DISTRIBUTION (LOUDSPEAKERS): THE B & W CASE

Subject: Distribution arrangements

Industry: Loudspeakers
(Some implications for other industries)

Parties: B & W Loudspeakers Ltd

Source: Commission Statement IP/02/916, dated 24 June 2002

(Note. When the company's selective distribution system was notified to the Commission, it appears that it was accompanied by restrictions on "bait pricing", cross-supplies between distributors and distance selling through the Internet. As these restrictions have now been removed, the Commission has sent a "comfort letter" to the company concerned.)

The Commission has dropped its objections to the distribution system of B&W Loudspeakers Ltd after the UK-based company, which makes high-quality loudspeakers for hi-fi and home cinema sound reproduction systems, put an end to certain hard-core violations of antitrust law.

In January 2000, B&W Loudspeakers, Europe's second most important supplier of top-quality loudspeakers after Bang & Olufsen, notified a selective distribution system for its products requesting clearance under EU competition rules. After a careful analysis, the Commission came to the preliminary conclusion, in December 2000, that the agreements could not qualify for an exemption under the general rules applying to distribution agreements and started formal proceedings against B&W Loudspeakers. The general rules are set out in Commission Regulation EC/2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices; and in the accompanying Guidelines on Vertical Restraints (Official Journal C 291 of 13.10.2000.).

B&W Loudspeaker's distribution system contained several hard-core restrictions of competition, namely minimum retailer prices disguised as a prohibition on "bait pricing" (this relates to the practice of offering a certain product at a specially attractive price with the aim of attracting customers to the sales outlet), restrictions on cross supplies between authorised dealers and a prohibition on distance sales including through the Internet. Such practices entail serious harm for consumers as explained in the Statement of Objections sent to B&W in 2000.

Following the opening of the formal proceedings, B&W Loudspeakers undertook to delete the restrictions on pricing, cross supplies and distance selling from its agreements. Retailers can now request B&W Loudspeakers to do distance selling. B&W Loudspeakers can refuse such requests only in writing and on the basis of the need to maintain the brand image and reputation of the products.

The criteria must be applied indiscriminately and must be comparable to those for sales from a traditional retail outlet. The modifications satisfy the Commission which sent a so-called comfort (administrative) letter which states that B&W from now on benefits from the 1999 Block Exemption Regulation on distribution and other vertical agreements. ■

Deutsche BP / Erdölchemie

The Commission has decided to impose a fine of €35,000 on Deutsche BP AG for negligently providing incorrect and misleading information in relation to the acquisition of German chemicals producer Erdölchemie GmbH. In the notification, the company failed to indicate several relevant elements as regards the market for acrylonitrile (ACN), a chemical used for the production of acrylic fibres, plastics and nitrile rubber. The Commission attaches a paramount importance to receiving all the information needed to be able to assess a concentration's impact on the marketplace within the tight and legally-binding timetable set in the Merger Regulation.

Deutsche BP, a subsidiary of BP plc (UK), filed its acquisition of Erdölchemie with the Commission in February last year for regulatory clearance under the Merger Regulation. During the course of its investigation, the Commission discovered that the BP group had co-operation agreements with competitors, which limited their ability to sell ACN on the European market. It was also revealed that BP had strong positions on the vertically related markets for the licensing of ACN production technology and for the supply of ACN catalyst, an essential input material for the production of ACN. The information provided in the initial notification of the transaction did not identify these factors, which were of significant relevance for the assessment of BP's competitive position on the ACN market. After BP supplied the missing information, the Commission was able to complete its investigation and finally cleared the transaction on 26 April 2001 without the need for commitments.

Under the Merger Regulation the Commission can impose fines between €1,000 and €50,000 when a company intentionally or negligently provides incorrect or misleading information in a notification of a transaction. In calculating the fine, the Commission takes into account the gravity of the infringement and the relevance of the omitted information for the assessment. In the present case, the Commission recognises that there was no intention to mislead on the part of Deutsche BP. Given that BP did not contest the facts, but agreed that the relevant information should have been included in the so-called Form CO notification, the fine was calculated at €35,000.

Source: Commission Statement IP/02/897, dated19 June 2002