vehicle approved by the authorities in question.

The Court took the view that that task was 'by nature, a duty governed by public law which is . . . delegated by the Belgian State, . . . exclusively to the manufacturer or its sole agent . . .' and that

'this legal monopoly, combined with the freedom of the manufacturer or sole authorized agent to fix the price for its service, leads to the creation of a dominant position within the meaning of Article 86 as, for any given make, the approval procedure can only be carried out in Belgium by the manufacturer or officially appointed authorized agent under conditions fixed unilaterally by that party' (Case 26/75, cited above, paragraphs 7 and 9 of the decision).

It is not disputed in these proceedings that each manufacturer is free to fix his fees. In that respect the figures submitted by BL, the Commission and the intervener are significant in the variations which they reveal from one manufacturer to another. The Code of Practice drawn up in 1983 by the Society of Motor Manufacturers and Traders (SMMT) and the Department of Transport to regulate the procedure for issuing certificates of conformity does not restrict that freedom.

Moreover, it cannot be denied that section 47 (5) of the 1972 Act confers on British manufacturers the right to certify the conformity of any vehicle of their make to the type vehicle in respect of which they have previously requested and obtained an NTA certificate. In view of the impractical nature of the PMAC procedure and the small number of importations for personal use, BL therefore controls both the initial approval of the new models which it manufactures and the certification of the vehicles which it markets. It is of course true that no manufacturer will take the commercial risk of not seeking approval for a right-hand-drive version for the United Kingdom and a left-hand-drive version for the continent. However, the facts of this case show that the freedom to request or to refrain from requesting type approval for a particular version can strengthen the manufacturer's privileged position in the procedure for issuing the certificate of conformity for left-hand-drive vehicles.

The administrative power delegated to BL therefore places it in a key position in relation to any importer, in particular dealers outside its distribution network, since it alone is, *de facto* if not *de jure*, in a position to provide usefully this service, which is essential for putting the vehicles on the road. The issue by BL of the certificate of conformity and the payment of the fee relating thereto represent a compulsory step for all importers. BL therefore enjoys, in relation to all importers, the 'strategic independence' of a dominant position.

The arguments based on the fact that the volume of parallel imports did not decline and on the lack of dependence of potential importers bear upon the appraisal of the anti-competitive activities with which BL is charged. Consequently, they will be discussed in connection with the analysis of the abuse, since BL's dominant position

arises solely from the provisions of United Kingdom law.

The relevant market is that of the supply of services necessary for the registration of vehicles in accordance with the requirements of trade dealers and private individuals, and not the motor-vehicle market as BL would seem to suggest. It goes without saying that BL's conduct in the administrative field, as described by the Commission in its decision, necessarily reflects its commercial policy. As Mr Advocate General Mayras pointed out in his Opinion in *General Motors*

'It is . . . on this market in services that the pricing policy which is adopted by the undertakings may affect competition not, that is, the "inter-brand" competition between different makes of motor cars but the "intra-brand" competition, which is competition on the market for the sale of vehicles produced by a manufacturer . . .' (Case 26/75, cited above, at p. 1385).

Clearly that consideration applies *a fortiori* to a policy whereby an undertaking does not renew the NTA certificate for a left-hand-drive version, which has previously been approved, or refuses to issue the certificates of conformity corresponding to that version.

That does not mean, however, that it is necessary to make an assessment of BL's commercial policy with regard to the retail market or the prices of its vehicles. It is merely necessary to consider whether, by its conduct on the market for the supply of certificates of conformity, it has abused the dominant position which is conferred on it under British law, so as to protect itself from the intra-brand competition of re-imported Metros. We must therefore distinguish clearly BL's position on the motor-vehicle market and that which is conferred on it by law in connection with the procedure of approval and registration. We must also note, as the Commission did, that private individuals and dealers or trade importers come into contact with BL only as a result of the statutory monopoly conferred on it. The object of the resulting relationship is not the purchase of a vehicle from BL but the supply by it of a specific service which it alone is in a position to provide and which, as a general rule, is essential for all importers, if they wish to be able to put their vehicles on the road.

Consequently, BL must be regarded as occupying a dominant position in the market for the provision of the certificates of conformity in question.

As the only manufacturer which had sought British type approval for its left-hand-drive models, three possible courses of action to counter the competition arising from parallel imports of continental Metros were open to it: it could inflate the price of the service provided or refuse to provide that service, or again it could go to the origin of that delegated administrative power and divest itself of it by allowing the type approval to lapse. In the Commission's view BL's abuse of its dominant position lies precisely in the fact that it resorted to those three possibilities.

II — Abuse

7. I propose to consider in turn the submissions put forward by BL to refute the three complaints which, in the Commission's view, amount to abuse of a dominant position.

