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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5/X/2005

NON CONFIDENTIAL VERSION

COMMISSION DECISION

of 5/X/2005

relating to a proceeding pursuant to Article 81 of the EC Treaty

(Cases F-2/36.623/36.820/37.275 – SEP et autres / Peugeot SA)

(Only the French text is authentic)

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(Only the French text is authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 implementing Articles 81 and 82 of the Treaty¹, and notably its Articles 7 (1) and 23 (2),

Having regard to the Commission Decision of 29 April 2004 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 19(1) of Regulation No 17, first implementing Regulation of Articles 85 and 86 of the Treaty², Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty, Article 27(1) of Council Regulation 1/2003 and Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty³,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing officer in the present case,⁴

WHEREAS:

¹ OJ L 1, 4.1.2003, p. 1. Regulation modified by Regulation (EC) n°411/2004 (JO L 68 of 6.3.2004, p.1).

² OJ L13, 21.2.1962, p. 204/62; this Regulation was revoked by Regulation (EC) No 1/2003. Article 34 (2) of Regulation (EC) n°1/2003 provisions that acts of procedure taken pursuant to Regulation n°17 keep their effects for the implementation of Regulation (EC) n°1/2003.

³ OJ L123, 27.4.2004, p.18. regulation, was revoked by Regulation (EC) n°773/2004 (OJ L 123 of 27.4.2004, p.18).

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1. FACTS

1.1. Context

1.1.1. Procedure

1. The Commission received three complaints to the effect that Peugeot SA had taken steps to restrict exports from certain Member States, including Germany and the Netherlands, to other Member States, notably France. The complaints emanated from intermediaries mandated to act on behalf of French end consumers trying to purchase a vehicle in another Member State⁵. They concerned agreements or concerted practices of Peugeot aimed at limiting sales of new vehicles to final consumers resident in another Member State which, in so doing, allegedly restricted competition within the meaning of Article 81(1) of the EC Treaty. The complaints argued that, in accordance with Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements⁶, manufacturers and/or their importers could prevent their dealers from selling new vehicles to unauthorised resellers; on the other hand, active and passive sales to final consumers established in the territory, and passive sales outside the territory, whether directly or through an authorised intermediary, as well as sales to other dealers belonging to the same network should not be the subject of any restrictions.
2. On 10 September 1999, with a view to verifying whether the information provided could form the basis for a finding of infringement, the Commission ordered inspections by decision pursuant to Article 14(3) of Council Regulation No 17. On 22 and 23 September 1999, the corresponding inspections took place on the premises of the manufacturers Automobiles Peugeot SA and Automobiles Citroën SA, both subsidiaries of Peugeot SA, and of dealers situated at various levels of the Dutch and German networks⁷. On 19 March 2003, with a view to obtaining further information, the Commission adopted a second series of decisions ordering inspections under Article 14(3) of Regulation No 17. On 2 and 3 April 2003, the Commission investigated several undertakings belonging to the Peugeot network simultaneously in France, Germany, the Netherlands and Denmark⁸. The evidence thus gathered was

⁵ The three complainants were Système Européen Promotion (SEP) SARL (complaint of 17 July 1997) and Automobiles JM (complaint of 27 November 1997), both French mandated car intermediaries, and Syndicat des Professionnels Européens de l'Automobile (complaint of 6 January 1998), representing certain French car brokers.

⁶ OJ L 145, 29.6.1995, p. 25.

⁷ The visits were to the Paris headquarters of Peugeot SA (the group's holding and parent company) and Automobiles Peugeot SA and Automobile Citroën SA (the two manufacturers members of the group). Visits were made simultaneously to the importers of the Peugeot and Citroën makes respectively for Germany (Peugeot Deutschland GmbH and Citroën Deutschland Aktiengesellschaft) and the Netherlands (Peugeot Nederland BV and Citroën Nederland BV). The series of inspections was rounded off by a visit to certain dealers of the two makes also in Germany and the Netherlands.

⁸ The visits were to the Paris headquarters of Peugeot SA (the group's holding and parent company) and Automobiles Peugeot SA (manufacturer member of the group). Visits were made simultaneously to the importers of the Peugeot make respectively in Germany (Peugeot Deutschland GmbH), the Netherlands (Peugeot Nederland BV) and Denmark (Bruun Import A/S). The series of inspections was rounded off by a visit to certain dealers of the Peugeot make also in Germany, the Netherlands and Denmark, as well as to the associations of dealers in those three countries.

supplemented by the replies to letters requesting information sent by the Commission during the course of the enquiry.

3. In its statement of objections of 29 April 2004 addressed to Automobiles Peugeot SA and its subsidiaries Peugeot Nederland NV (hereinafter called PNE) and Peugeot Deutschland GmbH, the Commission afforded the undertakings the opportunity to submit their comments. In their written reply of 30 July 2004 to the Commission's statement of objections (hereinafter called the reply from Automobiles Peugeot SA), Automobiles Peugeot SA and its subsidiaries PNE and Peugeot Deutschland GmbH made known their views on the Commission's objections⁹. In that same reply, the three undertakings waived the right to be heard orally by the Commission in the form of a hearing.
4. Following an additional investigation, certain matters raised in the statement of objections of 29 April 2004, notably those concerning the steps taken by Peugeot Deutschland against its German network, were dropped. Furthermore a letter was sent on 26 May 2005, which gave the state of play of the conclusions of the complementary investigation. This decision takes into account the comments of Automobiles Peugeot SA, which have been received on 27 June 2005. This Decision concerns the compatibility with Article 81 of the Treaty of the agreements concluded between Automobiles Peugeot SA through its subsidiary PNE, on the one hand, and the members of its Dutch network, on the other, aimed at limiting sales of Peugeot vehicles from the Netherlands to final consumers resident in other Member States.

1.1.2. Undertakings and association concerned

1.1.2.1. The manufacturer and its network

5. Peugeot SA (hereinafter called PSA), the second-largest European motor vehicle manufacturer with 15.1% of total sales in 2002 (passenger cars and light commercial vehicles), comprises the Peugeot and Citroën makes¹⁰. Automobiles Peugeot SA is a generalist manufacturer, wholly owned by PSA, which develops, produces and distributes cars under the Peugeot name. In 2002, its market share in the EU was 8.9%. At the central headquarters of Automobiles Peugeot SA, relations with subsidiaries are managed by the Europe Trade Department (Direction Commerce Europe - DEX or DEXP).
6. In each of the 25 Member States of the European Union, Peugeot products and services are distributed by a national retail distribution network¹¹. In the Netherlands,

⁹ The replies to the various matters raised by the Commission in its statement of objections of 29.4.2004 were furnished jointly by Automobiles Peugeot SA and its subsidiaries PNE and Peugeot Deutschland GmbH.

