JUDGMENT OF THE COURT (Third Chamber)
18 December 1986 *

In Case 10/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de grande instance [Regional Court], Paris, for a preliminary ruling in the action pending before that court between

VAG France SA, Paris,

and

Établissements Magne SA, Angoulême,

on the interpretation of 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 (Official Journal 1985, L 15, p. 16),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: S. Hackspiel, Administrator

after considering the written and oral observations submitted on behalf of

VAG France SA by Yann François, of the Paris Bar,

Établissements Magne SA by Jean Threard, of the Paris Bar,

the Commission of the European Communities by its Legal Adviser, Norbert Koch,

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 4 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 27 November 1986,

gives the following

JUDGMENT

1 By judgment of 18 December 1985, which was received at the Court on 16 January 1986, the Tribunal de grande instance, Paris, referred to the Court for a preliminary ruling, under Article 177 of the EEC Treaty, a question on the interpretation of 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 (Official Journal 1985, L 15, p. 16).

2 The question was raised in the context of proceedings brought by VAG France SA, a distributor in France of motor vehicles and products bearing the Volkswagen and Audi marks, against Etablissements Magne SA, an exclusive dealer entrusted with the sale to the public and the servicing of VW and Audi products in certain parts of the district of Angoulême. The action concerns the discontinuance of commercial relations between the parties to the main action which arose from a dispute regarding the consequences for their agreement of the entry into force of Regulation No 123/85.

3 Article 5 (2) of Regulation No 123/85 made exemption from the prohibition contained in Article 85 (1) of the EEC Treaty for certain categories of distribution agreements in the motor vehicle industry dependent upon the condition that the agreement was for a fixed term of at least four years or of indefinite duration and subject to termination on at least one year's notice.

4 It is apparent from the documents before the Court that the commercial relations between the parties were governed primarily by standard agreements concluded each year for a term of one year and that the last such agreement was signed on 18 December 1984 for the period from 1 January until 31 December 1985. After the adoption of Regulation No 123/85 VAG France proposed to Établissements Magne the conclusion of a new agreement of indefinite duration from 1 January 1986 but made the conclusion of that agreement dependent upon the attainment of certain sales targets for the year then running. Établissements Magne rejected the proposal and insisted upon the conclusion of a new contract for a fixed term of four years, pointing out that the existing contract which had to be brought into conformity with Regulation No 123/85 was itself for a fixed term.

5 The Tribunal de grande instance, Paris, considered that the dispute between the parties turned essentially on the question whether the entry into force of Regulation No 123/85 required them to amend the existing agreement between them in order to bring it into conformity, in particular, with Article 5 (2) of the regulation concerning the duration of an agreement by extending the duration of their agreement to four years, as is maintained by Établissements Magne, or whether, as is argued by VAG France, it merely had the effect of rendering void the exclusivity and no-competition clauses and, conceivably, the whole of the agreement until the expiry thereof or until the parties had concluded a new agreement which was in conformity with the Community rules. In order to give a ruling on that dispute the Tribunal de grande instance considered it necessary to request the Court of Justice to give a ruling

'on the application of Regulation (EEC) No 123/85 of 12 December 1984 to the agreement concluded on 18 December 1984 for a period of one year from 1 January 1985 until 31 December 1985, without tacit renewal, between VAG France and Etablissements Magne, having regard to the submissions of those parties'.

6 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case, the relevant Community rules and the observations submitted to the Court by the parties to the main action and by the Commission which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 It must be pointed out in the first place that the Court has no jurisdiction under Article 177 of the EEC Treaty to rule upon the application of Community law to specific cases. It may nevertheless extract from the wording of the question formulated by the national court, having regard to the facts stated by the latter, those factors which come within the field of Community law and which will enable the national court to resolve the legal problem before it.

8 Considered in that light, the question referred to the Court by the Tribunal de grande instance, Paris, seeks to ascertain whether Regulation No 123/85 is to be interpreted as meaning that Article 5 (2) thereof lays down mandatory provisions directly affecting the validity or content of the agreement as a whole or certain clauses thereof or obliges the contracting parties to adapt the content of their agreement in order to bring it into conformity with the aforesaid provisions.

9 The reply to that question must be sought in a reading of Regulation No 123/85, considered in the light of Article 85 of the EEC Treaty and of Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices (Official Journal, English Special Edition 1965-66, p. 35), on the basis of which Regulation No 123/85 was adopted.

10 Under Article 85 (1) of the EEC Treaty certain agreements between undertakings which are capable of affecting trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market are incompatible with the common market and prohibited. According to Article 85 (2) such agreements are automatically void unless the provisions of Article 85 (1) are declared inapplicable by the Commission in accordance with Article 85 (3).

11 The decision declaring Article 85 (1) inapplicable, provided for in Article 85 (3), may be adopted by the Commission either in the form of an individual decision in respect of a specific agreement under Council Regulation No 17 of 6 February 1962, the first regulation implementing Articles 85 and 86 of the Treaty (Official Journal, English Special Edition 1959-62, p. 87) or in the form of a regulation exempting certain categories of agreements under Article 1 of Regulation No 19/65. By means of such a regulation the Commission lays down the conditions

upon which the prohibition contained in Article 85 (1) is inapplicable to an agreement even though the latter, *per se*, satisfies the conditions of that prohibition.

12 It follows from the foregoing that 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.

13 Where an agreement does not satisfy all the conditions laid down by Regulation No 123/85 the parties may either request the Commission to adopt an individual decision declaring Article 85 (1) inapplicable or contend that the conditions laid down in another regulation providing exemption in respect of other categories of agreements are satisfied, or even establish that the agreement in question is on some other ground not incompatible with the prohibition contained in Article 85 (1).

14 It must be added that the Court has held (judgments of 30 June 1966 in Case 56/65 *Société technique minière* v *Maschinenbau Ulm GmbH* [1966] ECR 235 and of 14 December 1983 in Case 319/82 *Société de vente de ciments et bétons de l'Est* v *Kerpen & Kerpen GmbH* [1983] ECR 4173) that the consequences of the fact that those contractual provisions which are incompatible with Article 85 (1) are automatically void for all other parts of the agreement or for other obligations flowing from it are not a matter for Community law.

15 It is for the national court to determine in accordance with the relevant national law the extent and consequences, for the contractual relations as a whole, of the nullity of certain contractual provisions by virtue of Article 85 (2). It is on the basis of national law that it is necessary in particular to determine whether such incompatibility may have the effect of obliging the contracting parties to amend the content of their agreement in order to prevent it from being void and, as the case may be, to choose, to that end, the one or the other of the possibilities laid down in Article 5 (2) of Regulation No 123/85 with regard to the duration of the agreement.

16 The reply to the question put to the Court by the Tribunal de grande instance, Paris, must therefore be that Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (Official Journal L 15, p. 16) 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 and that it is for the national court, in the event that certain contractual provisions are void, to determine the consequences thereof in accordance with the relevant national law.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings brought before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Tribunal de grande instance, Paris, by judgment of 18 December 1985, hereby rules:

Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (Official Journal 1985, L 15, p. 16) 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.

It is for the national court, in the event that certain contractual provisions are void, to determine the consequences thereof in accordance with the relevant national law.

Galmot Everling Moitinho de Almeida

Delivered in open court in Luxembourg on 18 December 1986.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber