DISTRIBUTION (MOTOR VEHICLES): THE DAIMLERCHRYSLER CASE

Subject: Distribution arrangements
Parallel trade
Sales restrictions
Price fixing
Fines

Industry: Motor vehicles
(Implications for other industries)

Parties: DaimlerChrysler AG

Source: Commission Statement IP/01/1394, dated 10 October 2001

(Note. It seems surprising that cases of this sort still occur. All the basic legal issues are so well settled, and all the previous infringers have been so heavily fined, that large corporations with ample legal advice at their disposal must be assumed to find infringement less onerous than compliance. Yet this is hard to believe. As the Commission points out, there have been three recent cases in which car manufacturers have been heavily fined; but the fines have not had a sufficiently deterrent effect. Whether the Commission is influenced by this infringement enough to take a hard line on the other DaimlerChrysler case at present being investigated remains to be seen: this is the state aid case reported in our September 2001 issue, on page 206.)

The Commission has decided to impose a fine of €71,825,000 on DaimlerChrysler AG, one of the world's leading car manufacturers, for three infringements against Article 81 of the EC Treaty. The Commission decision concerns measures adopted by DaimlerChrysler to impede parallel trade in cars and limit competition in the leasing and sale of motor vehicles. This is the fourth Commission decision in recent years imposing a fine against a car manufacturer for an infringement of the EC competition rules.

The Competition Commissioner made the following comments on the decision. "A new car is an expensive purchase and consumers pay attention to prices. The Commission is determined to ensure that they benefit from competition at retail level and are given a good deal. Consumers strongly and rightly criticise the functioning of the Common Market if they are unable to find a official distributor who is willing to supply them or if they are discriminated against in relation to national customers. Our investigation has also shown once more that the car manufacturers can largely control their distributors and punish those whose commercial behaviour they dislike. This is an area where the law is perfectly clear. Practices like the ones that DaimlerChrysler engaged in are therefore unacceptable."

The Commission identified three types of infringements of the EC competition rules. The first consists of measures by DaimlerChrysler constituting obstacles to parallel trade. The undertaking instructed the members of its German distribution network for Mercedes passenger cars, roughly half of whom are agents, not to sell cars outside their respective territory. This was done in particular in the form of circular letters. In addition, DaimlerChrysler instructed its distributors to oblige foreign consumers to pay a deposit of 15% to DaimlerChrysler when ordering a car in Germany. This was not the case for German consumers, even though they might present the same "risk" of, for instance, being unknown to the seller, ordering a car with particular specifications, or living far away. The application of Article 81 to the restrictions agreed between DaimlerChrysler and its German agents results from the fact that these agents have to bear a considerable commercial risk linked to their activity. From the point of view of EC competition law, they must therefore be treated as dealers.

In a second infringement, DaimlerChrysler limited in Germany and Spain the sales of cars by Mercedes agents or dealers to independent leasing companies as long as these companies had not yet found customers (lessees) for the cars concerned. As a consequence, it restricted the competition between its own leasing companies and independent leasing companies because the latter could not put cars on stock or benefit from rebates granted to all fleet owners. Consequently, the independent leasing companies were not able to pass on such favourable conditions, in particular concerning prices and the availability of cars, to their customers. It is important to note that sales of Mercedes cars to leasing companies represent a substantial part of all sales of Mercedes cars. Commission Regulation EC/1475/95 concerning motor vehicle distribution clearly states that leasing companies have to be treated in the same way as final customers, to which distributors are completely free to sell new cars, as long as the lessee has no right to purchase the leased vehicle before the end of the leasing contract.

Finally, DaimlerChrysler participated in a price fixing agreement in Belgium with the aim of limiting the rebates granted by its subsidiary Mercedes Belgium and the other Belgian Mercedes dealers to consumers. A "ghost shopper" investigated the sales policies of the dealers and DaimlerChrysler agreed to enforce the agreement by reducing the supply to dealers who granted higher rebates than the 3% which had been agreed. This amounts to resale price maintenance, a practice that was already prohibited by the Commission last June in its decision against Volkswagen.

The measures adopted by DaimlerChrysler infringe the provisions of Article 81(1) of the EC Treaty, which prohibits all agreements between undertakings which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the Single Market. Moreover, Regulation EC/1475/95 prohibits car manufacturers and their importers from restricting, either directly or indirectly, the freedom of final consumers to buy new motor vehicles in the Member State of their choice. It therefore ensures that European consumers have the option of buying a car wherever it is most advantageous to them. The Regulation also states that the freedom of dealers to determine prices and discounts in reselling to end

consumers must not be restricted. This means that the sales prices and conditions must not be fixed by the manufacturer. They have to be determined by each individual dealer.

The amount of the fine takes into account the gravity of the infringements, their duration and the position of the company on the market. The fine must also have a sufficient deterrent effect on DaimlerChrysler and other companies. The first infringement, the obstruction of parallel trade, directly jeopardises the proper functioning of the Common Market by partitioning national markets. For this reason it has to be qualified as "very serious". In addition, it constitutes an infringement of long duration: the 15% deposit obligation had been in force since 1985, while the instruction to distributors in Germany not to sell outside their respective sales territories was applied from February 1996 to June 1999. The restrictions imposed on the sale of cars to leasing companies can be categorised as a "serious infringement" of medium duration (five years; and this practice continues). Finally, price fixing also has to be seen as a "serious infringement" and of medium duration (around four years in this case; it ended in 1999).

Although this case was started on the Commission's own initiative, complaints had come from consumers about the practices concerned. The decision is based on documents found during inspections in December 1996 at the premises of DaimlerChrysler AG (formerly Daimler-Benz AG or Mercedes-Benz AG) in Germany, and of its subsidiaries in Belgium, the Netherlands and Spain. ■

The AOL Time Warner / IPC Case

The Commission has approved the acquisition by Time, a subsidiary of US company AOL Time Warner, of sole control of IPC, the leading magazine publisher in the United Kingdom and Ireland. The Commission concluded that, whichever way the markets were defined, the deal would not pose any problems. The Commission's investigation showed that the proposed operation neither created nor strengthened a dominant position in the markets for magazine readership or advertising in either the UK or Ireland. The Commission also concluded that, even if it were to take a narrower view of the market, it would not pose any problem. Morover, the results of the Commission's market investigation showed that the creation of a vertical link between IPC's consumer magazine business and AOL TW's internet access business was unlikely to lead to the creation or strengthening of a dominant position on either market. This is partly because there does not currently exist in the UK a separate demand for on-line consumer magazines and partly because consumer magazines are largely sold in the UK via newsagents rather than via on-line subscriptions. The acquisition is unlikely to foreclose the possibilities for further vertical integration or similar co-operation between competitors of IPC and AOL TW in the UK.

Source: Commission Statement IP/01/1414, dated 12 October 2001