## PRICE FIXING (MUSICAL INSTRUMENTS): THE YAMAHA CASE

| | |
|---|---|
| Subject: | Price fixing<br>Trade restrictions<br>Market partitioning<br>Distribution arrangements |
| Industry: | Musical instruments<br>(Some implications for other industries) |
| Parties: | Commission of the European Communities<br>Yamaha |
| Source: | Commission Statement IP/03/1028, dated 16 July 2003 |

*(Note. Although this was a classic case of distribution arrangements being used to restrict trade and fix prices, the restrictions were limited and remedied as soon as the Commission intervened. The fine imposed on Yamaha was therefore not as heavy as if the restrictions had been more widespread, more systematic and less promptly ended.)*

The Commission has decided to impose a fine of €2.56 million on musical instruments manufacturer Yamaha for restricting trade within the European single market and fixing resale prices in certain Member States of the European Union for such products as pianos, guitars and oboes. Although the restrictions were of a serious nature, they seemed to be limited to certain dealers, products and countries rather than the result of a deliberate strategy, and appear not to have been implemented in full. Furthermore, as soon as the Commission intervened, Yamaha took steps to end the restrictions and to redesign its European distribution system.

Yamaha sells under a selective distribution system a whole range of traditional and electronic musical instruments and equipment in Europe, such as pianos, electronic organs, guitars, saxophones and violins. The company is the European market leader for most musical instruments.

After an investigation, the Commission has concluded that Yamaha has violated the competition rules of the European Communities by entering into agreements or concerted practices aimed at partitioning the market and fixing resale prices. Such practices had the object of restricting competition, within the meaning of Article 81(1) of the EU treaty and Article 53(1) of the European Economic Agreement, in Germany, Italy, France, Austria, Belgium, The Netherlands, Denmark and Iceland.

The restrictions took different forms at different times and in different countries. They included obligations on official dealers to sell only to final customers; obligations on official dealers to purchase exclusively from the Yamaha subsidiaries; obligations on official dealers to contact Yamaha before exporting via the Internet; and the fixing of resale prices. Agreements or restrictive practices (or both) partitioning the European market and fixing resale prices constitute a violation of the Community's rules, according to an extensive case law.

Although the infringement was qualified as serious, some of the contractual provisions were applied to only a limited number of dealers and products, were not systematically included in all Yamaha agreements throughout the EEA and have not been simultaneously implemented. Moreover, the fact that Yamaha terminated a majority of the restrictions as soon as the Commission intervened was also considered a mitigating circumstance. ■

**The CVRD / Caemi Case**

The Commission has authorised CVRD's proposed acquisition of sole control of Caemi, currently controlled by the Japanese iron ore trader Mitsui and CVRD. Joint control resulted from a transaction the Commission cleared in October 2001 subject to conditions. The Commission concluded that the subsequent move in the present case from joint to sole control does not give rise to new competition concerns. CVRD will stay responsible for fulfilling the said conditions.

CVRD (Companhia Vale do Rio Doce) and Caemi are Brazilian-based mining companies active in the production and selling of iron ore, kaolin and bauxite. Since CVRD is already present in the shareholding of the target company, this transaction gives raise to a change from joint to sole control. The acquisition of joint control by CVRD and Mitsui took place in the framework of a previous operation cleared by the Commission in October 2001 ("the first transaction"), following a second-phase investigation which identified serious competition concerns in the seaborne (world-wide) iron ore markets for pellets, DR pellets and the combination of DR pellets and DR lump.
In line with the approach adopted by the Commission when clearing the first transaction, the analysis of the present case has focused on the markets for the production and sale of iron ore, which are the only affected markets.

The results of the Commission's enquiry also show that the market dynamics (contractual practice, price settling and discounts policy) have not been significantly altered since the original transaction was authorised. CVRD's competitive position has remained substantially stable over the last 18 months. The Commission has therefore concluded that the notified operation has no significant impact on the relevant markets, as it does not alter the existing competitive situation resulting from the first transaction, no additional competition concerns having been identified.

Source: Commission Statement IP/03/1052, dated 18 July 2003