The first complaint: The discontinuance of the type approval for left-hand-drive Metros

8. By 1 October 1981, one year after the official launch of the Metro, BL was required to have notified all the alterations

made to the versions initially approved. The new information documents notified by BL concerned only right-hand-drive versions. Consequently, as was stated in a letter dated 19 July 1985 from the office of the United Kingdom's Permanent Representative to the European Communities, although strictly speaking the type approval for left-hand-drive versions had not lapsed, the manufacturer could no longer issue certificates of conformity for re-imported left-hand-drive Metros incorporating alterations which had not been notified.

In the contested decision, the Commission expressed the view that BL had sought by that means to prevent the competitive re-importation of vehicles of its own make, and thus abused its statutory monopoly. To counter that view, BL put forward three lines of argument.

(1) BL was free to decide whether or not to renew the type approval for left-hand-drive Metros.

9. According to BL, in view of the particular nature of the traffic rules in the United Kingdom, any manufacturer is free to decide not to market in that Member State a left-hand-drive model which is normally intended for export. An undertaking is deemed to abuse its dominant position where it frustrates the normal rules of competition. However, those rules in fact require that a type approval for left-hand-drive cars should not be maintained in a Member State which drives on the left.

BL was free not to request the approval and free not to renew it. The correlation between the freedom to market and the freedom to decide whether or not to seek type approval does not mean that BL can be compelled to maintain indefinitely the type approval of left-hand-drive versions of the Metro and therefore to remain under the commercial obligation to supply them for sale on a motor-vehicle market in which it is not suggested that it occupies a dominant position.

More generally, BL claims that the Commission's approach is discriminatory. BL is the only United Kingdom manufacturer required to continue issuing certificates of conformity for left-hand-drive versions. BL is also the only manufacturer to have had proceedings instituted against it, although its decision was no more serious than that taken by the other manufacturers not to seek approval.

(2) The decision not to renew type approval had very little effect on parallel imports.

10. The statistics to which I have already referred show that the volume of trade was greater when there was no type approval than after the approval had been re-established. According to BL, the opportunities provided by the personal importation procedure made it possible to compensate for the absence of type approval.

Moreover, only *potential* trade importers were affected by that measure; it did not concern customers of long standing. In addition, as was pointed out at the hearing, it could not frustrate their expectations because of the very short period of time which had elapsed between the launch of the Metro in the United Kingdom and its launch on the continent. In that respect there is therefore no distinction to be made between the decision not to seek approval and the decision not to renew a prior approval, since the effect is the same.

(3) Finally, it is objectively justified.

11. According to BL, it was no longer necessary to maintain an NTA certificate on commercial grounds. The stocks of unsold or damaged left-hand-drive Metros were

greatly reduced. Moreover, BL's decision was taken in accordance with its policy of cutting costs with a view to redressing its position.

The decision not to renew type approval was intended to preserve BL's selective distribution system. Thus in order to avoid jeopardizing the very existence of its system, BL was entitled not to provide assistance to non-approved United Kingdom dealers, in other words dealers outside its network.

As is shown by the numerous examples of defects, such dealers are not capable of providing a high-quality service, because they lack the proper equipment or training for carrying out a conversion, which affects essential mechanisms, such as the steering and the brakes. Since conversions can be carried out after the issue of the certificate of conformity without affecting its validity, BL had no choice but to take the decision in question in the interests of the safety of consumers and in order to protect the commercial reputation of the model.

Finally, on a more general level, BL considered that by requiring it to maintain the NTA certificate for left-hand-drive vehicles, the Commission decision breached the principle of proportionality by failing to take into account the need to protect the selective distribution system and the considerable possibilities of importation for personal use.

12. Before considering the merits of those arguments, it is necessary to define more clearly the precise conduct criticized by the Commission.

Contrary to BL's claim, the Commission's criticism as such cannot be regarded as seeking to restrict the undertaking's commercial freedom on the motor-vehicle market. In particular, it does not compel the undertaking to market left-hand-drive vehicles in the United Kingdom itself. Moreover, it is not in these proceedings a question of prejudging the merits of a decision not to seek approval, which might be justified by the undertaking's desire to protect itself from parallel imports supposedly for personal use, or the merits of a refusal by the manufacturer, for the same reasons, to supply information making it possible to reduce substantially the cost of the procedure for obtaining a PMAC. The contested decision does not concern such conduct.

What is at issue is the decision taken by BL not to maintain in October 1981 the national type approval for the left-hand-drive version of the Metro which it had previously requested and obtained. The problem is therefore to determine whether BL used its monopoly to protect itself from parallel imports of left-hand-drive Metros whose prices competed with those of United Kingdom Metros by preventing their registration in the United Kingdom.

In my view the reply must be that it did. As the Commission noted, the chronological order of certain events is, in that respect, illuminating. The decision not to renew the approval was taken between two meetings of the BL dealer council, as is clear from the minutes of those meetings. At the first, which was held on 16 July 1981, the question was raised of cars 'purchased at European prices specifically for re-importation'. At the second meeting, on 4 November 1981, the decision was

announced as a means of closing the 'personal import loophole' since 'left-hand-drive cars not subject to personal import exceptions will not . . . be legally registerable'.

