

COMPETITION COMMISSION SOUTH AFRICA

PRESS STATEMENT NO 01 OF 2005

31 May 2005

COMMISSION'S MOTOR VEHICLE INVESTIGATION

On the 6th of May 2004, we issued a press statement announcing that we have launched an industry-wide investigation into the new motor vehicle prices and sales practices. This followed the public outcry regarding new car prices remaining high despite the country's currency strengthening.

The investigation was formally initiated by the Commissioner on the 8th of April 2004 in terms of Section 49B(1) of the Competition Act No. 89 of 1998, as amended, ("the Act") against the National Association of Automobile Manufacturers ("NAAMSA") and manufacturers and/or importers and distributors of new motor vehicles in South Africa, as well as their respective dealers and associations.

The investigation relates to alleged prohibited restrictive business practices by manufacturers, importers, distributors and/or dealers of new motor vehicles in South Africa, during the period starting from 1 September 1999 to date. This involved the following allegations:

1. The manufacturers, importers and/or dealers fix prices and/or trading conditions in contravention of Section 4(1)(b) of the Act;
2. The manufacturers, importers, distributors and/or dealers have entered into agreements that impose restrictions that have the effect of substantially preventing or lessening competition in contravention of Section 5(1) of the Act;
3. The manufacturers and/or importers and distributors impose minimum resale price on dealers, alternatively manufacturers /importers/distributors and dealers agree on minimum resale price in contravention of Section 5(2) of the Act; and

4. The dominant manufacturers and/or importers charge excessively for products in their markets to the detriment of consumers in contravention of Section 8(a) of the Act.

We are pleased to announce that we have finalised the investigation in respect of all the above allegations, except for the one relating to excessive pricing.

The evidence gathered during this investigation indicates that most of the motor vehicle manufacturers and their franchised dealers have contravened sections 4(1)(b), 5(1) and 5(2) of the Act.

Section 5(1) of the Act prohibits an agreement between parties in a vertical relationship if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive gain, resulting from that agreement outweighs that effect.

Evidence gathered in this regard revealed that DaimlerChrysler South Africa (Pty) Ltd (“DCSA”), BMW South Africa (Pty) Ltd (“BMW”), Volkswagen South Africa (Pty) Ltd (“VWSA”), General Motors South Africa (Pty) Ltd (“GMSA”), Nissan South Africa (Pty) Ltd (“Nissan”) and their dealers entered into franchise and dealer agreements, which contained a number of restrictions that impact negatively on competition in the market within which they operate. We are still to finalise the decision in respect of Ford Motor Company of Southern Africa (Pty) Ltd (“FMC”) on this aspect.

The restrictions that were placed on dealers relate to, inter alia, the selling of new motor vehicles to unauthorised agents, the selling of new motor vehicles to exporters as well as active out-of-area marketing and selling of new motor vehicles.

Though we found evidence of similar restrictions in franchise or dealer agreements of a number of other manufacturers/importers/distributors, we were unable to conclude that these resulted in a substantial lessening or prevention of competition due to their relatively small market shares in the relevant market.

Section 5(2) of the Act prohibits the practice of minimum resale price maintenance and justification in this regard is not accepted as minimum resale price maintenance is regarded as a per se contravention of the Act.

On this aspect, evidence revealed that Volkswagen, Nissan, BMW, Citroën South Africa (Pty) Ltd (“Citroën”), DCSA, GMSA and Subaru South Africa (Pty) Ltd (“Subaru”) either imposed minimum resale prices on their respective dealers, or agreed on minimum resale prices with their dealers.

We have gathered correspondence that relate to dealers being advised about restrictions on discounts, being reported for transgressing discount limits, as well as being “threatened” that their motor vehicle supplies would be limited or withheld if they did not comply with the discount limits.

On the collusion part, there is evidence indicating that the franchised dealers of BMW, VWSA, DCSA, GMSA and Subaru have contravened section 4(1)(b) of the Act, which provides that an agreement or concerted practice between competing firms is prohibited if it involves, inter alia, directly or indirectly fixing price and/or trading condition; or dividing market by allocating customers, suppliers, territories, or specific types of goods or services.

In this regard we found that franchised dealers were all members of Dealer Councils and that at both Regional and National levels, agreements were reached regarding maximum discounts, out of area marketing, as well as out of area sales and/or discounting. This is a per se violation for which no justification can be provided.

On the excessive pricing allegation, we are still finalising the investigation. Our analysis thus far indicates that new car prices in our country are much higher than in other countries. We are working hard to finalise this part of the investigation, but we must emphasise that it is one of the most complex areas of the investigation. We will also liaise with **the dti** on the possible review of the MIDP, which in our view may be the main reason for the high car prices in our country.

Having considered the evidence gathered in the investigation, the Commission has made a decision to refer BMW, Citroen, GMSA, Nissan, VWSA, Subaru, DCSA to the Competition Tribunal (“the Tribunal”) in terms of section 50 of the Act for adjudication:

If the firms alleged to have contravened the Act are found guilty on contravening sections 4(1)(b) and/or 5(2) of the Act, the Tribunal can impose an administrative penalty of up to 10% of the firm(s) annual turnover in the Republic and its exports from the Republic for preceding financial year.

We are, however, empowered to negotiate and enter into a consent agreement(s) with the respondent(s) in terms of Section 49D of the Act, which agreement still has to be referred to the Tribunal for confirmation. Some of the respondents have already expressed a wish to negotiate consent agreements and we will evaluate each of those requests individually based on their merits.

We are also pleased to announce that there are a number of manufacturers/importers/distributors/dealers that were investigated and evidence gathered indicates that the firms have not engaged in the alleged collusion and or resale price maintenance.

However, there are some that were found to have engaged in anticompetitive practices but their market shares were found to be relatively small or negligible to have a substantial effect on competition in the respective markets. We urge these firms to review their agreements and practices to ensure that they are fully compliant with the Act.

In view of the above, we will be preparing notices of non-referral in relation to allegations against Honda South Africa, Renault South Africa, Hyundai South Africa, Volvo South Africa and Peugeot South Africa.

Though we have cited NAAMSA as one of the respondents in the initiation of this investigation, we found no evidence suggesting anticompetitive practices that contravene the Act. However, we gathered information that indicated that NAAMSA does collect sales forecasts from various manufacturers, which are then circulated amongst its members. We have since advised NAAMSA that such conduct is unacceptable as it is likely to facilitate collusion in the industry.

If the alleged contraventions are corrected by the firms concerned, consumers will be the ultimate beneficiaries in that they can negotiate discounts and will have an incentive to shop

around for better deals. This is anticipated to stimulate price competition in this industry. Reduction of competition in the market removes this incentive and raises prices for goods or services to the detriment of consumers.

This would further strengthen the position of dealers as independent business entities in that they will be free to sell motor vehicles where and to whomever they want to. Price competition was reduced since almost all manufacturers/importers/distributors of motor vehicles and dealers use the same system of restricting competition, which is detrimental not only to the consumer, but to the development and participation of dealers in the mainstream economy.

Dealers are cautioned to refrain from fixing prices, discounts and/or trading conditions amongst themselves, especially through the apparently existing dealer councils.

ISSUED BY COMPETITION COMMISSION SOUTH AFRICA

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