EXPORT RESTRICTIONS (MOTOR-CYCLES): THE TRIUMPH CASE

Subject: Export restrictions

Industry: Motor-cycles
(Implications for other industries)

Parties: Triumph Motor-Cycles
Greenib

Source: Commission Statement IP/00/1014 dated 15 September 2000

(Note. Ostensibly, the infringement in this case bears a strong resemblance to the infringement in the Opel case described above. However, the scale and duration of the infringement in the Triumph case, as well as the cooperation received from the infringing corporation after the discovery of the infringement, were such that the Commission did not consider it necessary to proceed to a formal decision imposing a fine. It is interesting to note that currency fluctuations were given as one of the main reasons for the price differences among the Member States concerned.)

The Commission has decided to end its antitrust action against the motorcycle manufacturer Triumph after the company stopped prohibiting its Benelux dealers from selling to UK customers. Following a number of letters from British customers claiming that they were unable to purchase Triumph's motorcycles in the Netherlands and Belgium, the Commission carried out a "dawn raid" at the premises of Triumph in the UK, its Benelux importer and a number of dealers in the above-mentioned countries in April 1999. Evidence of an export prohibition was indeed found. Later Triumph acknowledged the facts for the period from April 1997 until March 1998 and offered to co-operate with the Commission. By its action the Commission sends a clear message to the motorcycle manufacturers that it will act against similar infringements should they occur and sanction them where appropriate.

Triumph is a manufacturer of motorcycles of large engine capacity (750cc and over). Its motorcycles are sold in all Member States of the European Union (EU). Triumph's market share for this kind of motorcycle in the entire Union is below 5%. Market shares in individual Member States are also below 5% except in the United Kingdom where it varies around 10%. Motorcycle distribution is not covered by the block exemption granted by Regulation 1475/95 which concerns only the selective and exclusive distribution system for cars, trucks and buses.

Following the reception of the British customers' letters the Commission started an inquiry on its own initiative to investigate the existence of the alleged export prohibition from Belgium and the Netherlands to the United Kingdom. For that purpose, surprise inspections were carried out at Triumph's, at Greenib's

premises, the Benelux importer, and at a number of dealers in Belgium and the Netherlands.

The Commission found evidence proving that Greenib urged its Benelux dealers to stop export sales of Triumph motorcycles. Documents found at the premises of the Belgian and Dutch dealers confirmed this instruction. Three months after the inspections, Triumph admitted having imposed an export prohibition via Greenib on its Benelux dealers from April/May 1997 to March 1998 to prevent its dealers from selling to UK customers. According to Triumph, the action to reduce parallel trade was a result of the currency fluctuations between the sterling and other currencies. Price differences between the UK and Belgium and the Netherlands reached 30% for certain models at the time.

At the Commission's request and with a view to ensuring that the action does not recur, Triumph advised Greenib, its UK dealers and the dealers in Belgium and the Netherlands, that all dealers were free to sell motorcycles to any customer irrespective of that customer's country of origin or where the motorcycle is to be used.

An export prohibition constitutes one of the most serious restrictions of competition and is contrary to Article 81 of the Treaty. However, given the limited period of time during which the ban was applied, the limited impact that it was able to produce on the market, and given that Triumph has acknowledged the facts, has taken appropriate measures to cease the export ban, and has implemented all the requested measures asked for by the Commission to inform dealers of their obligations, the Commission considers that it is not necessary in the present circumstances to pursue the case further. ■

The Boeing / Hughes Case

In our July, 2000, issue, we referred to the in-depth investigation by the Commission into the proposed acquisition by the Boeing Company of the satellite business of Hughes Electronics Corporation. The investigation has dismissed earlier doubts that the operation could significantly strengthen Hughes' position in commercial geostationary communication satellites, as well as the concern that the parties might induce Hughes' satellite customers to procure launch services from Boeing. The Commission has therefore decided that the acquisition will not lead to the creation or strengthening of a dominant position on these markets. Hughes is currently the market leader for commercial GEO satellites, with market shares around 35-40%. It was originally thought that the operation could further enlarge the gap between Hughes Space and Communications (HSC) and its competitors. However, following the results of the Commission's detailed investigation, it appears that HSC is and will remain subject to the competition from other large satellite prime contractors, such as Lockheed Martin, S/S Loral, Alcatel Space Industries and Astrium.

Source: Commission Statement IP/00/1067, dated 27 September 2000