SELECTIVE DISTRIBUTION (MOTOR VEHICLES): THE AUDI CASE

Subject:	Selective distribution Block exemption
Industry:	Motor vehicles
Parties:	Audi AG Volkswagen Group
Source:	Commission Statement IP/03/80, dated 20 January 2003

(Note. This case has some value to those anxious to act without delay on the recently adopted block exemption on selective distribution in the motor vehicle sector. Taken together with the Opel case, referred to in the text of the report, some guidance is offered to traders, dealers and consumers on the way in which, in practice, the block exemption rules are intended to work.)

The Commission has reached agreement with Audi AG, the German car manufacturer belonging to the Volkswagen group, on the authorisation of repair shops in the Audi network. Audi has undertaken to establish a system of qualitative selective distribution for the provision of after-sales services to benefit from the new block exemption regulation. This permits former Audi dealers or repairers who meet the relevant quality criteria to remain active in the market as members of Audi's network. In addition, Volkswagen AG will ensure that the same policy will be followed by all the other brands of the Volkswagen group.

According to the Commission, the settlement achieved with Volkswagen and Audi provides the first example of action taken with respect to the new rules in the motor vehicle sector. It is intended to serve as guidance to the entire motor vehicle sector. As a result of the precedent set, many small repairers will be able to stay on within Audi's authorised network, and will have a better opportunity to compete.

The new block exemption regulation for the motor vehicle sector aims to increase competition for both the sale of new motor vehicles and the provision of after-sales repair and maintenance services. Since September 2002, the Commission has received many formal complaints and letters from Audi dealers and authorised Audi repairers whose agreements were terminated by Audi. These complaints relate to Audi's refusal to prolong agreements with former dealers or repairers who nevertheless fulfil the qualitative criteria for authorisation as Audi repairers.

The new motor vehicle block exemption regulation entered into force on 1 October 2002. It foresees a transitional period in respect of certain agreements, which may therefore benefit from the former motor vehicle block exemption regulation until 30 September 2003. To take advantage of the transitional period, agreements have to satisfy two conditions: first, they must already have been in force on 30 September 2002 and second, they must satisfy the conditions for exemption provided for in the former block exemption regulation.

To ensure the provision of repair and maintenance services for the cars of its brand, Audi has established a network of authorised dealers, who sell new cars and at the same time provide these after-sales services. In addition, Audi has concluded agreements with authorised Audi repairers who only provide after-sales services.

The agreements between Audi and its authorised repairers cannot benefit from the transitional period. Such agreements, which relate purely to servicing, were not covered by the former block exemption, as they do not provide for a link between the sale of new vehicles and the servicing of vehicles, the existence of which was one of the conditions for the application of the former block exemption regulation. Consequently, to benefit from the new block exemption, Audi has now agreed to apply a system of qualitative selective distribution with regard to its after-sales services. This means that Audi will only use qualitative criteria for the selection of authorised repairers, and will conclude servicing agreements with repairers that satisfy these criteria. Moreover, Audi must not apply these criteria in a discriminatory manner.

As far as the practical implementation of this solution is concerned, Audi has extended agreements with authorised Audi dealers or repairers in respect of which termination has taken effect since the new block exemption regulation came into force on 1 October 2002, as well as those where termination will take effect in the near future (that is, before the end of the transitional period on 30 September 2003) as service agreements. To this effect, Audi is contacting the operators concerned and allowing them either to stay in the Audi network as authorised repairers or to re-enter it, as the case may be. In this respect, it is presumed that dealer/repairers whose agreements were brought to an end a short time ago, still fulfil the qualitative criteria currently applicable to authorised Audi repairers.

Audi will communicate the qualitative criteria currently applicable to authorised Audi repairers without delay to former authorised Audi dealers or repairers whose agreements were brought to an end before the entry into force of the new Regulation and who are now applying to become authorised Audi repairers once more. In these cases it can equally be presumed that these operators still fulfil the qualitative criteria currently applicable to authorised Audi repairers. Once a repairer declares that it fulfils these criteria, Audi should immediately assess whether the criteria are fulfilled and, in the affirmative, allow the candidate to become an authorised Audi repairer. Audi will apply the same procedure with regard to independent repairers who have never been members of the Audi network but who now want to become authorised Audi repairers. Volkswagen AG and Audi AG have confirmed to the Commission that they will fully comply with the obligations described above for all brands of the Volkswagen group.

Any manufacturer who operates a network of service outlets and has a market share of over 30% for the relevant repair and maintenance services will not be able to benefit from the transition period provided for by the new Regulation with regard to its servicing agreements. Consequently, such a manufacturer must now establish a qualitative selective distribution system for its networks of authorised repairers. In contrast, to benefit from the block exemption, a manufacturer with a market share of over 30% who does not operate a network of service outlets outside his dealer network, and whose dealer network complies in all respects with the former motor vehicle block exemption regulation, will have to apply qualitative selection after the end of the transitional period on 30 September 2003 at the latest.

A similar solution was achieved in September 2002 as regards authorised repairers for cars of the Opel brand. These cases provide guidance for other motor vehicle manufacturers in similar circumstances with regard to their after-sales servicing networks. The Commission is confident that its monitoring will be helpful for consumers, vehicle manufacturers and other interested parties with regard to the application of the new rules. ■

The Celanese / Degussa Case

The Commission has decided to open a detailed investigation into a proposed joint venture between German companies Celanese and Degussa. On 18 December 2002, the Commission received notification of the proposed operation whereby Celanese Chemicals Europe GmbH, a subsidiary of Celanese AG, and Degussa AG's Oxeno Olefinchemie GmbH create a 50/50 joint venture in the field of propylene-based oxo chemicals in Europe. The joint venture will merge the commercial, technical and operational C3-oxo business activities of Celanese in Oberhausen, Germany, with those of Degussa's Oxeno subsidiary in Marl, also in Germany. Oxo Chemicals are primarily used as chemical intermediates, solvents and plasticizers. A preliminary examination has identified competition concerns in a number of markets where the combined entity would have very high market shares. According to the information available, the joint venture would have market shares of between 40 and 55% of the products concerned in Europe, well ahead of competitors BASF of Germany, Perstorp Oxo of Sweden and Atofina of France. In its in-depth investigation the Commission will seek to establish whether such high market shares could give the combined entity a dominant position in the products at stake. Degussa is the world's largest producer of specialty chemicals. It is controlled by German energy group E.ON AG. Celanese is also a chemicals company with a world-wide presence, but specialises in basic chemical products, acetates, technical synthetic materials and food additives.

Source: Commission Statement IP/03/154, dated 31 January 2003