It may be noted in passing that there was a danger that such a measure might have the the opposite effect of encouraging fictitious personal imports, as the statistics relied on by BL may show. I would add that in order to counter such operations it would have been sufficient for BL to ask the British authorities to intervene, a step which moreover it had considered.

In the light of those circumstances, the refusal to renew the NTA certificate does indeed appear to be a response to the concerns manifested by BL's approved distributors. Moreover, BL acknowledged that the pressure exerted by the members of its network had led it to reconsider the commercial justification of the approval.

Therefore the decision not to renew the approval, which was taken as a result of the two abovementioned meetings, was indeed directed against commercial parallel importations.

13. The chronology of the events thus clearly reveals that the measure adopted was intended to restrict competition. The explanations put forward by BL to justify its adoption or to minimize the effect which it had on re-importations is not in my view such as to alter that assessment.

The claim that there was no commercial justification for maintaining the approval is not supported by specific proof, such as statistics relating to the evolution of 'frustrated' stocks or the reduction of costs. In particular, BL does not explain either how it was able to reduce the frustrated stocks in the period between the launch of the left-hand-drive Metro and October 1981 or how the discontinuance of the approval led to a reduction in costs despite the fact that the notifiable alterations are in substance identical whichever version is concerned, left-hand-drive or right-hand-drive, as BL itself made clear in reply to one of the Court's questions concerning the re-establishment of the approval in March 1983.

In connection with BL's need to protect its selective distribution system and, indirectly, the safety of consumers and the reputation of the model, I would make the following comments.

The need to protect a distribution network cannot justify a measure based on the manipulation of the undertaking's statutory monopoly, which, by isolating the British market from the continent, reduces the purchasing possibilities of British consumers by preventing importation through non-approved dealers, a possibility which BL had itself encouraged by its initial decision to seek approval. In its notice concerning Commission Regulation (EEC) No 123/85 of 12 December 1984 on the block exemption of motor-vehicle distribution agreements (Official Journal 1985, L 15, p. 16) the Commission described as 'abusive hindrance' unilateral measures on the part of a manufacturer which limit

'the European consumers' final freedom to purchase',

such as where

'manufacturers . . . withhold their cooperation in the registration of vehicles which European consumers have imported from other Member States' (Commission Notice concerning Regulation (EEC) No 123/85, Official Journal 1985, C 17, p. 4, point I (2)).

Similarly, in its judgment of 17 September 1985, in *Ford*, the Court dismissed actions against a decision in which the Commission

found to be contrary to Article 85 of the EEC Treaty the unilateral measure taken by the company representing Ford in Germany, to halt deliveries of right-hand-drive vehicles to its own dealers

'in order to protect, within the Ford group, the position of Ford Britain and the British dealers'

because, as the Commission stated,

'distribution systems within the Community should not cause a substantial part of the Community to be deliberately insulated from the rest' (Joined Cases 25 and 26/84, paragraph 41 of the decision).

As regards the problems relating to the safety of consumers and therefore the reputation of the model, the solution can only be legislative. If there is a gap in the British system of type approval — the apparent lack of a right on the part of a manufacturer or any authority appointed to that effect to check that a conversion has been properly carried out after the issue of the certificate of conformity — the solution must be found in the adoption of appropriate laws or regulations, and not in a measure which by distorting the normal competition represented by prices of re-imported vehicles, itself encouraged by BL's initial decision, amounts to depriving dealers and therefore private individuals of the possibility of purchasing vehicles at a lower price. It may be noted, in addition, that the cases of defects submitted by BL, which were identified during the period subsequent to the re-establishment of the approval, clearly cannot justify the decision taken in October 1981.

BL also sought to show that the non-renewal of the approval had no significant effect. The statistics which it submits to that end are not decisive. It is not possible on the basis of those figures to assess the level of imports which could have been attained if the decision in question had not been adopted. It would have been more conclusive in that respect to submit the figures regarding re-importations in the period *prior* to the failure to renew the approval, since that would have made it possible to determine the rate of increase. In particular, as the Commission pointed out, the resulting comparison is hardly convincing, since there is no breakdown into personal and commercial imports which would have made it possible to establish that the former took over from the latter once the type approval had lapsed. Even if that was the case, it could have been because the applicable British rules were infringed, since trade importers were forced — like Mr Merson — to use the expedient of fictitious personal importation.

The distinction between habitual and potential customers does not in my view affect the assessment of BL's conduct.

Both habitual and potential customers, who are dependent on BL for the right to put their vehicles on the road, were in fact prevented from taking advantage of real price competition. As the Commission correctly pointed out, BL frustrated the expectations which it had itself aroused by first creating a legal situation — namely, the type approval of left-hand-drive vehicles — which gave rise to a factual situation — namely, the development of a trade in re-importations.