¹⁰ In addition to its car-related activities, the group also controls a component supplier, Faurecia, and the European leader and world No 2 in most of its business areas, namely Gefco, a transport and logistics company; finance companies federated by Banque PSA Finance; Peugeot Motocycles (scooters and 50-125 cc mopeds); Peugeot Citroën Moteurs (PCM), for the sale of engines and gearboxes to customers outside the group; and Process Conception Ingénierie (PCI), for the design and manufacture of industrial plant for the group and other world manufacturers.

¹¹ Up until 30 September 2003, Peugeot products and services were distributed by a distribution network organised along the lines of a selective, exclusive distribution system. From 1 October 2003, Automobiles Peugeot SA reorganised its network along the lines of a selective distribution system.

the network is organised and run by an importer wholly controlled by Automobiles Peugeot SA, namely PNE of Utrecht, Netherlands¹². The activities of PNE consist of the import, export and distribution of new Peugeot vehicles and of the spare parts, accessories and components relating thereto and of the provision of after-sales services through a dealer distribution network. The importer also manages, organises and runs this dealer network.

7. In the Netherlands, the Peugeot network is made up of dealers and agent resellers contractually tied to those dealers. Dealers are independent companies which sell new vehicles, spare parts and second-hand vehicles and provide after-sales services, either directly or through agents, under a dealership contract with the importer¹³. The number of dealer members of the Peugeot network in the Netherlands shrank appreciably between 1995 and 2003, from [●] to [●]. The number of agent resellers members of the same network increased, for its part, from [●] to [●] over the same period.¹⁴

1.1.2.2. The association of Dutch dealers (VPDN)

8. The association of Peugeot dealers and agents in the Netherlands (*Vereniging Peugeot Dealers Nederland*, hereinafter called the VPDN) has as its corporate aim to further the commercial and professional interests of its members¹⁵. Eligibility for membership of the VPDN is open to dealers having a dealership contract with PNE and their agents as well as to independent dealers authorised by PNE to operate as such¹⁶. On the basis of information furnished by the association, in 2003 the VPDN had [●] dealer members and [●] agent members¹⁷. Even if the VPDN had a national focus, it is equally possible for it to hold meetings at regional level¹⁸.
9. VPDN's organs include a Chairman elected from among Peugeot dealers and agents in the Netherlands, a management body and a general meeting¹⁹. The VPDN also has three standing committees composed of dealer representatives²⁰. The Commercial

¹² Outside France, where this role is played directly by Automobiles Peugeot SA, each national retail distribution network is organised and run by an importer wholly controlled by Automobiles Peugeot SA, except for in [●], where the importer is totally independent. Automobiles Peugeot SA has not concluded any written agreements with its importer subsidiaries. See pp. 16423-16439 of the Commission's file held in the framework of this investigation: reply from Automobiles Peugeot SA dated 11.7.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17.

¹³ See pp. 16423-16439: reply from Automobiles Peugeot SA dated 11.7.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17.

¹⁴ See pp. 16423-16439: reply from Automobiles Peugeot SA dated 11.7.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17.

¹⁵ See pp. 17283-17675, in particular p. 17291: Article 2 of the VPDN's memorandum and articles of association.

¹⁶ See Article 5 of VPDN's memorandum and articles of association.

¹⁷ See pp. 17283-17675, in particular p. 17283: letter from the VPDN sent to the Commission on 14.7.2003; see also pp. 17286-17290: Annex C to the letter from the VPDN sent to the Commission on 14.7.2003.

¹⁸ See on this point recital 81 of the present decision.

¹⁹ See pp. 17283-17675, in particular p. 17283: letter from the VPDN sent to the Commission on 14.7.2003; see also pp. 17286-17290: Annex C to the letter from the VPDN sent to the Commission on 14.7.2003.

²⁰ See pp. 17283-17675, in particular p. 17284: letter from the VPDN sent to the Commission on 14.7.2003.

Committee (*Commerciale-commissie*, subsequently named *Sales-commissie*) was set up to promote the sale of Peugeot vehicles. During the period covered by this Decision, PNE representatives attended almost all Commercial Committee meetings²¹, which were held on average every two months. At those meetings, dealer representatives and PNE senior management discussed commercial strategy. In particular, they cast an eye over PNE's entire strategy, the results of sales drives organised by PNE for a given model or a particular time, the past quarter's or year's targets in terms of penetration of the Dutch market, the targets for the following quarter or year and, lastly, measures to do with the system of dealer remuneration.

10. The functions of the employees of the various undertakings and association of undertakings who are mentioned in this Decision are set out in the table in Annex 1, which forms an integral part of this Decision.

1.1.3. *Relevant market and position of the Peugeot make*

11. The passenger car market can be divided into a number of segments. This classification is based on factors such as purchase price or vehicle length. Other criteria, such as engine capacity and horse power or even quality or prestige also play a part, albeit less important, when it comes to placing a vehicle in a given segment. A distinction is generally made between the following segments²²: A: mini cars; B: small cars; C: medium cars; D: large cars; E: executive cars, F: luxury cars; G: multi-purpose vehicles and sports cars. Segment G is occasionally subdivided still further into such categories as general-purpose/specialised off-road vehicles, and expensive and less expensive sports cars. New sports cars can also be placed in a separate segment called "S"²³. For the reasons given at recitals 15 and 16 it is not necessary to decide, for the purposes of this Decision, whether each segment is to be regarded as a relevant market.

- the Sales Committee (*Sales-commissie*) was set up to foster Peugeot sales.
- the After-sales Committee (*Aftersales commissie*) was set up to promote speedier solutions to technical problems. Members come along with real-life problems not only of a purely technical nature but also involving, say, parts supply, testing equipment, etc.
- the automisation steering group (*stuurgroep automatisering*) was set up to optimise harmonisation of all IT aspects.

²¹ See pp. 17283-17675, in particular pp. 17641-17645: letter from the VPDN sent to the Commission on 14.7.2003. It is clear from these documents that PNE representatives took part systematically in VPDN meetings from at least August 1995. These were normally the Sales Director (*Directeur verkoop*) and the Marketing Director (*Directeur marketing*), as well as the Car Sales Manager (*Hoofd autoverkoop*), the Fleet Sales Manager (*Hoofd fleetsale*) and the Dealer Support Manager (*Hoofd dealer support*).

²² See Commission Decision 2001/146/EC of 20.9.2000 in Case COMP/36.653 - *Opel* (OJ L 59, 28.2.2001 p. 1), paragraph 10. See the decision of the Commission of 28 January 1998 relating to a proceeding under Article 85 of the EC Treaty (IV/35.733 - Volkswagen) Official Journal L 124 of 25/04/1998 p. 0060 - 0108. See also the study entitled "Intra-EC Car Price Differentials Report", 1992, p. 29 as well as the "*Quantitative Study to Define the Relevant Market in the Passenger Car Sector*" by Frank Verboven, K.U. Leuven - September 2002 and the successive reports on car price differentials produced by unit COMP/F2, which divides the market into seven segments.

