

Brussels, 10 October 2001

Commission imposes fine of nearly € 72 million on DaimlerChrysler for infringing the EC competition rules in the area of car distribution

The European Commission has decided to impose a fine of € 71.825 million on DaimlerChrysler AG, one of the world's leading car manufacturers, for three infringements against Article 81 of the EC Treaty. The Commission decision concerns measures adopted by DaimlerChrysler AG in order to impede parallel trade in cars and limit competition in the leasing and sale of motor vehicles. This is the fourth Commission decision imposing a fine against a car manufacturer that does not respect EC competition rules.¹

EU Competition Commissioner Mario Monti commented the decision : « A new car is an expensive purchase and consumers pay attention to prices. The Commission is determined to ensure that they benefit from competition at retail level and get a good deal. Consumers strongly and rightfully criticise the functioning of the Single Market if they are unable to find a official distributor who is willing to supply them or if they are discriminated against in relation to national customers. Our investigation has also shown once more that the car manufacturers can largely control their distributors and punish those whose commercial behaviour they dislike. » The Commissioner added : « This is an area where the law is perfectly clear. Practices like the ones that DaimlerChrysler indulged in are therefore unacceptable and must be reprimanded severely ».

The Commission identified three types of infringements of the EC competition rules. The first one consists of measures by DaimlerChrysler that constitute obstacles to parallel trade. The undertaking instructed the members of its German distribution network for Mercedes passenger cars, roughly half of which are agents, not to sell cars outside their respective territory. This was done in particular in the form of circular letters. In addition, DaimlerChrysler instructed its distributors to oblige foreign consumers to pay a deposit of 15% to DaimlerChrysler when ordering a car in Germany. This was not the case for German consumers, even though they might present the same "risk" of, for instance, being unknown to the seller, ordering a car with particular specifications, or living far away.

The application of Article 81 to the restrictions agreed between DaimlerChrysler and its German agents results from the fact that these agents have to bear a considerable commercial risk linked to their activity. From the point of view of EC competition law, they must therefore be treated as dealers.

¹ Commission Decision of 28.1.1998 against Volkswagen AG (Official Journal of the European Communities No L 124, 25.4.1998, p. 60; see IP/98/94). Commission Decision of 20.9.2000 against Opel Nederland BV / General Motors Nederland BV (OJ L 59, 28.2.2001, p. 1; see IP/00/1028). Commission Decision of 29.6.2001 against Volkswagen AG (OJ L 262, 2.10.2001, p. 14; see IP/01/760).

In a second infringement, DaimlerChrysler limited in Germany and Spain the sales of cars by Mercedes agents or dealers to independent leasing companies as long as these companies had not yet found customers (“lessees”) for the cars concerned. As a consequence, it restricted the competition between its own leasing companies and independent leasing companies because the latter could not put cars on stock or benefit from rebates which are granted to all fleet owners. Consequently, the independent leasing companies were not able to pass on such favourable conditions, in particular concerning prices and the availability of cars, to their clients. It is important to note that sales of Mercedes cars to leasing companies represent a substantial part of all sales of Mercedes cars. Commission Regulation (EC) No 1475/95 concerning motor vehicle distribution² clearly states that leasing companies have to be treated in the same way as final customers, to which distributors are completely free to sell new cars, as long as the lessee has no right to purchase the leased vehicle before the end of the leasing contract.

Finally, DaimlerChrysler participated in a price fixing agreement in Belgium with the aim of limiting the rebates granted by its subsidiary Mercedes Belgium and the other Belgian Mercedes dealers to consumers. A “ghost shopper” investigated the sales policies of the dealers and DaimlerChrysler agreed to enforce the agreement by reducing the supply to dealers that granted higher rebates than the 3% that had been agreed. This amounts to resale price maintenance, a practice that was already sanctioned by the Commission last June in its decision against Volkswagen.

The measures adopted by DaimlerChrysler infringe the provisions of Article 81 (1) of the EC Treaty, which prohibits all agreements between undertakings which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the Single Market. Moreover, Regulation 1475/95 prohibits car manufacturers and their importers from restricting, either directly or indirectly, the freedom of final consumers to buy new motor vehicles in the Member State of their choice. It therefore assures that European consumers have the option of buying a car wherever it is most advantageous to them. The Regulation furthermore states that the freedom of dealers to determine prices and discounts in reselling to end consumers must not be restricted. This means that the sales prices and conditions must not be fixed by the manufacturer. They have to be determined by each individual dealer.

The amount of the fine takes into account the gravity of the infringements (for that matter the position of the company on the market is also looked at) and their duration. The fine must also have a sufficient deterrent effect on DaimlerChrysler and other companies.

The first infringement, the obstruction of parallel trade, is directly jeopardising the proper functioning of the Single Market by partitioning national markets. For this reason it has to be qualified as “very serious”. In addition, it constitutes an infringement of long duration: the 15% deposit obligation is in force since 1985, while the instruction to distributors in Germany not to sell outside their respective sales territories was applied from February 1996 to June 1999.

² OJ L 145 of 29.6.1995, p. 25. This regulation, which will expire on 30.9.2002, authorises a system of selective and exclusive distribution for motor vehicles. The Commission adopted an evaluation report on the application of Regulation 1475/95 on 15 November 2000 (see IP/00/1306). This Report is available on the website of the Competition DG of the Commission:

http://europa.eu.int/comm/competition/car_sector/distribution/eval_reg_1475_95/report/.

The restrictions imposed on the sale of cars to leasing companies can be categorised as a “serious infringement” of medium duration (5 years; this practice is still ongoing).

Finally, price fixing also has to be seen as a “serious infringement” and of medium duration (around 4 years in this case; it was terminated in 1999).

Background

This case is an own initiative procedure. But the Commission had received complaints from consumers about these practices. The decision is based on documents that were found during inspections in December 1996 at the premises of DaimlerChrysler AG (formerly Daimler-Benz AG or Mercedes-Benz AG) in Germany, and at the premises of its subsidiaries in Belgium, the Netherlands and Spain. Some Mercedes dealerships in Belgium, the Netherlands and Spain were also inspected.