

CASE CARD | 4 October 2021

Ford v. Commission (interim measures) (228/82 and 229/82)

Unilateral conduct (circular to dealer network)

1. CASE SUMMARY

A. Summary of facts

Ford AG employed a selective distribution system based on a main dealer agreement binding it to its German distributors. In 1976, this agreement was notified to the Commission by Ford AG with the intention of obtaining an exemption under Article 101(3) TFEU.

In 1982, following an increase in demand by British customers for right-hand drive cars in the German market, Ford AG issued a circular to its German dealers stating it would no longer accept their orders for those cars and that, as of that date, all such cars would have to be purchased either from a Ford dealer established in the United Kingdom ('UK') or from a subsidiary of Ford Britain.

By way of interim measure, the Commission obliged Ford AG to withdraw its circular and to inform its German Ford dealers that right-hand drive cars still formed part of Ford AG's agreed delivery range. In addition, Ford AG could not take any measures having the same effect as the circular.

B. Legal analysis

This judgment is strictly related to the powers of the Commission to impose interim measures under the given circumstances.

First, the ECJ relies on the Commission's explicit acknowledgement that the refusal to supply, in and by itself, is not an agreement within the meaning of Article 101 TFEU and hence its powers to act depend on the existence of a main dealer agreement that falls within the scope of Article 101 TFEU. (§16)

Furthermore, the ECJ determined that the Commission's interim measure decision did not relate to Ford AG's main dealer agreement. Instead, it only related to Ford AG's circular containing the refusal to supply right-hand drive cars to German dealers. (§21)

Even if the Commission would have been allowed (a) to consider Ford AG's refusal to supply as a circumstance which prevented an exemption of the main dealer agreement or (b) to subject an exemption to a requirement that supplies be resumed, the Commission would not have been able to impose such a requirement, by means of a

decision ordering interim measures, into a separate, enforceable order in a case where the main dealer agreement is not at issue.

The ECJ therefore ruled that the Commission's decision was void.

2. QUOTES

"In this case the main proceedings relate to the dealer agreement. It is solely in relation to that agreement that the Commission is in a position to make a finding that there is an infringement of Article [101(1) TFEU] and the final decision which the Commission may adopt under Article 3 (1) is that which requires Ford AG to bring the operation of that agreement to an end." (§20)

"Even on the assumption that the Commission, when adopting in pursuance of Article 6 and 8 of Regulation No 17 a decision in application of Article [101(3) TFEU], may regard the refusal to supply as a circumstance which prevents an exemption from being granted in respect of the dealer agreement or may subject the grant or continuation of such an exemption to the requirement that supplies be resumed, it would still have no authority to convert that requirement, by means of a decision ordering interim measures, into a separate, enforceable order which leaves no choice to the undertaking concerned." (§22)

3. RELEVANT LEGISLATION

- Article 101 TFEU

4. RELEVANT LITERATURE

/

5. PRACTICAL SIGNIFICANCE

This judgment relates to the very first interim measure imposed by the Commission. It underscores that the Commission cannot impose interim measures that relate to a refusal to supply in isolation, i.e. without at the same time addressing the main dealer agreement in circumstances in which the Commission acknowledges that such refusal to supply in and by itself does not infringe Article 101 TFEU on account of its unilateral nature.