²³ In Automobiles Peugeot SA's reply of 11 July 2003 to the Commission's request for information dated 11 June 2003, segments E and F are combined, and segment G groups together monovolumes and non-commercial vehicles derived from commercial vehicles. Automobiles Peugeot SA also states that segment S is not used by the group, and vehicles which fall within this segment are distributed among the other segments according to their characteristics.

12. In geographic terms, car manufacturers are basically of the opinion that the relevant geographic market covers at least the European Union or the European Economic Area, or is even a world market. However, certain factors related to economic and regulatory conditions and consumer preferences show that each Member State forms a distinct market. Notwithstanding this, it is clear from established case law that, where the Commission has duly proved, in a decision, that the applicant committed an infringement whose object was to restrict competition within the common market and which was by its nature liable to affect trade between Member States, the application by the Commission of Article 85 (now Article 81) of the Treaty does not require that it first define the geographic market²⁴.
13. Between 1995 and 2002, the total number of new passenger cars registered each year in the European Union and the European Economic Area went up from 12 034 316 to 14 398 718 units²⁵. During that period, the PSA Group had, with the Peugeot and Citroën makes, a growing market share of between 12% (in 1995) and 15.3% (in the first six months of 2003) on the basis of new registrations, making it as from 1999 the second-largest supplier of passenger cars in Europe behind the Volkswagen group. PSA is also the car-manufacturing group with the highest domestic growth in the past five years (+ 55.1%). Its sales exceeded 3.26 million vehicles in 2002, 4.3% up on 2001. The Peugeot make alone accounted for a total of 861 696 registrations in 1995 and 1 277 738 registrations in 2002, jumping from sixth to third place among makes in the Community and in the European Economic Area with a market share rising from 7.2% in 1995 to 8.9% in 2002²⁶. In the Netherlands, the Peugeot make also enjoyed strong, steady growth in its market shares, which increased from 6.5% in 1997 to 10.7% in 2003 in the case of passenger cars and from 4.2% in 1997 to 8.7% in 2003 in the case of commercial vehicles²⁷.
14. Automobiles Peugeot SA is present in five of the segments mentioned in recital 11, and in them it holds substantial market shares in the Community and in each individual Member State. The table in Annex 2, indicates the market shares for the most important Peugeot models in each of those segments. It should be noted that this overview is based on the number of vehicles sold, it being usual practice in the car industry to calculate market shares on that basis and not on the basis of value (turnover). Peugeot's largest market share is in segment B, where its 106 and 205 then 206 models enjoyed an almost constant increase from 1995 to 2003 (provisional), with the highest point being reached in 2001. In segments E, F and G, which are the weakest and which concern luxury cars such as the 605 and 607, the make's market share experienced the same trend over the same period, reaching the highest point in 2000. In the Netherlands and in France, sales of vehicles in segment B outstripped all others throughout the period. In France, however, segment C, containing the 306, the 307, the 309 and the Partner, remained very important for the make despite a fall in 1996 and 2000; for its part, segment D, into which the 405 and

²⁴ See judgment of the Court of First Instance (Fourth Chamber) in Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 231.

²⁵ Figures supplied by the Association des Constructeurs Européens d'Automobiles - ACEA – Internet site: www.acea.be.

²⁶ Figures: www.acea.be

²⁷ Reply from Automobiles Peugeot SA dated 11.7.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17.

the 406 fall, enjoyed strong growth up until 2000, likewise capturing very significant market shares.

15. The restriction of competition to which this Decision relates is a restriction by object, which remains appreciable not only when the market is viewed through each of these relevant segments taken individually, but also if it is deemed that a segment of relevance to this case and the two neighbouring segments overlap to form a relevant market or if it is deemed that the latter is made up of all the segments mentioned in paragraph 11 above.
16. It is therefore not necessary to take a definitive decision as to which segment is to be considered the relevant market or to settle the question whether the market for passenger cars comprises the Community as a whole or whether each Member State is a distinct geographic market. Nor did Automobiles Peugeot SA challenge such an approach in its reply to the Commission's statement of objections.

1.2. Parallel trade in Peugeot vehicles out of the Netherlands

1.2.1. Exports from the Netherlands

17. Exports of Peugeot cars took off all of a sudden in 1995, peaking in 1997 in the Netherlands when they attained [●] units, or more than [●]% of all Peugeot car sales in that Member State. In 1999, they fell to [●] units, or approximately [●]% of car sales²⁸. The order of magnitude remained stable until 2003, as can be seen from the table in Annex 3²⁹.

1.2.2. Incentives for non-resident consumers to buy in the Netherlands

18. The parallel trade in Peugeot vehicles must be assessed in the light of the price differentials that exist between Member States of the European Union. These differentials may be evaluated on the basis of the six-monthly report on car prices in the European Union published by the Commission on the basis of data supplied by the manufacturers concerned. The report compares the recommended list prices, net of tax, furnished by the car manufacturers³⁰.

²⁸ The year 1998 seems to have been a year of transition during which, despite a fall in the volume of Peugeot cars exported from the Netherlands, the relative importance of exports increased significantly compared with the total sales achieved by Peugeot in the Netherlands. This phenomenon was due to a substantial, but temporary, fall in domestic demand for Peugeot cars.

²⁹ The data are taken from a document dealing with the export of cars from the Netherlands, which was copied during the inspections at PNE's premises: see pp. 8513-8518 (DVE 6); PowerPoint presentation "IMPORTSEXPORTS3MAI.ppt", copied from the computer [of the General Director]. Graphic entitled "*Chantier 6 : gammes et prix*". The data were subsequently confirmed and supplemented by Automobiles Peugeot SA: see pp.16423-17282: reply from Automobiles Peugeot SA dated 15.7.2003 to the Commission's request for information under Article 11 of Regulation No 17. Automobiles Peugeot SA has also confirmed the percentage of exports for 1998.

³⁰ See, in this connection, the Commission's six-monthly reports on car prices in the European Union as on 1 May and 1 November of each year for the years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002 and 2003; they are available on Competition Directorate General Internet site at the following address: http://europa.eu.int/comm/competition/car_sector/price_diffs/ for the period 1998-2003, and for previous years from DG Competition itself.

