

Brussels, 28 January 1998

Commission fines Volkswagen ECU 102 million following consumer complaints

The European Commission has fined Volkswagen ECU 102 million for systematically forcing its authorised dealers in Italy to refuse to sell Volkswagen and Audi cars to foreign buyers, mainly from Germany and Austria. In 1995 the Commission received a large number of complaints from consumers who had had difficulty buying new cars in Italy. In its decision on the case, the Commission finds that Volkswagen, Audi and Volkswagen's Italian subsidiary Autogerma have devised in concert with their Italian dealers a strategy aimed at preventing, or at least substantially restricting, sales from Italy to other Member States, especially Germany and Austria.

Volkswagen has three months in which to pay the fine and two months in which to take the steps required by the Commission in order to put an end to the practices involved.

The Commission decision comes at the end of a proceeding which was initiated following numerous complaints from consumers about the difficulty of buying new Volkswagen and Audi cars in Italy. An Italian VAG dealer was still refusing to sell to Austrian customers even very recently.

In October 1995 the Commission carried out inspections at Volkswagen's offices in Wolfsburg, at Audi's offices in Ingolstadt, at Autogerma's offices in Verona (Autogerma is a wholly owned subsidiary of Volkswagen, and the official importer for both makes in Italy) and at the offices of a number of VAG dealers in the north of Italy.¹ Papers found in the course of those inspections provided clear evidence of a market-partitioning policy pursued by Volkswagen, Audi and Autogerma.

¹ See Commission press release IP/96/1095 dated 28 November 1996 on the statement of objections sent to Volkswagen AG et Audi AG.

Some of the illegal practices identified were the following:

- about fifty authorised dealers were threatened that their dealership contracts would be terminated if they sold to foreign customers, and some twelve dealerships were actually terminated;
- the profit margins and bonuses of authorised dealers who sold outside their allotted territories were systematically reduced;
- deliveries to Italian dealers were rationed; in 1995 alone Audi refused to supply some 8 000 cars which Autogerma had promised them;
- Autogerma kept the Italian dealers under supervision and gave clear warnings to those who sold to non-Italian customers; it also monitored lists of foreign customers;
- Volkswagen and Audi recommended to their Italian dealers that they should not tell their foreign customers the real reasons for the refusal to sell but should instead try to discourage them by speaking of different specifications and difficulties with the guarantee; they were not to let them know that they had instructions to this effect from the Volkswagen group.

The documents found clearly show that Volkswagen and Audi were well aware that these practices were unlawful. In February 1995, for example, Audi writes that it would be “**somewhat risky**” to connect the measures taken in Italy with the prevention of re-imports. Elsewhere Volkswagen very clearly states that the introduction of what is called a “split margin” for authorised dealers is not compatible with the European Regulation that grants a block exemption for motor vehicle distribution agreements; this is because the split margin “**aims to put an end to cross-border trading, when cross-border trading is precisely what the Commission wants**”, and the measure is “**very likely to attract a fine**”.

In a hand-written memo of July 1995 Volkswagen recommends giving in to a “**genuine intermediary**”, who has threatened to complain to the Commission after Autogerma evidently obstructed the purchase of a vehicle; this is to be done “**on political grounds**” in order to avoid the “**withdrawal of the Block Exemption Regulation**”.

Audi went so far as to obtain details of vehicle registrations in Germany from the responsible government office, giving an undertaking that it would not use them to identify or monitor foreign authorised dealers; but that was in fact the whole purpose of assembling the information, because Volkswagen and Audi passed on the chassis numbers of cars registered in Germany and Austria to Autogerma, so that Autogerma could identify the authorised dealers who had sold the vehicles.

Volkswagen and Audi also refused to issue certificates of conformity without seeing invoices and contracts of sale, so as to be able to identify the origin and destination of the vehicles.

Commenting on the decision, Mr Van Miert said that the Commission would not hesitate to take the necessary measures against motor manufacturers who did not comply with the Regulation governing the motor trade.

Motor manufacturers had some latitude in the way they chose to organise their distribution networks, he said, but the rules required them to allow consumers to exercise their unalterable right to buy a car anywhere in the European Union.

Conduct objected to goes back more than ten years

In its decision, the Commission finds that the conduct of Volkswagen/Audi, which is the largest motor manufacturing group in Europe, is a threat to the proper operation of the single market and a very serious infringement of Community competition law. In setting the fine, the Commission has taken account, among other things, of the duration of the infringement and of the fact that the companies in the Volkswagen group set up the system of restrictive practices by exploiting the economic strength they enjoy in their relationship with their networks of authorised dealers in Italy.

The Commission holds that the infringement is aggravated by the fact that Volkswagen did not take the appropriate action when told by the Commission to put an end to what was a serious infringement.

The size of the fine is an indication that the Commission will not tolerate practices of this kind and will act with similar determination against other manufacturers who set out to partition the market.

The Commission's decision requires the companies concerned to remove from their dealership contracts all clauses restricting or prohibiting the sale in Italy of new vehicles to final consumers, authorised intermediaries or other authorised dealers from other Member States.

It is worth pointing out that, on the basis of this decision, consumers who feel they have been the victim of similar practices can now take their case in the first place to their domestic competition authorities and domestic courts of law. Those authorities and lawcourts will usually have jurisdiction to establish whether there has been an infringement of European Union competition law and to order the manufacturer or the importer to bring the infringement to an end.