ABUSE OF DOMINANT POSITION (TYRES): THE MICHELIN CASE

Subject: Abuse of dominant position
Rebates
Tying agreements
Market entry
Fines

Industry: Tyres (for heavy vehicles)
(Implications for other industries)

Parties: La Manufacture Française de Pneumatiques Michelin (Michelin)

Source: Commission Statement IP/01/873, dated 20 June 2001

(Note. There is an almost old-fashioned ring about this case, partly because, in general, abuses of a dominant position are becoming increasingly uncommon and partly because, as far as Michelin is concerned, it is a throwback to the early 1980s, when the earlier Michelin case was decided. The present case illustrates the classic method of foreclosing the market by means of special incentives to dealers; it is a reminder that incentives, such as rebates and bonuses, are not necessarily unlawful but can be a weapon in the hands of a company with a dominant position on the market. The fine imposed by the Commission was relatively heavy, in part because of the repetition of the "offence"; but it would have been higher still if the company had been less cooperative in the course of the investigation. For a discussion of the principles which the Commission must observe when calculating a fine, and in particular the weight to be attached to the question of cooperation, see the judgment of the Court of First Instance in the Tate and Lyle case in this issue, particularly paragraphs 157 to 164; in the latter paragraph, the earlier Michelin case is cited by the Court.)

The Commission has decided to impose a fine of €19.76 million on the French tyre maker Michelin for abusing its dominant position in replacement tyres for heavy vehicles in France during most of the 90s. After a careful and lengthy investigation, the Commission has come to the conclusion that Michelin's complex system of quantitative rebates, bonuses and other commercial practices illegally tied dealers and foreclosed the French market to other tyre manufacturers. The infringement is all the more serious in that this is the second time that Michelin has engaged in similar anti-competitive behaviour in Europe.

In the Commission's view, dominant companies need to be careful not to engage in practices which exclude other companies from the market. Rebates and bonuses are normal commercial practices; but, as the Court of Justice has confirmed, some types are illegal when they are granted by a company in a dominant position and have an exclusionary effect.

In May 1996 the Commission started an investigation on its own initiative into the commercial practices of la Manufacture Française de Pneumatiques Michelin (Michelin) amid suspicions that Europe's largest tyre manufacturer had violated European Union competition law. About a year later (June 1997), Commission officials carried out inspections at Michelin's premises in France, which provided evidence that the company was abusing its dominant position in the French market for retread and new replacement tyres for heavy vehicles. The tyre market can be divided into two sectors, the original and the replacement equipment markets. Replacement tyres can be new or retread, that is. given a new tread if the casing is in sound condition.

The Commission has established that Michelin operated a complex system of quantitative rebates, bonuses and commercial agreements, which constitute a loyalty-inducing and unfair system in relation to its dealers. Michelin's commercial policy for both the retread and the new replacement tyre market had the effect between 1990 and 1998of keeping dealers closely dependent and preventing them from choosing their suppliers freely. This policy, which artificially barred competitors' access to the market, was suspended by Michelin in January 1999.

Article 82 of the EC Treaty prohibits abuses of dominant positions either individually or collectively in the European common market or in a substantial part of it insofar as it may affect trade between Member States. According to publicly available information, Michelin has a market share exceeding 50% of the market for new replacement tyres for heavy vehicles in France. As regards the French retread market, its share is even higher. None of its competitors is comparable in size. It can, therefore, be considered that Michelin holds a dominant position in France.

In 1981, the Commission found Michelin guilty of the same anti-competitive behaviour in the Netherlands. The Court of Justice ruled in the first Michelin decision and consistently in more recent cases, that quantity rebates with exclusionary effects are illegal when granted by a company in a dominant position for more than three months.

In setting the amount of the fine, the Commission took into account the fact that the infringement was of a serious nature, that it went on for a considerable number of years and that it had an appreciable effect on the European market. Moreover, this is the second time that Michelin has violated EC competition law: this is an aggravating circumstance. On the other hand, Michelin co-operated with the Commission's investigation and put an end to the infringement before the Statement of Objections was sent to the company. This counted as a mitigating circumstance in calculating the final amount. Michelin has two months to pay the fine or to appeal to the European Court of First Instance. ■

The Court case reported in this issue is 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.