19. The differentials between recommended selling prices net of tax as between the Netherlands and other Member States during the period covered by this Decision (1997-2003) were sufficiently significant to provide an incentive to consumers residing in Member States other than the Netherlands, and notably in France, to purchase Peugeot cars from members of the Dutch network. By way of example, for the Peugeot 206 prices in France were up to 8% higher than in the Netherlands between May 2002 and May 2003, and for the Peugeot 406 prices in France were 8-14% higher than in the Netherlands between May 1998 and May 2003. The price differential between the Netherlands and Germany was also significant in that during the period covered by this Decision it often reached 10% and on occasion far exceeded that level. For instance, German prices exceeded Dutch prices by 18% in May 2001 for the Peugeot 106 and by 21% in May 2002 for the Peugeot 406. The price differences between certain Peugeot models in the Netherlands and in other member countries of the European Union were also significant. By way of illustration, the recommended list prices charged by the Peugeot importer in the United Kingdom were, all models combined, on average 30-45% higher than in the Netherlands between May 1998 and May 2000. Similarly, the prices charged by Automobiles Peugeot SA in Italy were, all models combined, higher than in the Netherlands between May 1998 and May 2003: for example, in May 1998, the price in Italy of the Peugeot 306 model was 16% higher than in the Netherlands; in May 2000, the price in Italy of the Peugeot 406 was 13% higher than in the Netherlands; and in May 2003, the prices in Italy of the Peugeot 406 and 607 models were respectively 25% and 12% higher than in the Netherlands. Lastly, the prices charged by Automobiles Peugeot SA in Austria were, all models combined, higher than in the Netherlands between May 1998 and May 2003: for example, in May 2002, the prices in Austria of the Peugeot 406 and 607 models were respectively 15% and 12% higher than in the Netherlands; and in May 2003, the price in Austria of the Peugeot 607 model was 12% higher than in the Netherlands.

1.3. The agreements and practices identified

20. In the Netherlands, Peugeot products and services were distributed during the period covered by this Decision by a dealer network organised on a selective, exclusive basis founded on an agreement between PNE and the dealers. PNE's circulars to the dealer members of the Dutch Peugeot network describing the operation of the bonus system formed part of these agreements, just as the application of these circulars limiting exports had become an integral feature of the agreements in question.
21. The system of dealer remuneration is a key element of the agreements concluded between dealers and car manufacturers, Peugeot included. As regards the timespan covered by the present decision, the remuneration system developed by Peugeot has undergone two periods of implementation (from 1997 to 1999 and from 2000 to 2003). Despite the changes made to the system, which are detailed in the present decision, its underlying logic remained the same throughout the two periods. The system performed a twofold function: providing an incentive for dealers to reserve their best efforts for their area of responsibility, and serving as an instrument for limiting sales to consumers not resident in the Netherlands.
22. The latter objective formed part, moreover, of a policy pursued by Automobiles Peugeot SA at the European level. Back in 1998, the methods of taking action vis-à-vis dealer networks in the Community were described in clear terms by **Marketing**

and Quality Director]: one of the criteria for obtaining a bonus was performance, which comprised the criterion of vehicle registration in the dealer's contract territory³¹. This line was the result of more general discussions which sought to address the concern of Automobiles Peugeot SA to limit parallel trade. A subsequent testimony of this line results from the remarks of **[General Director]**, at a general meeting of the Association Européenne des Concessionnaires Peugeot (AECF) in 1999. **[General Director]** explained on that occasion that Automobiles Peugeot's strategy of combating parallel exports was three-pronged, consisting of (1) the narrowing of price differentials for one and the same product across the European Union, (2) the harmonisation of margins on invoices across the European Union so as to reduce dealers' leeway for granting discounts, and (3) the unification of supplementary margins and of supplementary margin factors across Europe in order to prevent cross-border vehicle sales³². This stated position is referred to here with the sole purpose of specifying the factual context in which the specific measures targeted by this Decision (in sections 1.3.1 and 1.3.2 below) are situated, a context characterised by the concern of Automobiles Peugeot SA to counter parallel trade.

1.3.1. Peugeot's dealer remuneration system

1.3.1.1. General characteristics of the system

23. PNE amended the system of remunerating dealers in the Netherlands in early 1997 by introducing, in parallel to the fixed margin traditionally granted to dealers, a system of bonuses aimed at rewarding dealer performance. From 1997 to 2003, PNE set up remuneration machinery based essentially on a margin³³ coupled with a bonus³⁴ which rewarded sales to final customers.
24. For the purpose of implementing this target bonus, PNE each year set with its dealers the latter's sales targets. This calculation gave rise to a several-stage procedure in

³¹ See pp. 1551-1585: memo from [Marketing and Quality Director] of Automobiles Peugeot SA, dated 11.6.1998 to participants concerning the remuneration system.

³² See pp. 1591-1603 (MML 34): record dated 23.7.1999 of the AECF's general meeting in Vienna on 4 and 5 June 1999, sent by the Europe Trade Department of Automobiles Peugeot SA to several directors of Automobiles Peugeot SA: "*Nos politiques sont parfaitement claires, elles visent 3 axes. Le premier axe est effectivement de réduire, autant que possible, sans sortir des différents marchés internationaux, les écarts de prix entre un même produit à travers l'Union Européenne. C'est ce que nous faisons à chaque lancement et ce que nous essayons de maintenir pendant la durée de vie des produits. Nous avons intégré dans nos plans à moyen terme ces réductions d'écart de prix de vente. Deuxième axe : est le fait d'essayer d'unifier les marges sur factures à travers l'Union Européenne, puisque s'il n'y a pas de différence sur le prix hors taxe, il peut y avoir des différences sur la capacité pour chacun d'entre vous à faire du commerce et donc une volonté de réduire les écarts de prix de vente. Le troisième axe est d'unifier autant que faire ce peut, et notamment en prenant en compte un certain nombre de contraintes juridiques qui existent pays par pays, les compléments de marge et les facteurs de compléments de marge à travers l'Europe pour que, là aussi, les capacités de chacun d'entre vous de faire du commerce ne soient pas trop différentes d'un pays à l'autre, pour éviter cette tentation de transferts transfrontaliers des clients et des véhicules.*"

³³ The dealer's margin is the difference between the net recommended list price of a given car and the price at which the dealer buys the car from his supplier. This amount serves to cover the dealer's distribution costs and overheads as well as the discounts which he has to grant most of the time to final consumers.

³⁴ The bonus consists of a flat-rate payment made to the dealer by his supplier at regular intervals for each vehicle sold in accordance with the terms applicable. Payment of the bonus is subject to the dealer's meeting certain quantity targets, and from 2000 on, certain quality targets.

which the VPDN also took part through either its General Meeting or its Commercial Committee³⁵.

