

Press and Information Division

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Judgment of the Court of First Instance in Case T-208/01

Volkswagen A.G. v Commission of the European Communities

**THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION'S DECISION
DECLARING VOLKSWAGEN'S COMMERCIAL PRACTICES WITH REGARD TO
ITS GERMAN DEALERS UNLAWFUL**

The Commission did not prove an agreement between the automobile manufacturer and its authorised dealers to fix a selling price by prohibiting discounts on a new model.

In 1996 and 1997, the automobile manufacturer Volkswagen called upon its German dealers not to sell the new Volkswagen Passat model below a recommended selling price and to limit, or even not grant, discounts to customers.

Acting on a consumer's complaint, the Commission held that such initiatives were anti-competitive, since their purpose was to eliminate, among the dealers, competition by discounts. Having concluded that there was an agreement contravening competition law, the Commission, by a decision of 2001¹, fined Volkswagen 30.96 million Euros.

Volkswagen disputed, having infringed the rules of free competition, before the Court of First Instance, arguing, in particular, that its initiatives with regard to its dealers were unilateral. There was therefore no agreement between the parties.

The Court of First Instance recalls, first of all, in line with its case-law, that the Commission may not decide that unilateral conduct by a manufacturer, in the context of its contractual relations with its retailers, in reality forms the basis of an anti-competitive agreement unless it establishes express or implied acquiescence by the retailers in the attitude adopted by the manufacturer.

The Court of First Instance finds, also, that the Commission did not prove any actual acquiescence by the dealers in Volkswagen's calls when they became aware of them. The Commission decided that such proof was not necessary, since the dealers had, by signing a dealership agreement, tacitly acquiesced in such calls.

The Court finds, however, that the compliance with Community competition law of the dealership agreement signed by the dealer's is undisputed.

¹ Commission Decision of 29 June 2001 in Case COMP/F-2/36.693 — Volkswagen (OJ 2001 L 262, p. 14)

The Court finds therefore that the Commission's position amounts to claiming that a dealer who has signed a dealership agreement which complies with competition law is deemed, upon and by such signature, to have accepted in advance a later unlawful variation of that contract, even though, by virtue precisely of its compliance with competition law, that contract could not enable the dealer to foresee such a variation.

The Court rejects such position as contrary to the requirement to prove a concurrence of wills. The signature of the dealership agreement by Volkswagen's dealers could not be regarded as implied acceptance, given in advance, of Volkswagen's anti-competitive initiatives.

Since no agreement was proved, the Court has annulled the Commission's decision imposing a fine on Volkswagen A.G.

Reminder: An appeal against the decision of the CFI, limited to points of law, can be brought before the Court of Justice of the European Communities within two months of delivery.

Unofficial document, for media use only, which does not bind the Court of First Instance.

Available languages: DE, ES, EN, FR, IT.

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.

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