There is, therefore a clear distinction to be made between the decision not to seek approval and the decision not to maintain the approval once it had been obtained. By

discontinuing the issue of certificates of conformity, that second measure represented for all the importers, including those who, like the intervener, wished to register a vehicle which had already been imported and those who were preparing to effect such importations, a *fait accompli* which entirely undermined their projects. It is true that the approval was valid for a short period, but not so short as to prevent the appearance and, still further, the development of a volume of parallel imports, as is demonstrated not only by the six cases referred to by the Commission, to which I shall return, but also by the pressure exerted on BL by its approved dealers.

The submission based on discrimination is unfounded, since BL's position is not comparable to that of other manufacturers. It is the only British manufacturer against which proceedings have been instituted. It is also the only manufacturer to have sought approval for a left-hand-drive model. It must therefore accept the consequences of a situation which it itself created.

Finally, as regards the submission based on breach of the principle of proportionality, it must be stated that the exception for personal imports cannot, as I have already stated, fully compensate for the absence of type approval. The Commission is right to stress the restrictive conditions which make that possibility an exceptional importation procedure, free from the constraints of type approval. In the light of those conditions, consumers who wish to take advantage of the price differential will prefer, for the sake of convenience, to go to a motor-vehicle dealer where they can acquire directly a vehicle whose conformity has already been certified and which has already been converted to right-hand-drive.

The second complaint: Refusal to issue certificates of conformity

14. In its decision, the Commission notes that the type approval of left-hand-drive Metros did not expire on 1 October 1981 but on 1 April 1982. None the less, BL refused to grant applications submitted between June 1981 and April 1982. The Commission relies in that respect on the correspondence between BL and six dealers and private individuals.

BL contests the assumption thereby made as to the moment when the type approval expired. It also contests the Commission's appraisal of its conduct in relation to the six individual applications which were submitted to it.

15. As regards the period for which the type approval remained valid, BL states that under the laws and regulations governing the procedure for obtaining the NTA certificate the validity of the certificate expires when notifiable alterations cease to be notified to the authorities. In this case, since no alteration concerning the left-hand-drive version was notified after 24 September 1981, the approval for that version was deemed to expire on 1 October 1981. There was therefore no 'period of grace' of six months.

The Commission contends that it is immaterial whether, under British law the type approval becomes void immediately after the manufacturer's failure to notify notifiable alterations or whether there is a 'period of grace' of six months, provided that BL was convinced that it was still possible to issue certificates of conformity until 1 April 1982.

16. In relation to the six cases relied on by the Commission to establish BL's refusal to

issue the certificates, BL puts forward the following arguments to explain its attitude.

For the companies Auto Europa and International Cars RHT Limited, which asked it to communicate to them the type approval number of the left-hand-drive Metro, BL replied in its letters of 18 and 23 June 1981 that a certificate of conformity was the necessary prerequisite for the registration of any re-imported vehicle and that no certificate had been issued in respect of such a vehicle because it had been intended for export.

In the case of Mrs Fox, who asked whether an NTA certificate existed for Metros exported to other Member States, BL concedes that in its letter of 11 August 1981 it did not draw her attention to the possibility of issuing to her a certificate of conformity, that, contrary to what it stated, the warranty remained valid in the case of a conversion properly carried out and that such a conversion did not affect the validity of the type approval of the model. It notes however that Mrs Fox, who described herself as a personal importer, could have used the personal importation procedure, as BL made clear in its reply.

In addition, in its letter of 16 November 1981 BL refused to communicate to Royal Cars AMS Autos Limited the information necessary to obtain a PMAC. The contested decision does not, however, deal with conditions for issuing PMACs.

According to BL, its refusal on 17 November 1981 to comply with Mr Merson's request for it to certify the conformity of a left-hand-drive Metro, the chassis number of which had been communicated to it, was based on the fact that the NTA certificate had lapsed. BL concedes however that a certificate ought to have been issued, since it had been established on the basis of the chassis number that the vehicle in question had been manufactured before 1 October 1981.

Finally, in reply to Mr Doyle, BL declared on 12 January 1982 that the three Minis whose chassis numbers he had communicated to it could not be approved since they had been manufactured after the lapse of the type approval.

17. Having regard to the evidence, the view expressed by the Commission in its decision concerning the abusive nature of the refusal to issue certificates of conformity must be accepted in substance, although modified with respect to the duration of the infringement complained of.

In connection with the effect of the failure to notify on 1 October 1981 the alterations to the left-hand-drive versions of the Metro, I would make the following observations.

As is clear from the letter of 19 July 1985 from the office of the United Kingdom Permanent Representation to the European Communities, where alterations are notified, the former approval number for the original models remains valid for a period of six months. Where notifiable alterations are not communicated there is no period of grace either in law or in practice. Thus the type approval for left-hand-drive Metros lapsed immediately following the expiry of the time-limit for the notification of alterations on 1 October 1981, so that no certificate of conformity to the original type vehicle could be issued after that date for new Metros, intended for export, incorporating the alterations which had not been notified.

In the light of that consideration, is the Commission correct in assuming that BL was in fact convinced of the existence of such a 'period of grace'? I do not think so.