25. The calculation of sales targets was based on the number of vehicles, all makes combined, registered in the Netherlands for each segment of the car market³⁶ less any vehicles sold directly by the importer and any vehicles purchased by leasing or rental companies, which were excluded from the calculation. The sales target for Peugeot vehicles was calculated in each segment in the light of the market share target. The annual projections were then divided among the dealers' contract territories on the basis of the impact of the registrations carried out, in the same segment and in that territory, on total car registrations. The result of this calculation was the territory's potential³⁷.
26. The gross sales target by segment was refined by taking into account the dealer's past performance, which consisted of the per-segment average achievement of targets by the dealer during the last [●] years³⁸. The gross sales target was then multiplied by this corrective percentage to obtain the annual actual sales target³⁹. This target was then divided into quarters. In this connection, according to Automobiles Peugeot SA, the determining of quarterly commercial targets was necessary to take account of market trends and, where appropriate, of the market's seasonal nature. The sum of the quarterly targets could therefore turn out to be lower or higher than the target set at the beginning of the year.
27. The actual sales targets per segment were added together to give two groups of products: passenger cars and light commercial vehicles. If the market deviated (up or down) by more than [●]% from the projection, the sales targets could be adjusted⁴⁰.
28. The system introduced by Peugeot distinguished between two phases of the bonus grant mechanism. Acquisition of entitlement to the bonus was based on a progressive scale of achievement of a target agreed at year's beginning, being a sales target to be met in the dealer's territory. Subsequently, once the sales target had been met, payment of the entitlement thus gained was also made on the basis of vehicles sold in that territory. A registration in the territory of the Netherlands was crucial, not only to satisfying any target giving entitlement to the bonus and determining the level of the bonus per car, but also to identifying each vehicle sold qualifying for a bonus.

³⁵ See p. 8496 (DVE 3): handwritten memo on the setting of annual targets. Year A of each dealer; pp. 7613-7618, in particular p. 7613 (EF 6): record of the disputes settlement committee on the letter from [dealer] dated 13.2.2003; pp. 7327-7333 (Rb 14): tables on annual targets for 2001 to be submitted to the Commercial Committee.

³⁶ See pp. 20871-20909, in particular pp. 20902 and 20903: reply from Automobiles Peugeot SA dated 8.9.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17.

³⁷ See pp. 8497 to 8501 (DVE 4): calculation of the potential for 2002 of the dealer [●]. Example: [●] segment B cars were registered in a territory out of a national total of [●]. The territory's potential is therefore [●]%.
Example: [●]

³⁸ Example: [●]
³⁹ See pp. 8497-8501, in particular p. 8498 (DVE 4): calculation of the 2002 potential of the dealer [●].

⁴⁰ A dealer who, in the course of a quarter, had reached the highest level (i.e. [●]% of the sales target) could carry over the excess cars to the following quarter's target. This could not take place from the fourth quarter to the following year. This step was a reaction by PNE to the practice of dealers who, in the course of a quarter, exceeded their sales targets and waited until the following quarter before registering the cars in order thus to ensure a good performance also during the following quarter.

29. The system outlined above underwent two successive periods of implementation during which the precise implementing procedures were changed, albeit without altering the system's overall design.

1.3.1.2. The period from 1997 to 1999

30. The introduction of the bonus system replaced in 1997 the sales drives (*registraties akties*) that used to be held from time to time by PNE⁴¹. PNE introduced the new bonus system after discussing it with the dealers at meetings of the VPDN's Commercial Committee. In 1999, PNE partially amended the bonus system, taking into account certain demands from dealers⁴². However, the Commission has no knowledge that dealers refused this new system. Subject to these amendments, which did not alter its structure, this Peugeot dealer remuneration system as applied in the Netherlands between 1997 and 1999 was made up of three components: the fixed margin, the bonus and the superbonus.

(a) *The fixed margin*

31. For the period 1997-99, the amount of the margin ranged between [●] % and [●] %, as is shown by the data in the table in Annexe 4A⁴³. In order to finance the new bonus system described in recitals 32 and following, in 1997 PNE reduced the fixed margin by [●] % on average for all cars sold. This measure is explained in Annexe II to PNE's circular dated 20 January 1997⁴⁴, in accordance with the table in Annex 5.

(b) *The bonus and the superbonus: acquisition of entitlement*

32. Over the whole of the period in question, the bonus scheme introduced by PNE was generally applied to all passenger car models and to the Boxer light commercial vehicle. To qualify for the bonus, vehicles had to be registered in the Netherlands after 1 January 1997. The bonus constituted a fixed amount expressed in terms of absolute value which PNE paid to dealers who met the targets set by the importer at the beginning of the year⁴⁵. The bonus system introduced by PNE also included an

⁴¹ See pp. 17283-17675, 17608-17611, in particular p. 17610: record of the VPDN's Commercial Committee meeting on 17.12.1996: "Met de invoering van het bonussysteem komt uiteraard het fenomeen 'registratie-akties' te vervallen".

⁴² See pp. 17371-17377, in particular p. 17374: record of the VPDN's general meeting on 11.11.1998: "De dealervereniging heeft bereikt dat met ingang 1-1-1999 de bonus bij het behalen van [●] % van de doelstelling, f. [●] , - per auto is verhoogd".

⁴³ See p. 23429: reply from Automobiles Peugeot SA dated 10.11.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17.

⁴⁴ See pp. 3294-3306, in particular p. 3295: Peugeot bonus scheme, PNE circular dated 20.1.1997 to all dealers concerning the 1997 Peugeot bonus scheme (passenger cars): "Financiering van het Peugeot bonussysteem personenauto's: - verlaging geharmoniseerde dealermarge met gemiddeld [●] % per productlijn per gefactureerde auto, - omzetting registratiepremie budget Peugeot Nederland naar het Peugeot bonussysteem".

⁴⁵ See pp. 3294-3306: Peugeot bonus scheme, PNE circular dated 20.1.1997 to all dealers concerning the 1997 Peugeot bonus scheme (passenger cars) - Annex I: operation of the Peugeot bonus scheme (33 questions and answers), Annex II: financing of the Peugeot bonus scheme, Annex III: the Peugeot bonus scheme and the margin.

additional superbonus which was paid to dealers who met [●]% of the targets specified during the first and second months of the quarter⁴⁶.

33. In 1997, the first year of application of the system, the amount of the bonus varied from a minimum of NLG [●] to a maximum of NLG [●] (net of VAT) per car. Including the superbonus, the maximum amount could be as high as NLG [●]⁴⁷. Sales of the Peugeot 205 model were excluded from the bonus and superbonus system⁴⁸. Dealers were divided into [●] categories, determined on the basis of the number of cars sold each year⁴⁹ (see on this point Annex 7, which forms an integral part of this Decision). The amounts of the bonus and superbonus depended on the category to which the dealer belonged and the target which, for each reference period, was agreed between PNE and each dealer member of the network. Acquisition of entitlement to a certain level of bonus and superbonus was conditional on the dealer meeting at least [●]% of the target agreed at the beginning of each year with PNE. Dealers' annual targets were determined on the basis of the total forecast, all makes combined, for the Dutch market in terms of vehicles registered and PNE's market share at the national level. The dealer's target, compliance with which conferred entitlement to the bonus, was therefore calculated on the basis of the number of vehicles sold and registered in the Netherlands⁵⁰. A check was then

⁴⁶ The level of the Superbonus could reach [●]% of the bonus, up to a total maximum of [●] FL for each vehicle registered in the Netherlands. See in this regard p. 3294 to 3306, and in particular p. 3295: Peugeot bonus system, PNE circular of 20.01.1997 to all dealers on the subject: Peugeot bonus system 1997 (private cars) - Annex I: how the Peugeot bonus system works (33 questions and answers), Annex II Financing of the Peugeot bonus system, Annex III: The Peugeot bonus system and the margins. The number of Peugeot dealers in the Netherlands who earned the bonus and the superbonus during the years 1997-99 is given in Annex 6.

