ABUSE OF DOMINANT POSITION (TYRES): THE MICHELIN CASE

Subject: Abuse of dominant position
Discounts / Rebates
Fines

Industry: Tyres
(Implications for other industries)

Parties: Manufacture Française des Pneumatiques Michelin
Commission of the European Communities

Source: Judgment of the Court of First Instance, dated 30 September, 2003, in Case T-203/01 (*Manufacture Française des Pneumatiques Michelin v Commission of the European Communities*); Court Press Release 80/03

(Note. The Court of First Instance has upheld the Commission's Decision to fine Michelin for practices which were unfair to its dealers: a company in a dominant position, which operated a system of loyalty rebates and bonuses for its dealers, thereby strengthened its position to the detriment of other operators and impeded normal competition. At the time of writing, the judgment is not available in English.)

Summary of Judgment

Michelin enjoys a dominant position on the French market for replacement tyres for trucks and buses, a market which includes both new replacement tyres and retreaded tyres. In 2001 the Commission adopted a decision by which it found that Michelin had abused its dominant position, in that, in France, Michelin's commercial and pricing policy towards its dealers was based on a complex system of discounts, refunds and/or other financial advantages. The main objective of the policy was to tie dealers to the company and to maintain the company's market share and consequently to undermine competition in the common market. The Commission fined Michelin €19.76 million.

The following were specifically found to be abuses: quantitative discounts (or "quantity rebates") and discounts calculated by reference to the quality of the service provided by the dealer to its customers ("service bonuses"). These preferential prices were not stipulated when the dealer was invoiced but were generally applied in the year following the reference period.

Michelin brought an action before the Court of First Instance of the European Communities for annulment of the Commission's Decision. It denied that the discounts and bonuses in question were loyalty-inducing, challenged the Commission's allegation that the cumulative effect of the various systems of rebates amounted to a further abuse and disputed the Commission's economic

analysis and the size of the fine imposed on it. The Court of First Instance upheld the Commission's decision, accepting that a company in a dominant position, which operated loyalty discounts and bonuses, impeded normal, price-based competition and infringed Community law.

Quantity rebates were unfair since dealers were unable to estimate the real unit purchase price of Michelin tyres, the rebates not being calculated and paid until about a year after the first purchases were made. Dealers were placed in a position of uncertainty until recovery of the rebates and this prompted them to minimise their risks by taking advantage of the terms offered and purchasing from Michelin. The Court of First Instance observed, first, that it has consistently held that although it is not necessarily contrary to Community law for a company in a dominant position to grant a system of discounts under which the rate of the discount increases with the volume of purchases made, the system must be based on a countervailing advantage which is economically justifiable (for example, economies of scale which are passed on to the customer).

However, Michelin gave no economic justification for its system of quantity discounts, which, because it was loyalty inducing, tended to prevent French dealers in truck and bus tyres not only from ascertaining the price at the time of purchase but also from obtaining supplies from competing manufacturers. Similarly, in the Court of First Instance's view, the service bonuses operated by Michelin, which supposedly rewarded after-sales services provided by dealers, had an abusive effect: they were unfair since they were based on subjective criteria, were loyalty-inducing and were in the nature of a tied sale in that they encouraged dealers to give priority to Michelin when having tyres retreaded. The grant of such discounts by a company in a dominant position is not consistent with normal competition based on prices and is consequently prohibited by Community law.

The terms on which certain dealers entered into partnership with Michelin helped to strengthen Michelin's position and to remove competition on the market for new truck and bus tyres and are thus prohibited by the EC Treaty. The system of preferential prices linked to the "Michelin Friends Club" also amounted to an abuse. Conditions of Club membership included requiring dealers to give undertakings relating to market share, to stock a certain number of Michelin tyres and to promote the brand, in return for which Michelin provided dealers with training and financial support towards investment. The Court of First Instance found that the Commission was right in concluding that overall those conditions were intended to eliminate competition on the part of other manufacturers as well as to ensure that Michelin's position was maintained and that competition on the market in new replacement truck and bus tyres was restricted.

The Court of First Instance endorsed the Commission's analysis and upheld the fine imposed on Michelin. Given that these infringements had lasting and harmful effects for consumers, the Court of First Instance rejected Michelin's arguments challenging the Commission's economic analysis and the level of the fine, which was high because of aggravating circumstances. ■