It is not possible to accuse BL in respect of the same period, of both having failed to renew a lapsed NTA certificate and having believed, mistakenly, that it remained in force. In any event, and whatever view is taken in that regard, it should be noted that the Commission, as BL correctly pointed out, relied exclusively in the contested decision on the *existence* of 'the period of grace' and not on any conviction on the part of BL. The duration of the second infringement therefore does not extend beyond 1 October 1981, except where applications submitted after that date concerned left-hand-drive Metros manufactured before that date.

It is in that light that we must examine the six individual cases in which, according to the Commission, BL refused its assistance.

18. It is the communication of the chassis number of the imported vehicle which makes it possible for the manufacturer to identify it in order to determine the date and the original version — left-hand-drive or right-hand-drive — of manufacture. It is then in a position to certify the conformity of the vehicle with the type vehicle. All certificates of conformity therefore include the chassis number of the imported vehicle and the type approval number of the NTA certificate for the type vehicle to which it conforms. Therefore any application for a certificate for a Metro which could be identified by its chassis number as a left-hand-drive version manufactured before 1 October 1981 should be accepted by BL, *whenever it is submitted,* subject only to the need for it or one of its approved distributors to verify that the four basic alterations referred to above have been effected.

What was in fact the position? Of the six cases relied upon, only the first five are relevant. Mr Doyle's application did not relate to Metros, with which these proceedings are concerned. Moreover, BL correctly indicated the procedure to be followed by him and understandably refused, at first, to issue a certificate for vehicles manufactured after the type approval had lapsed.

In relation to the first four applications, BL's attitude was tantamount to withholding information.

BL replied to Auto Europa and International Cars RHD Limited in such a way as to cast doubt on the possibility even of the existence of type approval for the left-hand-drive version of the Metro, although at that time the approval was in force. It stated to the first of those companies that the administrative workload arising from the application made it necessary for 'full details of each vehicle to be provided to facilitate the necessary compliance validation'. In reply to International Cars RHD Limited, BL did not indicate the procedure to be followed for the continental Metros which the party concerned expressed a wish to re-import, it merely stated that a certificate of conformity must be issued. The letter to AMS Autos Limited is even shorter; it does not even refer to the possibility of a certificate of conformity since BL did not consider that the 'provision of the information requested' regarding the importation of continental Metros was 'appropriate'.

The reply to Mrs Fox is equally dissuasive. She was considering purchasing a left-hand-drive Metro on the continent and asked BL whether an NTA certificate existed for the vehicles which it exported to the continent. BL made no effort to enlighten her, referring solely to the existence of such a certificate in each Member State of exportation. In particular, BL stressed that where a left-hand-drive vehicle was converted to right-hand-drive the warranty was violated and the type approval was 'invalidated', without any further explanation.

It must be said that BL has alluded to the doubtful reputation of two of the dealers

and, as far as Mrs Fox is concerned, admits that it made a mistake, which led it to state that, depending on the chassis number, it could issue her a certificate of conformity. Nevertheless, each of its replies quite clearly shows its reluctance to provide assistance to the parties concerned, despite the fact that, as is clear from the case of Mrs Fox which I have just cited, the appropriate reply was, like the procedure itself, extremely simple.

To the charge of withholding information requested must be added BL's refusal to issue to Mr Merson a certificate of conformity for a left-hand-drive Metro notwithstanding the fact that he had communicated to them the chassis number of the car and although a certificate had been issued in respect of another vehicle for which the chassis number had also been communicated. There is no doubt that once that number was identified BL must have been aware that that request, although submitted after 1 October 1981, concerned a vehicle manufactured before that date, as is shown moreover by the attempt which it subsequently made to correct the situation.

In conclusion, consideration of the correspondence in the five cases cited shows that BL clearly intended to deter re-importations. Since International Cars RHD Limited, Royal Cars AMS and Merson were motor-car dealers who, as BL was aware, intended to effect parallel imports, that conduct must be viewed in the same light as the decision not to renew the NTA certificate and therefore as an additional manifestation of the abuse of its dominant administrative position. I repeat however that, contrary to the view expressed by the Commission, I do not believe that the infringement persisted until April 1982; I consider that it continued until 17 November 1981, when the letter of refusal was addressed to Mr Merson.

The third complaint: Excessive fees

19. In the contested decision, the Commission established a causal connection between the pressure exerted on BL by its approved distributors and the fixing in July 1981 of the fee of UKL 150 imposed on dealers for the issue of a certificate of conformity for left-hand-drive versions. That amount, which was six times higher than the previous fee of UKL 25 that still applied in respect of the certificates for right-hand-drive versions, was excessive, in the Commission's view, since the administrative work required was still the same. The Commission stated that the reduction of that fee to UKL 100, which became effective on the re-establishment of the type approval on 16 March 1983, was apparently made at the expense of private individuals, who before that paid the UKL 25 fee.

Those fees exceed the amount regarded by the Court as reasonable in its judgment in *General Motors.* In view of the difficulty of obtaining right-hand-drive versions or of using the PMAC procedure, they penalize parallel imports.