⁴⁷ See pp. 3294-3306, in particular p. 3295: Peugeot bonus scheme, PNE circular dated 20.1.1997 to all dealers concerning the 1997 Peugeot bonus scheme (passenger cars), - Annex I: operation of the Peugeot bonus scheme (33 questions and answers), Annex II: financing of the Peugeot bonus scheme, Annex III: the Peugeot bonus scheme and the margin.

⁴⁸ See pp. 21147-21149, in particular p. 21148: PNE circular dated 18.4.1997 to all dealers concerning the 1997 Peugeot bonus scheme - targets April-June (passenger cars). Annex to the letter from [dealer] dated 4.9.2003.

⁴⁹ See pp. 3307-3320, in particular 3310: reason for having a bonus scheme, document copied in the office of [dealer support manager], of PNE.

⁵⁰ See pp. 3294-3306, in particular p. 3295: Peugeot bonus scheme, circular dated 20.1.1997 to all dealers concerning the 1997 Peugeot bonus scheme (passenger cars) - Annex I: operation of the Peugeot bonus scheme (33 questions and answers), Annex II: financing of the Peugeot bonus scheme, Annex III: the Peugeot bonus scheme and the margin: "*Het Peugeot bonussysteem heeft tot doel: het sterker belonen van de commercieel actieve Peugeotdealer op basis van registraties van nieuwe personenauto's op de Nederlandse markt*". The scheme is described more precisely in a memo from [Dealer Support Manager], dated 11.11.1999 to the members of his department, to which is attached a document entitled "*Starting points from which to calculate the 1999 target*" (pp. 3274-3276). It makes it possible to use by way of example the calculation of the target for 1999. The market potential for the Peugeot make for 1999 was determined by segment on the basis of cars sold up to and including September 1998 with the exception of cars sold by the importer or intended for leasing or rental. To obtain as objective a picture as possible of a dealer's performance, PNE (re)calculated the number of vehicles which should have been registered in the dealer's territory in order to reach the national average, on the basis of the data for the previous three years and of the forecast for the year in question. The dealer's target was obtained by comparing his performance with the results of the calculation of the average for the last three years. In this way, the target for 1999 was brought back into balance with the dealer's average performance. The target for 1999 corresponded to [●]% of the performance achieved in 1998. These measures are mentioned, as far as 1997 is concerned, on pp. 17573-17578: record of the Commercial Committee meeting on 6.11.1997. The same features were retained for 1998: pp. 17560-

carried out each quarter by the importer to ensure that the amount of sales and the market share obtained during the quarter were consistent⁵¹. The same arrangements applied to Boxer light commercial vehicles registered in the Netherlands. So as to bring home the need to register a light commercial vehicle in the Netherlands in order to qualify for the bonus, PNE specified in that connection that the vehicle should have affixed to it a grey number plate (*grijs kenteken*), being the type of number plate that is affixed to light commercial vehicles in the Netherlands⁵². The amount of the bonus varied between NLG [●] and NLG [●]. The data were checked every six months.

34. In 1998, the same system of bonuses and superbonuses was carried over by PNE without substantial amendment. On the basis of the circular adopted by PNE in December 1997 and sent to dealers⁵³, all passenger cars registered in the Netherlands could be taken into consideration in determining the base conferring entitlement to payment of the bonus, that is to say, all passenger cars with so-called yellow Dutch number plates (*geel kenteken*)⁵⁴. The same system applied to light commercial vehicles of the Boxer model with so-called grey Dutch number plates (*grijs kenteken*). For the latter, PNE increased the bonus compared with 1997, from NLG [●] to NLG [●].
35. In 1999, PNE increased the basic amount of the bonus, this time for passenger cars⁵⁵. The system granted a basic bonus of NLG [●] per car admitted, the aim being to better reward dealers for their efforts, to obtain a clear, effective system and to retain a coherent remuneration structure. Remuneration through the bonus could be as high as NLG [●] per car. The base conferring entitlement to payment of the bonus did not start until [●]% of the target had been met. The rules governing the superbonus remained unchanged. The bonus system for light commercial vehicles no longer applied after 1 January 1999, being replaced by long-term sales campaigns⁵⁶.

17562, in particular 17560: record of the Commercial Committee meeting on 22.9.1998, and pp. 17563-17565, in particular p. 17654: record of the Commercial Committee meeting on 16.6.1998.

⁵¹ See pp. 3294-3306, in particular pp. 3295, 3298 and 3301: Peugeot bonus scheme, circular dated 20.1.1997 to all dealers concerning the 1997 Peugeot bonus scheme (passenger cars) - Annex I: operation of the Peugeot bonus scheme (33 questions and answers), Annex II: financing of the Peugeot bonus scheme, Annex III: the Peugeot bonus scheme and the margin.

⁵² See pp. 21150-21151, in particular p. 21150: PNE circular dated 10.2.1997 to all dealers concerning the 1997 Peugeot bonus scheme (light commercial vehicles). Annex to the letter from [dealer] dated 4.9.2003.

“*Grijs kenteken*”, or grey number plate, designates the number plate that is affixed to light commercial vehicles in the Netherlands. In reality, the plate is yellow, like that of passenger cars. However, part of the registration certificate is grey. The grey number plate is issued only for light commercial vehicles which are not intended for carrying passengers and which therefore are specially configured for the carriage of goods (see the Internet site: www.parool.nl/994843893289.html).

⁵³ See pp. 2746-2748 (MV 7), in particular p. 2746: circular dated 24.12.1997 from [Sales Director], to all dealers concerning the 1998 Peugeot bonus scheme (passenger cars and light commercial vehicles - LCVs).

⁵⁴ “*Geel kenteken*”, or yellow number plate, designates in the Netherlands the plate that is used following the registration in that country of a passenger car.

⁵⁵ See pp. 17283-17675, pp. 17371-17377, in particular p. 17374: record of the VPDN’s general meeting on 11.11.1998: “*De dealervereniging heeft bereikt dat met ingang 1-1-1999 de bonus bij het behalen van [●]% van de doelstelling, f. [●], - per auto is verhoogd*”.

⁵⁶ See pp. 1195-1196 (B 20), in particular p. 1196: letter from PNE dated 4.1.1999 to all its dealers in the Netherlands concerning their new bonus scheme for 1999 (passenger cars).

