

Case T-368/00

General Motors Nederland BV and Opel Nederland BV

v

Commission of the European Communities

(Competition — Distribution of motor vehicles — Article 81 EC — Regulations (EEC) No 123/85 and (EC) No 1475/95 — Partitioning of the market — General strategy aimed at restricting exports — Restriction of supply — Restrictive bonus policy — Ban on exports — Fine — Gravity and duration of the infringement — Proportionality — Guidelines for the calculation of fines)

Judgment of the Court of First Instance (Second Chamber), 21 October 2003 II-4495

Summary of the Judgment

1. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Meaning — Unilateral conduct — Not included — Individual measures applied to dealers and accepted by them — Included (Art. 81(1) EC)*

2. *Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Onus on the Commission to prove the duration of the infringement*
(Art. 81(1) EC)
3. *Competition — Agreements, decisions and concerted practices — Adverse effect on competition — Dealership agreements for sales of motor vehicles — Exclusion of export sales from the system of bonuses granted to dealers*
(Art. 81(1) EC)
4. *Competition — Agreements, decisions and concerted practices — Adverse effect on competition — Criteria of assessment — Anti-competitive object — Sufficient finding*
(Art. 81(1) EC)
5. *Competition — Fines — Amount — Determination thereof — Criteria — Seriousness of the infringements — Factors to be taken into account*
(Council Regulation No 17, Art. 15(2))
6. *Competition — Fines — Amount — Discretion of the Commission — Judicial review*
(Art. 229 EC; Council Regulation No 17, Art. 17)

1. In the absence of agreements between undertakings, a unilateral act by one undertaking without the express or tacit participation of another does not fall within Article 81(1) EC.

tinuous commercial relations governed by a pre-established general agreement.

(see paras 58, 60, 98, 147)

Concerning the distribution of motor vehicles, a distinction must be drawn between a general strategy of manufacturers designed to limit exports and individual measures taken by dealers in the context of that strategy. Those dealers, once they are accepted, are integrated into the dealership contract and incorporated into a series of con-

2. The Commission is under a duty to produce sufficiently precise and coherent proof to justify the firm conviction that the alleged infringement has taken place.

(see para. 88)

3. The implementation by a supplier of motor vehicles, in the context of dealership contracts, of a measure which excludes export sales from the bonus system constitutes an agreement with the object of restricting competition. As bonuses are no longer granted for export sales, the margin of economic manoeuvre which dealers have to carry out such sales is reduced in comparison with that which they have to carry out domestic sales. Dealers are thereby obliged either to apply less favourable conditions to foreign customers than domestic customers, or to be content with a smaller margin on export sales. By withdrawing bonuses for export sales, the latter become less attractive to foreign customers or to dealers. The measure is therefore, by its very nature, likely to inhibit export sales.

restriction or distortion of competition within the common market.

(see para. 104)

5. The gravity of infringements has to be determined by reference to numerous factors, such as the particular circumstances of the case, its context and the dissuasive effect of fines, without there being any binding or exhaustive list of the criteria which must be applied.

An infringement designed to partition the internal market is, by its nature, particularly serious. It goes against the most fundamental aims of the Community and, in particular, the accomplishment of the single market.

(see paras 100, 102)

(see paras 189, 191)

4. There is no need to take account of the concrete effects of an agreement when it has as its object the prevention,

6. In the context of Regulation No 17, the Commission has a wide margin of discretion in fixing the amount of fines in order to steer the conduct of under-

takings towards compliance with the competition rules. The Court of First Instance is, however, under a duty to verify whether the amount of the fine imposed is proportionate in relation to the gravity and duration of the infringement, and to weigh the gravity

of the infringement and the circumstances invoked by the applicant.

(see para. 189)