20. Before considering the submissions put forward by BL, for the sake of clarification it is necessary to identify the different types of fees charged by it.

BL stated that from 1 July 1981 it charged two different fees, one of UKL 150, for applications submitted by dealers, and the other of UKL 100, for applications from private individuals.

Moreover, BL indicated that the issue of a certificate of conformity for vehicles which had first been converted for right-hand-drive was subject to the payment of an additional fee of UKL 100 to cover the inspection costs.

In view of the fact that the type approval for left-hand-drive versions lapsed on 1 October 1981 and was re-introduced on 16 March 1983, the following table may be drawn up of the different fees charged by BL.

(UKL)

Period / Versions	until 1.7. 1981	from 1. 7. 1981 to 1. 10. 1981	after 16. 3. 1983	1986
right-hand-drive		25		
left-hand-drive	25	dealers 150 private individuals 100	100	50

right-hand-drive after conversion: additional fee 100

21. BL sought to counter the Commission's assessment by showing that the fees in question were of limited application.

The UKL 150 fee applied only for a short period and therefore only in a few cases. The UKL 100 fee for private individuals could be avoided by using the personal import procedure. Thus, in contrast to the Court's finding in its judgment in Case 26/75, parallel imports were not curbed.

In any event, BL claims that its fees were justified by the work involved in issuing a certificate and maintained that they are much lower than those charged by other manufacturers. In that respect, BL notes that manufacturers who agree to issue a certificate of conformity for a vehicle which has been converted to right-hand-drive do so only after inspection and charge anything from UKL 100 to UKL 650 or more. By penalizing only BL, the Commission adopted a discriminatory decision.

Finally, BL considers that the Commission has not proved that the fees are excessive in relation to the economic value of the service provided, as required under the test laid down by the Court in *General Motors.*

22. Those arguments cannot be accepted. It is possible to extract from the Court's decision in *General Motors* the essential criteria for determining whether or not a fee of the type in question is excessive.

The Court held that once the dominant position occupied by the undertaking in question on the market in the supply of services necessary for the registration of the vehicle in Belgium has been defined.

'it is possible that the holder of the exclusive position . . . may abuse the market by fixing a price — for a service which it is alone in a position to provide — which is to the detriment of any person acquiring a motor vehicle imported from another Member State and subject to the approval procedure'.

The Court added that

'Such an abuse might lie, *inter alia*, in the imposition of a price which is excessive in relation to the economic value of the service provided and which has the effect of curbing parallel imports by neutralizing the possibly more favourable level of prices applying in other sales areas in the Community . . .' (Case 26/75, cited above, paragraphs 11 and 12 of the decision).

Considering the question in the light of 'all the factors which gave rise to the decision of the Commission', the Court held that the fee charged to certain individuals

'was excessive in relation to the economic value of the service provided by way of the approval procedure' (Ibid. paragraphs 15 and 16).

I do not consider it necessary to calculate that amount. As BL correctly pointed out, the circumstances of this case cannot be compared, from that point of view, with those in Case 26/75. On the other hand, it is necessary, to seek to identify, in the light of all the relevant information, the factors contributing to the economic value of the work involved in the issue of a certificate of conformity.

Remember that the issue of a certificate of conformity for a left-hand-drive Metro imported from the continent requires:

(i) the identification of the vehicle by its chassis number, which makes it possible to ensure that the vehicle in question conforms to the left-hand-drive version of the original type vehicle approved; and

(ii) an inspection to ensure that the four basic alterations necessary for putting a vehicle on the road in Great Britain have been carried out.

As BL expressly conceded at the hearing, it is not necessary to carry out a vehicle inspection of the type required where approval is sought for a vehicle which has been converted to right-hand-drive. The conversion takes place subsequently and, as has been seen, does not affect the validity of the certificate of conformity.

As BL informed the Commission in a telex message of 9 February 1983, the fact that type approval for the different left-hand-drive models had just been re-established therefore meant that:

'There is a simple, quick and inexpensive route whereby an importer can obtain the necessary information to comply with NTA regulations'.

The only reservation that I would express in that respect concerns BL's assessment of the cost of the operation. Although at that stage the fee had been reduced to UKL 100, it was still disproportionate to the service provided. To establish, by the series number, that the vehicle was manufactured by BL at a date at which an NTA certificate existed for the reference version, and then to ascertain, on the basis of an invoice issued by one of its approved distributors that the headlight beams have been redirected, that the fog lamp and wing mirror have been placed on the right, and finally that the speedometer has been calibrated in miles, demands two small operations requiring a minimum amount of the manufacturer's time, in particular where, as is the case with BL, the manufacturer has centralized the competent departments by creating a single type approval department. Those factors are sufficient in themselves to show how low the economic value of the service in question is.