(c) *The bonus and the superbonus: payment of entitlement*

36. From the evidence held on file, it is clear that, not only was the acquisition of entitlement to the bonus and superbonus limited to cars sold by the dealer in the territory of the Netherlands, as described in paragraphs 32-35 above, but the same applied to the payment of such entitlement once acquired. Normally, payment of the bonus and of the superbonus was in effect reserved exclusively for vehicles registered in the Netherlands, even where the dealer had met his sales targets in the contract territory, through the attainment of a minimum number of registrations in that country.

37. The circulars sent to dealers at the beginning of each year to explain the operation of the bonus system laid down the principle of a link between registration of the passenger car or light commercial vehicle (Boxer) in the Netherlands and payment of the bonus:

- *Circular dated 20 January 1997 to all dealers concerning the 1997 Peugeot bonus system (passenger cars) - Annex III : the Peugeot bonus system and the margin*⁵⁷: the passenger cars taken into account for the purposes of the bonus system were those registered as from 1 January 1997 in the Dutch market (*geregistreeerde personenauto's op de Nederlandse markt*). This circular described the operation of the new bonus system in its entirety, as is evidenced by its Annex 1 comprising 33 questions and answers on the new remuneration system. It is clear from the circular's wording that it makes no distinction between the rules applicable to acquisition of the bonus and those applicable to its payment. It must therefore be inferred from this that those rules, including the operative event that is registration in the Dutch market, apply both to acquisition of entitlement to the bonus and to its payment.
- *Circular dated 10 February 1997 to all dealers concerning the 1997 Peugeot bonus system (light commercial vehicles)*⁵⁸: PNE explained in this circular that the bonus system for light commercial vehicles was intended to reward more strongly those Peugeot dealers who were commercially active in terms of new light commercial vehicle registrations in the Dutch market (*op basis van registraties van nieuwe bestelwagens op de Nederlandse markt*). Inasmuch as the circular refers expressly to that of 20 January, it can only be inferred that the same principles apply also to commercial vehicles.

⁵⁷ See pp. 3294-3306, in particular pp. 3295 and 3302: Peugeot bonus scheme, PNE circular dated 20.1.1997 to all dealers concerning the 1997 Peugeot bonus scheme (passenger cars) - Annex III: the Peugeot bonus scheme and the margin: "*Het Peugeot bonussysteem heeft tot doel: het sterker belonen van de commercieel actieve Peugeotdealer op basis van registraties van nieuwe personenauto's op de Nederlandse markt. [De ingangsdatum van het Peugeot bonussysteem is 1 januari 1997. Dit betekent: - alle vanaf 1 januari 1997 door u geregistreeerde personenauto's komen in aanmerking voor het Peugeot bonussysteem]*". See p. 3305.

⁵⁸ See pp. 21150-21151, in particular p. 21150: PNE circular dated 10.2.1997 to all dealers concerning the 1997 Peugeot bonus scheme (light commercial vehicles). Annex to the letter from [dealer] dated 4.9.2003: "*Doelstelling Peugeot bonussysteem bestelwagens 1997. Het Peugeot bonussysteem bestelwagens heeft tot doel: - het sterker belonen de commerciële actieve Peugeot dealer op basis van registraties van nieuwe bestelwagens op de Nederlandse markt*".

- *Circular dated 24 December 1997 to Peugeot dealers’ head offices concerning the 1998 Peugeot bonus system (passenger cars and light commercial vehicles)*⁵⁹: only passenger cars with a so-called yellow number plate (as affixed to private cars registered in the Netherlands) were taken into consideration for purposes of applying the bonus system. As regards vehicles with so-called grey number plates (as affixed to light commercial vehicles registered in the Netherlands), only Boxers were taken into account for the purposes of the bonus system.
- *PNE circular dated 17 September 1998 to all dealers concerning the intermediate situation with regard to the 3rd quarter bonus*⁶⁰: in order to verify whether the car sold satisfied the conditions of the bonus system, PNE checked the data recorded in DIALOG⁶¹ against the RDW data on registrations with a view to withdrawing vehicles not covered by the bonus system⁶². This meant that vehicles registered in other Member States, being by definition not included in the DIALOG and RDW (Rijksdienst voor het Wegverkeer) databanks, were not taken into account either for purposes of calculating the base of the bonus or for purposes of paying the bonus corresponding to the base actually reached by the dealer courtesy of sales already achieved in his contract territory.
- *Circular dated 4 January 1999 to Peugeot dealers’ head offices concerning the 1999 Peugeot bonus system (passenger cars)*⁶³: PNE described therein to its dealers the new features of the bonus system for 1999. There was no mention in it of any amendment of the bonus payment system.

38. This link between registration in the Netherlands and payment of the bonus was confirmed from time to time in the course of bilateral meetings between the VPDN and PNE: at a meeting of the VPDN’s Commercial Committee on 17 December 1996⁶⁴, PNE’s representatives described for the benefit of the Commission’s dealer

⁵⁹ See pp. 2746-2748 (MV 7), in particular p. 2746: circular dated 24.12.1997 from [●], PNE’s Sales Director, to all dealers concerning the 1998 Peugeot bonus scheme (passenger cars and light commercial vehicles - LCVs): “Zoals reeds op de dealerdag van 11 november jongstleden is medegedeeld, kunnen in 1998 alle personenauto’s (geel kenteken) in aanmerking komen voor een bonussuitkering. [7. Alleen Boxers op grijs kenteken tellen mee voor het bonussysteem (uw doelstelling is hier overigens ook op gebaseerd)]”. See p. 2748.

⁶⁰ See p. 3273: PNE circular dated 17.9.1998 to all dealers concerning the intermediate situation with regard to the 3rd quarter bonus: “Het is en blijft echter een momentopname die gebaseerd is op de afmeldingen in DIALOG zoals die door u werden gedaan. Door correcties via de controle met de RDW-gegevens en bijvoorbeeld auto’s die niet onder de Bonusregeling vallen, kunnen deze gegevens alsnog wijzigen. Een controle met uw eigen gegevens blijft dus van belang!”.

⁶¹ DIALOG is a software package used by Automobiles Peugeot SA and its dealers for ordering vehicles. For more information, see paragraphs 0-63.

⁶² More information on the RDW is to be found in paragraphs 65-72.

⁶³ See pp. 1195-1196 (B20), in particular p. 1195: PNE circular dated 4.1.1999 to Peugeot dealers’ management offices concerning the 1999 Peugeot bonus scheme (passenger vehicles): “Een belangrijk verschil met vorig jaar is echter dat in 1999 de minimale bonuspremie verhoogd is van FL [●], = naar FL [●], = per geregistreerde personenauto”.

⁶⁴ See pp. 17283-17675, pp. 17608-17611, in particular p. 17610: record of the VPDN’s Commercial Committee meeting on 17.12.1996: “De heer [Member of the Sales Committee] vraagt of alleen gele kentekens meetellen. De doelstelling wordt gebaseerd op de gele kentekens, dus ook de bonus geldt voor de registratie van gele kentekens. Wat gebeurt als een dealer meer dan de in het schema voorziene [●]% van de doelstelling haalt? Dan is, aldus de [Commercial Director], de extra omzet zijn beloning.

members the features of the new bonus system. One dealer, as a preface to a question about the percentage ceilings for meeting targets, said that fulfilment of the target was based on yellow plates (registration in the Netherlands), and that the bonus (its payment) was therefore based on the same criterion of yellow plates. In his reply, the responsible PNE representative did not challenge this statement.

