PRICING POLICY (MOTOR VEHICLES): THE VW CASE

Subject:	Pricing policy Fines Block exemption
Industry:	Motor vehicles (Some implications for other industries)
Parties:	Volkswagen AG
Source:	Commission Statement IP/01/760, dated 30 May 2001

(Note. The vocabulary of anti-trust law now includes the expression "price discipline", which falls short of outright price fixing but can earn a substantial fine from the Commission. Having run up against the competition rules in Italy, Volkswagen has now been held to have infringed the rules in Germany. In the present case, VW had taken the view that the action of some dealers who reduced prices below the recommended retail price jeopardized the brand image of the models in question. But VW threatened sanctions against some of its dealers; and its actions were caught not only by the general prohibition of price-fixing in the EC Treaty itself, but also by the "black-list" provisions of the block exemption regulation on motor vehicle distribution. Even if the case had not concerned motor vehicles, it would have been caught by the corresponding provision of the block exemption regulation on vertical restraints.)

The Commission has decided to impose a fine of €30.96m on Volkswagen AG, the biggest German, and European, car manufacturer, for having instructed its German Volkswagen dealers in 1996 and 1997 to show "price discipline" and not to sell the new Passat at prices considerably below the recommended retail price. This is the second Commission decision against Volkswagen, and follows that taken in January 1998. (The 1998 decision found that Volkswagen and its Italian importer had obstructed re-exports of Volkswagen and Audi cars from Italy into other Member states, in particular Germany and Austria. This decision has been largely confirmed by the European Court of First Instance, in its judgment of 6 July 2000; the fine of €102m, reduced to €90m by the Court, is one of the highest ever imposed on a single company.)

Measures taken to limit discounts aim at fixing retail prices and represent a so-called "hard core" restriction of competition: they infringe Article 81(1) of the EC Treaty, which prohibits price fixing measures, and are incompatible with the block exemption regulation applicable to motor vehicle distribution. (Measures of price fixing also figure as a hard core restriction of competition in Article 4(a) of the new general block exemption regulation on vertical restraints (Commission Regulation EC/2790/1999 of 22 December 1999), which applies to all distribution agreements except for distribution agreements concerning motor vehicles to which Regulation EC/1475/95 applies.)

Price comparisons over the last few years have shown that in Germany, new car prices before taxes for models of the Volkswagen brand are substantially higher than in all other Member States except the United Kingdom. (See, for example, the Commission's most recent Report on Car Prices within the European Union.) "Today's decision is once again a clear signal that competition policy serves consumers' interests. It is the first decision regarding resale price maintenance and confirms, in the area of vertical restraints, the Commission's strict policy on price fixing practices," said Competition Commissioner Mario Monti. "Unfortunately this case is also a further example of non-respect of the Block Exemption Regulation. The measures adopted by Volkswagen represent a clear restriction of dealers' freedom to set their own prices, and were aimed at changing their commercial behaviour to the detriment not only of German consumers, but also of those from other Member States. The measures, which aimed at maintaining prices at an artificially high level in a market where new car prices are already among the highest in Europe, constitute by their nature a very serious infringement of European competition rules and must be met with an appropriate sanction". The Commissioner added that the protection of the dealers' freedom to set their prices was one important element of the current motor vehicle block exemption, which would expire next year. In this regard he mentioned that the Commission intended to publish its ideas on the future regime before the end of the year 2001.

This particular case against Volkswagen is based on documents that the Commission received together with a letter of complaint from a consumer and as part of replies from Volkswagen to formal requests for information. These documents show that in 1996 and 1997, Volkswagen sent several circular letters to its German Volkswagen dealer network, urging the dealers not to sell the new VW Passat a prices considerably below the recommended resale price and/or to limit or not to grant discounts to customers. This model was launched on the German market in October 1996 (limousine version) and in June 1997 (estate version). Volkswagen also sent a number of individual letters to certain dealers, who were warned to obey price discipline for this new model, and threatened with legal consequences, such as the termination of their dealer contract, should they disobey these instructions.

Before sending these letters, Volkswagen had become aware of the fact that a number of German dealers had offered this new model for sale at prices below the recommended retail price. Volkswagen sought to justify the measures it took by claiming that they were needed both to support its dealers' profitability and to preserve the brand image of the new model, which in Volkswagen's view would be damaged through certain dealers' pricing policy.

Price-fixing measures are incompatible with Article 81(1)(a) of the EC Treaty, and are "black listed" in Article 6(1)(6) of Regulation 1475/95, the block exemption regulation applicable to motor vehicle distribution and servicing, which provides that the exemption shall not apply where "the manufacturer, ... directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods". The Regulation asserts the right of

European consumers to obtain competitive prices from dealers, including appropriate discounts. The measures adopted by Volkswagen, and applied for almost three years, were liable to maintain or to reinforce an artificially high price zone for the new VW Passat model in Germany. During this time, consumers would have had to pay higher prices for the Volkswagen Passat, a model with German sales of about 400,000 units during the three years in question. The measures were also liable to dampen private exports from and to increase private imports into Germany.

The object of Volkswagen's measures was to fix resale prices and thus to eliminate an essential element of competition for dealers: the ability to sell new cars at discounted prices. As car dealers normally grant discounts to customers with the sale of new cars, Volkswagen's instructions can be seen as an effort to eliminate or restrict price competition by compelling the dealers to deviate from their normal commercial behaviour. The measures in question, which concerned all German Volkswagen dealers, not only aimed to restrict intra-brand competition between German Volkswagen dealers, but also between Volkswagen dealers in Germany and Volkswagen dealers abroad. Leaving the quality of service aside, the ability to set their own resale prices is the most important tool available to dealers for competing with other dealers. Such measures represent a severe interference with competition and are therefore by their nature a very serious infringement of competition rules. The VW Passat is a popular model in Germany, especially when compared with other models in the same segment of the market. All these considerations support the conclusion that the measures adopted by Volkswagen led to an appreciable restriction of price competition.

In determining the level of the fine, the Commission took account of the fact that the infringement concerned one model (in two versions) from Volkswagen's entire product range. This model has, however, a large share of vehicle sales within a segment for which demand in Germany is strong. The circular letters were addressed to the whole German VW dealer network and thus concerned all sales of the VW Passat in Germany. As regards the geographic scope of the infringement, the Commission considers that its main impact was on one Member State (Germany), which accounts for a large share of all car sales in the EU. It would also be likely to have had an effect on consumers from other Member States.

In the light of all these considerations, and for the purpose of determining the fine, the Commission considered the infringement "serious". Moreover, as an aggravating circumstance, the Commission took into account among other things that Volkswagen had requested its dealers in the first circular letter to send to it copies of all advertisements of other Volkswagen dealers "without price discipline". ■

The Court cases reported in this issue are taken from the website of the Court of Justice of the European Communities. The contents of this website are freely available. Reports on the website are subject to editing and revision.