

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



ŽENDRIJŲ TEISINGUMO TEISMAS
I KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 33/06

6 April 2006

Judgment of the Court of Justice in Case C-551/03 P

General Motors BV v Commission of the European Communities

THE COURT CONFIRMS THE JUDGMENT OF THE COURT OF FIRST INSTANCE FINDING ANTI-COMPETITIVE CONDUCT BY THE NETHERLANDS SUBSIDIARY OF GENERAL MOTORS

General Motors was unable to show that the Court of First Instance made errors of law in its judgment.

Opel Nederland¹, the sole company in the Netherlands for the sale, import, export and wholesale trade in Opel motor vehicles and spare parts, concluded dealership agreements with about 150 authorised dealers.

Under Community legislation, Opel Nederland is allowed to prohibit its dealers from supplying vehicles to a reseller that does not form part of its sales network, but cannot prohibit them from supplying those products to final consumers or to other dealers belonging to that network.

In 1996, the Commission ordered investigations on the strength of which, by a decision of 20 September 2000, it ordered Opel Nederland to pay a fine of 43 million euros for hindering free competition.

The Commission found that there was a systematically restrictive strategy in relation to supply and bonuses, and a direct prohibition on exports to final consumers and to Opel dealers established in other Member States.

It classified the infringement as very serious, in view of the strong position of the Opel brand on the Netherlands market and on the markets of the other Member States.

¹ A wholly-owned subsidiary of General Motors Nederland. By letter of 20 June 2005, the Court was informed by General Motors Nederland and Opel Nederland that the two companies had merged and henceforward formed a single company called "General Motors BV".

Opel Nederland then applied to the Court of First Instance of the European Communities for the annulment of the 2000 decision, and, in the alternative for a reduction in the fine.

In its judgment of 21 October 2003, the Court of First Instance essentially confirmed the Commission's decision. It held, however, that the Commission had not been able to establish that there had been a restrictive supply measure, consisting in a limitation of supplies on the basis of existing sales targets. It therefore reduced the amount of the fine to 35,475,000 euros.

Opel Nederland then lodged an appeal with the Court of Justice of the European Communities seeking the annulment of the judgment of the Court of First Instance in so far as it concerned the alleged general strategy restricting exports and Opel Nederland's bonus policy and confirmed a fine on those points.

The general strategy restricting exports

The Court of Justice first held that it did not have jurisdiction to examine the appeal in so far as General Motors was seeking to call into question the assessment of the facts by the Court of First Instance. The Court of First Instance alone has jurisdiction to ascertain and assess the facts.

The Court therefore examined only whether the Court of First Instance had distorted the evidence. It found in that regard that General Motors had not succeeded in showing that the Court of First Instance had obviously distorted the evidence.

Opel Nederland's bonus policy

The Court examined in this respect whether the Court of First Instance had erred in law by confirming the Commission's statement that Opel Nederland had implemented a bonus system designed to restrict exports, contrary to the EC Treaty. It concluded that such an objective could be achieved not only by means of direct restrictions on exports **but also through indirect measures, such as Opel Nederland's applying bonuses to national sales only**, since such measures have an impact on the economic conditions of those transactions. The Court of First Instance had therefore been right to confirm the Commission's statement.

Calculation of the fine

The Court held that the Court of First Instance was right to find that the Commission was not required to find attenuating circumstances in its decision. It therefore confirmed the calculation of the fine.

Therefore, **the Court of Justice has dismissed the appeal.**

Unofficial document for media use only, not binding on the Court of Justice.

Available languages : DE, EN, FR, NL, PL, SL

The full text of the judgment is available on the Court's website

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-551/03 P>

It can usually be consulted from midday CET on the day of delivery.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355; fax: (00352) 4303 2731