It is not easy to carry out a comparative analysis of the fees charged by British manufacturers, since BL is alone in having obtained type approval in Great Britain for left-hand-drive versions. For that reason the figures submitted by BL are not conclusive, since they incorporate the costs of the inspection of the vehicle converted to right-hand-drive, costs which are not incurred in the certification of left-hand-drive vehicles. The figures submitted by the Commission, which were supplied by the SMMT, show that during the period in question, namely until March 1983, fees charged for the approval of re-imported vehicles varied from nought to UKL 50 and, since that time, have not exceeded UKL 75. In view of the particular circumstances of BL, that can only be an indication. Nevertheless, other factors, which were moreover stressed by

the Commission in its decision, highlight the disproportion between the fees charged by BL and the economic value of the service provided.

As the Commission correctly pointed out, the cost of issuing a certificate of conformity certainly does not represent a decisive factor in setting the level of the fee. The successive reduction of the fee to UKL 100 and then at its present level of UKL 50, in other words an amount three times lower than the original amount, is revealing in that respect. What is more, the difference which existed between the fee charged to private individuals (UKL 100) and that charged to dealers (UKL 150) is equally significant. The justification advanced by BL — that the profit margin of the dealers made it possible for dealers to meet the cost more easily — would seem to confirm that the fee was not devised to cover the real costs but was calculated according to the financial capabilities of those seeking approval. The abusive nature of such conduct is obvious.

On the same basis, it is difficult to understand what could justify the difference between the fee charged for left-hand-drive vehicles — UKL 150 to UKL 100 — and that of UKL 25 charged for right-hand-drive vehicles. In both cases an NTA certificate exists; the only difference relates to the basic alterations to be carried out on left-hand-drive versions. I cannot see how the simple verification of an operation paid for by the consumer can justify the charging of a sum which is six times or indeed only four times greater.

I would add finally that BL admitted that those fees were a result of pressure exerted by its dealers. That provides confirmation that they were part of a deliberate policy to deter parallel imports.

The availability to private individuals of the alternative procedure for personal importation cannot affect the substance of the infringement committed by BL. As I have already stressed, the legal conditions required to qualify for that exemption mean that certain private individuals could not or would not use that procedure. The case of Mrs Fox, to which I have already referred, may be an example. In particular, the existence of that alternative in no way excuses the excessive nature of the fees charged for motor-vehicle dealers, expressly referred to by the Commission in its decision. Clearly, in view of the problems relating to the importation from the continent of a vehicle which must be approved and subsequently converted, consumers will normally address themselves to dealers. For them, a fee of UKL 150 or UKL 100, in the light of the circumstances and the considerations which I have mentioned, has particular deterrent value because such a fee is liable to negate the price advantage derived from the importation of left-hand-drive vehicles.

23. Consideration of all the submissions put forward by BL against the three charges of anti-competitive conduct laid by the Commission in its contested decision, leads me to the conclusion that BL abused the statutory monopoly conferred on it for the approval and certification of the conformity of vehicles.

Under pressure from its dealers, BL sought to restrict competition, by charging excessive fees, by refusing to issue certificates of conformity and by refusing to review the NTA certificate so as to partition the British market in right-hand-drive Metros, thus protecting such vehicles from the threat of price competition represented by the development of parallel imports of continental left-hand-drive versions of the

same model, in particular from Belgium. There is therefore no doubt that trade between Member States was affected, since the attempt to isolate the British market constituted an undeniable obstacle to the economic interpenetration sought by the Treaty.

It is thus established that BL abused its dominant position. It remains to consider the arguments put forward by BL to show that the Commission infringed procedural requirements in the course of the preliminary administrative procedure.

III — Conformity of the procedure

24. In BL's view, the attitude adopted by the Commission in the course of the procedure following the hearing of 19 October 1982 gave rise to procedural irregularities vitiating the contested decision. In that respect it claims that, with regard to the uniform fee of UKL 100, the Commission infringed the principle of the right to be heard and that, more generally, it breached the principle of good administration and misused its powers.

25. As far as the reduced fee of UKL 100 is concerned, BL's submissions enjoin us to consider whether that infringement was properly established and whether, as regards its gravity and its duration as assessed by the Commission, it should be dated from 16 March 1983, in view of the fact that:

(i) only the UKL 150 fee was referred to in the statement of objections;

(ii) the Commission considered that the reduction of that fee was acceptable until 31 August 1983; and

(iii) it failed to give BL an opportunity to make its views known.

In considering that submission it is therefore necessary to begin by examining the statement of objections, which defines the subject-matter of the procedure initiated by the Commission and forms the basis for its decision.

In the statement of objections the Commission refers only to the UKL 150 fee fixed by BL for dealers. It must however be pointed out that the passage relating to it draws attention to its disproportionate nature in relation to the UKL 25 fee which had previously been charged and was still charged for right-hand-drive vehicles (points 62 and 63 of the statement of objections). The Commission also stresses the differences existing between fees charged to private individuals and those charged to dealers, despite the fact that the administrative work is the same. It is therefore entitled to contend that it did not base its position on a specific sum; it concentrated on the general level of the fees in order to show by means of a comparative analysis that it was excessive.

