

Press and Information Division

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Judgment of the Court of First Instance in Case T-368/00

General Motors Nederland BV, Opel Nederland BV v Commission of the European Communities

**THE COURT OF FIRST INSTANCE ESSENTIALLY CONFIRMS THE
COMMISSION'S DECISION CONCERNING THE EXISTENCE OF AN OBSTACLE
TO FREE COMPETITION**

The amount of the fine is reduced from EUR 43 million to EUR 35 475 000

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

Under Community legislation, Opel Nederland is authorised to prohibit its dealers from supplying vehicles to resellers who are not part of its sales network, but may not prohibit them from supplying those products to final consumers or to other dealers who belong to that network.

The Commission ordered investigations in 1996, on the strength of which, by a decision of 2000, it fined Opel Nederland EUR 43 million for hindering free competition.

The Commission discovered a system that systematically restricted supply and bonuses, together with a direct prohibition on exports to final consumers and Opel dealers in other Member States.

It categorised the infringement as very serious, having regard to the important position of the Opel brand on the Netherlands market and on the markets of other Member States where the sale prices of Opel vehicles were significantly higher than in the Netherlands.

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

In its judgment, the Court of First Instance essentially confirms the Commission's decision. It considers, however, that the Commission has not succeeded in establishing the existence of a restrictive supply measure, limiting supplies by reference to existing sales objectives. The amount of the fine has therefore been reduced to EUR 35 475 000.

The Court of First Instance finds that the Commission's decision does not contain sufficient proof that supplies to dealers were limited, and still less that that measure entered into the field of the contractual relations between Opel Nederland and its dealers.

Concerning the **amount of the fine**, the Court of First Instance notes that the Commission adopted **guidelines** in **1998** in order to ensure the transparency of its decisions. The calculation is made by fixing a basic amount (in relation to the gravity and duration of the infringement), to which, where appropriate, increases or reductions are applied to take account of aggravating or extenuating circumstances.

Assessment of the gravity of an infringement takes account of its nature, its actual impact on the market where measurable, and the extent of the geographical market concerned. Concerning the duration of infringements, a distinction is made between those of short duration, medium duration and long duration.

The Court of First Instance (which is responsible for verifying whether the amount imposed is proportionate in relation to duration and gravity) considers that the classification of the **infringement** as '**very serious**' is justified, and that due reasons for that classification were given in the Commission's decision, the aim of the infringement having been to partition the internal market.

The Court also finds the infringement particularly serious on account of the size of Opel, the importance of that brand on the European market and the effect on the markets of other Member States, particularly Germany.

The Court therefore accepts the Commission's argument on gravity, but considers that the amount of EUR 40 million fixed by the Commission on that account should be reduced to EUR 33 million, having regard to the fact that the existence of the restrictive supply measure has not been established.

Finally, the Court accepts that the infringement is of **medium duration**, which (in accordance with what the Commission decided) justifies an increase of 7.5% (of the amount determined for gravity), which takes the final amount of the **fine** to **EUR 35 475 000**.

Unofficial document for media use which is not binding on the Court of First Instance.

Available languages: French, English, German, Dutch, Italian, Spanish

*The full text of the judgment can be found on the Internet
(www.curia.eu.int)*

In principle it will be available from midday CET on the day of delivery.

*For further information please contact Christopher Fretwell
Tel: (352) 43.03.32.05; fax: (352) 43.03.33.55*