EXPORT RESTRICTIONS (MOTOR VEHICLES): THE OPEL CASE

Subject: Export restrictions
Fines

Industry: Motor vehicles
(Implications for other industries)

Parties: Opel Nederland BV
General Motors Nederland BV

Source: Commission Statement IP/00/1028, dated 20 September 2000

(Note. It seems strange that this type of case continues to arise. Similar cases have been in the news during the last ten years; and, as the Commission points out, the fines have been heavy, particularly in the Volkswagen case. Perhaps it is no coincidence that the date on which the infringement in the Opel case came to an end was about the same as the date on which the Volkswagen fine was imposed. The case illustrates the point that, where prices are for some reason lower in one Member State than in others, dealers and manufacturers are in no hurry to see those lower prices extend to the rest of the market. Market forces operate in different ways in different countries. But where those market forces are artificially nudged by such devices as export restrictions, it is right for competition authorities to intervene.)

The Commission has decided to impose a fine of €43m on Opel Nederland BV, the Dutch importer of cars of the Opel brand for having obstructed exports of new cars to end consumers from other Member States between September 1996 and January 1998. This is the second major Commission decision, following that taken against Volkswagen AG in January 1998, in which complaints from consumers have led the Commission to investigate practices of car manufacturers and their importers, and to impose heavy fines. "The right to buy products cheaper in other Member States is one of the main benefits of the Single Market. The adoption of this decision is therefore a clear signal that competition policy serves consumers' interests," said Competition Commissioner Mario Monti.

In the Netherlands, prices before taxes are generally substantially lower than in other Member States, such as Germany, France and the United Kingdom. The case against Opel Nederland, a 100% subsidiary of General Motors Nederland BV, began with inspections which the Commission carried out in December 1996 on the basis of information received from customers wanting to buy cars in the Netherlands at lower prices. These inspections, which took place at the premises of Opel Nederland and one of its Dutch Opel dealers, prove that due to high export demand from customers from other Member States, Opel Nederland had, from September 1996 onwards, developed and pursued a strategy consisting of three measures destined to restrict or to prevent dealers from selling cars to customers, including end consumers, from abroad.

Direct instructions given by the responsible District Managers of Opel Nederland to a number of exporting dealers, and subsequent commitments received from a number of these dealers to stop all export sales, meant that the importer could be sure of a substantial reduction of exports. Almost all of the exporting dealers are located in areas close to the border, in which export business traditionally plays an important role. Dealers had also been told that the number of cars which they were expected to sell on the basis of their dealership contract, should mainly be sold within the Netherlands. By taking this measure, Opel Nederland intended to limit the scope for export sales. Finally, from October 1996 until January 1998 Opel Nederland operated a large number of sales campaigns, which each contained a provision that bonus payments would be refused if dealers carried out sales to end consumers from abroad. Such bonus payments generally represent an important portion of a dealer's profit from the sale of new cars.

All these measures applied by Opel Nederland violate the provisions of Article 81(1) of the EC Treaty. Commission Regulation EC/1475/95 concerning motor vehicle distribution prohibits car manufacturers and their importers from restricting, either directly or indirectly, the freedom of final consumers, authorised intermediaries or dealers of their own distribution network, to buy new motor vehicles in the Member State of their choice. The Regulation therefore ensures that European consumers have the option of buying a car wherever it is most advantageous to them. In doing this, consumers can also use the services of an authorised intermediary.

In determining the level of the fine, the Commission took into account the fact that the measures applied by Opel Nederland were destined to prevent consumers from taking advantage of the benefits of the Single Market. It also considered that Opel Nederland should have known that its behaviour was incompatible with the European competition rules, and in particular with the provisions of Regulation EC/1475/95. This Regulation, which expires on 30.9.2002, exempts all selective and exclusive distribution systems for motor vehicles and their spare parts from the application of European competition rules, provided that certain conditions are fulfilled. The Commission will present a report on the assessment of the Regulation by the end of this year.

The infringement committed by Opel Nederland is of similar nature to the offence committed by Volkswagen AG, which resulted in the Commission fining Volkswagen in January 1998. According to the Court of First Instance in the subsequent Volkswagen judgment, such measures adopted by car manufacturers constitute a serious infringement of European competition rules, since they obstruct the proper functioning of the Single Market, which is one of the most fundamental objectives of the Community. In spite of the grave nature of the offence, the fine imposed on Opel Nederland is lower than that inflicted on Volkswagen. This does not imply a more lenient attitude on the part of the Commission with respect to this type of infringement but simply reflects the fact that the Commission must take into account the special circumstances of each case including the rigour with which the illicit measures were applied and their duration. ■