I do not see how the Commission can be criticized in that respect. It had of necessity to construct its argument on the basis of the UKL 150 fee then in force. It could but note with satisfaction the decision taken by BL to reduce it to UKL 100. It took the view, however, that even after that reduction the fee was still excessive. It therefore asked BL to state the real justification for charging that sum. BL merely proposed that the question should be considered at a later stage. The Commission, which had given the undertaking the opportunity to be heard, was not under a duty to grant it a postponement. It was thus entitled to adopt its decision definitively establishing that the fee was excessive notwithstanding its reduction. It may be recalled, however, that, in fixing the amount of the fine the Commission took

into consideration BL's 'cooperative attitude' (paragraph 31 of the decision).

In that respect the Court has held that

'Observance of the right to be heard is in all proceedings in which sanctions, in particular fines or penalty payments, may be imposed a fundamental principle of Community law which must be respected even if the proceedings in question are administrative proceedings'.

In connection with a statement of objections the Court has held that

'These requirements are satisfied.. if the notification sets forth clearly, albeit succinctly, the essential facts upon which the Commission relies . . . ',

and if the undertakings in question have been

'afforded the opportunity during the administrative procedure to make known their views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim that there has been an infringement of Article 86 of the Treaty' (Case 85/76 *Hoffmann-La-Roche* v *Commission* [1979] ECR 461, paragraphs 9 to 11 of the decision).

In its judgment of 7 June 1983 in *Musique Diffusion Française* the Court stated that:

'The Commission must take into account the factors emerging from the administrative procedure in order either to abandon such objections as have been shown to be unfounded or to amend and supplement its arguments, both in fact and in law, in support of the objections which it maintains, provided however that it relies only on facts on which the parties concerned have had an opportunity to make known their views and provided that, in the course of the administrative procedure, it has made available to the undertakings concerned the information necessary for their defence' (Joined Cases 100 to 103/80 *Musique Diffusion Française* v *Commission* [1983] ECR 1825, paragraph 14 of the decision).

Broadly speaking, I do not think that those principles have been breached in this case.

26. On the question of the duration of the infringement with which BL is charged, it may be noted that in its judgment in *Musique Diffusion Française*, the Court held that

'the duration of the infringement is one of the factors to be taken into consideration when fixing the fine . . . ',

so that

'the Commission, particularly when it proposes to impose fines, must state, as an essential factor, the duration established by it on the basis of the information available to it at the time when it formulates the statement of objections'.

The Court added that the Commission

'may extend the period thus stated if supplementary information obtained during the administrative procedure so justifies, provided that the undertakings have had an opportunity to make their views known in that respect' (*Musique Diffusion Française*, cited above, paragraph 15 of the decision).

As I have stated, that requirement was fulfilled in this instance by the letter of 31 August 1983. The Commission made it clear that it considered the UKL 100 fee to be

excessive, which would extend the duration of the infringement established initially. The Commission was therefore entitled to take 16 March 1983 as the starting point for that infringement in the contested decision.

27. BL also contends that, by its conduct in the course of the administative procedure, the Commission infringed the principle of good administration and misused its powers.

The Commission gave BL to understand that it was satisfied with the corrective measures adopted by BL — renewal of the type approval and reduction of the fee — only in order to encourage it to reduce the price of its right-hand-drive vehicles on the continent. In so doing it not only infringed the principle of good administration, by disregarding the efforts made by BL, but also misused its powers, since the price of right-hand-drive versions on the continent did not come within the scope of the procedure initiated.

28. In the first place, it must be stated that consideration of the correspondence exchanged between the parties following the hearing on 19 October 1982 clearly shows that the Commission in no way disregarded the efforts made by BL. Indeed, the preliminary administrative procedure had fulfilled one of its objectives, namely to provide

'the undertakings concerned with an opportunity to bring the practices complained of into line with the rules of the Treaty' (judgment of 8 November 1983 in Joined Cases 96 to 102, 104, 105, 108 and 110/82 *IAZ* v *Commission* [1983] ECR 3369, paragraph 15 of the decision).

The claim based on the breach of the principle of good administration cannot therefore be accepted.

As regards the alleged misuse of power, I would first point out that, whilst it is true that the question of the prices of right-hand-drive vehicles on the continent was raised following the drawing up of the statement of objections, it was raised with BL's agreement. Moreover, BL submitted a comparative table of prices of right-hand-drive and left-hand-drive versions supplied in the various Member States and explained its price policy.

There is however a second consideration which must be taken into account. The contested decision was in no way concerned with price of right-hand-drive versions on the continent. In my view, that decision is therefore not contrary to the principle of good administration or vitiated by a misuse of power.

29. The Commission decision thus conforms to the procedural requirements and is justified as to the substance, with regard both to the principles relied on and to the amount of the fine. BL's criticisms must therefore be dismissed.

Consequently, I propose that the Court should dismiss the application brought by BL and order the applicant to pay the costs.