

PRESS STATEMENT
COMMISSION'S MOTOR VEHICLE INVESTIGATION
07 DECEMBER 2005

The Competition Commission ("the Commission") has concluded consent agreements individually with six motor vehicle manufacturers/importers and/or their dealers, namely, General Motors, Nissan, DaimlerChrysler, Citroën, Volkswagen and its Gauteng dealers and Subaru dealers. The manufacturers and/or their dealers will, in terms of the consent agreements, pay administrative penalties collectively amounting to R31 650 000. The manufacturers and dealers have also agreed to implement compliance programmes to ensure that their businesses comply with the Competition Act ("the Act"), in particular to eradicate the practices of minimum resale price maintenance by manufacturers and collusion between dealers.

The Commission has referred the consent agreements to the Competition Tribunal ("Tribunal") requesting that they be made consent orders of the Tribunal.

Background

In April 2004, the Commission launched an industry-wide investigation into the prices of new motor vehicles. The Commission investigated:

- The fixing of prices and/or trading conditions by manufacturers/importers and/or dealers in contravention of section 4(1)(b) of the Act;
- Agreements between manufacturers/importers and their dealers containing restrictions that have the effect of substantially preventing or lessening competition in contravention of section 5(1) of the Act;
- Minimum resale price maintenance imposed by manufacturers/importers on dealers, in contravention of section 5(2) of the Act; and

- Excessive pricing by manufacturers/importers that are dominant in their respective markets in contravention of section 8(a) of the Act.

The Commission found evidence of manufacturers imposing minimum resale prices on dealers, dealer collusion and anti-competitive franchise agreements. The Commission announced on 31 May 2005 that it would refer cases against the manufacturers and dealers to the Tribunal for adjudication. Following this announcement, the manufacturers and dealers entered into negotiations with the Commission to settle their respective cases. The outcome of these negotiations are the consent agreements which have been referred to the Tribunal for confirmation.

The consent agreements

In terms of the consent agreements the manufacturers have agreed to:

- Not impose minimum resale prices or maximum discounts on their dealers and inform dealers that they are free to sell at whatever prices they may choose;
- Not be party to, or in any way support, agreements between dealers as to the prices to be charged or quoted;
- Institute compliance programmes designed to ensure that their employees and dealers are informed about their obligations under competition law and the terms of the consent agreements;
- Establish a mechanism for dealers and consumers to report contraventions of the Act;
- Review their franchise agreements with dealers to ensure compliance with the Act; and
- Pay administrative penalties.

In terms of the consent agreements, the dealers will not collude on prices, will implement compliance programmes and have agreed to pay administrative penalties.

The agreed administrative penalties which are based on sales in the affected lines of business are as follows:

Manufacturer/dealers	Administrative penalty
GMSA	R12 000 000
DCSA	R 8 000 000
Nissan	R 6 000 000
VWSA and its Gauteng dealers	R 5 000 000
Subaru dealers	R 500 000
Citroën	R 150 000

The Commission is still in negotiations with BMW dealers and intends prosecuting this case should an agreement not be reached by the end of January 2006.

The “excessive pricing” investigation

The Commission’s investigation on excessive pricing revealed that prices of models sampled were on average 14% higher in South Africa when compared to similar models in EU countries and the United Kingdom. The analysis took differences in tax, vehicle specifications and motor plans into account. However, to sustain an excessive pricing case, the Commission has to firstly establish that a firm is dominant (ie has a market share of at least 35% in any of the market segments for motor vehicles). We found that none of the parties met the threshold for dominance. A case in terms of section 8(a) of the Act could therefore not be pursued. The Commission will however continue to keep a close eye on motor vehicle prices. In addition the Commission will participate in the MIDP review process, conducted by the Department of Trade and Industry, and highlight its concerns regarding the prices of new vehicles.

Acting Commissioner, Shan Ramburuth, said: “As a result of the Commission’s intervention, dealers will no longer have the excuse that they are bound to a maximum discount. This will give consumers greater power to negotiate better discounts with

dealers and should lead to increased competition and lower prices. We encourage consumers to take advantage of their increased ability to negotiate prices and to alert the Commission should they encounter anti-competitive practices when making purchases”.

ISSUED BY THE COMPETITION COMMISSION OF SOUTH AFRICA

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