1.3.1.3. The years 2000-2003

(a) *Origins of the new system*

39. Starting in 1998, PNE began thinking about the possibility of amending the margin and bonus system in use since January 1997. It manifested its intention of amending the system and of paying dealers variable remuneration components, both quantitative (the quantity bonus) and qualitative (by introducing a variable part of the margin, taken from its fixed part, entitlement to which would be subject to compliance with quality criteria). Monitoring based on place of registration was presented as being the most effective technical approach⁶⁵.
40. In the course of the talks leading up to the implementation of the new system, the VPDN stressed that, by making it more worthwhile for a dealer to stick to his territory, the system made for less competition between Dutch dealers and hence for greater network stability⁶⁶. The new remuneration system was applicable provided the dealer did not voice his express opposition by letter written within 14 days of receipt of the circular in which PNE explained the rules on the current year's

Het voorgestelde systeem loopt van een realisatie van [●] % tot en met [●] %. [] De heer [Commercial Director] meldt dat er voor de bestelauto's een apart bonussysteem komt. De jaardoelstelling voor grijze kentekens is [●] stuks. Zolang er echter nog leveringsproblemen zijn met bepaalde modellen, zal onze aandacht voor wat dit bonussysteem betreft uitsluitend gericht zijn op de Boxer. Alle bestelwagen tellen me, alleen de Boxer is premiedragend”.

⁶⁵ See pp. 3115-3124 (CR 30), in particular p. 3122 Presentation: tables of margins for the following years: “*Structuur van het nieuwe margesysteem: extra marge-« performance » component: - performance coefficient ter prikkeling van de commerciële spirit – basis is registratiedoelstelling per kwartaal (met als vertrekpunt de jaardoelstelling), gecombineerd met een doelstelling voor het bewerken van het eigen rayon (verhouding [●])*”; pp. 3103-3106, in particular p. 3104 (CR 26) memo with no reference dated 7.1.1999 “new system of network remuneration”: “*Pour créditer les cres de la marge des compléments quantitatifs et qualitatifs, il y a deux possibilités: A) Créditer sur la base des facturations: Si PNE va créditer les cres sur la base des facturations, PNE devra également créditer les cres de la marge sur les voitures en stock. Dans ce cas, PNE devrait payer la marge des voitures dont il n’est pas connu quand et où elles seront immatriculées. De plus, les voitures en stock pourraient être vendues à un autre concessionnaire, qui a un objectif de marge différent. Une telle méthode est donc très compliquée et prête à confusion. C’est pour cela que PNE opte pour la possibilité B: B) Créditer sur la base des immatriculations: Si PNE va créditer les cres sur la base des immatriculations, le nombre de déclarations des ventes faites par les cres à la fin du mois servira de base pour la définition de l’avance à créditer aux cres. Cette avance sera versée au début du deuxième mois et au début du troisième mois. A la fin du troisième mois, PNE définira les pourcentages de marge quantitative et qualitative réalisées.*”; pp. 1134-1143, in particular p. 1143 (B 3): network plan dated 26.3.1999 PNE.

⁶⁶ See pp. 3057-3064 (CR 21), in particular p. 3057, and pp. 7849-7856 (AVH 8), in particular p. 7849: record of the meeting held on 31.8.1999 at PNE’s premises between a delegation from VPDN management and the VPDN’s Sales Committee on Margin 2000, followed by a normal meeting of the Sales Committee; pp. 7236-7249, in particular p. 7236 (CS 25): tables presented at the meeting on 31.8.1999.

bonus⁶⁷. From the available documents, it is clear that initially only two dealers challenged the bonus system introduced in 2000⁶⁸.

41. It should be noted, moreover, that the Paris headquarters of Automobiles Peugeot SA had some serious doubts about the compatibility of this bonus system with the competition rules. The minutes of a meeting between the VPDN and PNE reveal indeed that certain obstacles “of a legal nature” induced Automobiles Peugeot SA purely and simply to abandon the quantity bonus for the year 2000, *inter alia* because of “European problems”⁶⁹.
42. The new system for remunerating Peugeot dealers was applied in the Netherlands as from 1 January 2000. The structure of the remuneration system remained substantially unchanged until 1 October 2003⁷⁰, the date on which the Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector came into force⁷¹. The system’s two main components, which are examined in detail in the paragraphs 43 to 51, are: a margin composed of a fixed part, a variable qualitative part and an organisational bonus cum quality bonus (*Organisatiepremie-kwaliteitpremie*); and a quantity bonus (*Quantitatief deel*).

(b) *The fixed and the variable parts of the margin*

43. From information given by PNE to its dealers at a VPDN meeting following the entry into force of the new remuneration system in 2000, it is clear that the fixed part of the margin was reduced by [●]% compared with the previous year (see paragraph 31). For the period from 2000 to 2003, the percentage ranged between [●]% and

⁶⁷ See pp. 21055-21058, in particular p. 21056: PNE circular dated 19.1.2001 to the management of all Peugeot dealers concerning the rules on the 2001 bonus; pp. 21068-21071, in particular p. 21069: PNE circular dated 18.1.2002 to the management of all Peugeot dealers concerning the rules on the 2002 bonus.

⁶⁸ See pp. 17283-17675, pp. 17441-17445, in particular p. 17442: record of the meeting of the VPDN’s Commercial Committee on 29.1.2002: “*De bonusregeling voor 2002 is bekend. De heer [Sales Director] meldt dat tot nu toe één dealer ‘bezwaar’ heeft aangetekend*”.
See pp. 23197bis-23445, in particular p. 23200 and 23201: from the reply from Automobiles Peugeot SA dated 10.11.2003 to a letter from the Commission requesting information under Article 11 of Regulation No 17, it is clear that only the dealer [●] in 2001 and the dealer [●] in 2002 voiced their disagreement with the bonus scheme introduced by PNE in 2000. They subsequently withdrew their reservations on this point.

⁶⁹ See pp. 17517-17521, in particular p. 17520: minutes of the meeting between the VPDN (Commercial Committee) and PNE on 23.10.1999: “*De [“Overlegcommissie” member] vraagt hie het gestelt is met de bonus voor volgend jaar. Kan alles nog wel zoals gepland was ? De heer [Sales Director] geeft aan dat er diverse obstakels te nemen zijn waar wij van juridische zijde op zijn geweest. Hij zegt dat er een in zijn ogen voorlopig zelfs nog kleine kans is dat Automobiles Peugeot de bonus (NB: de commerciële ondersteuning en niet de kwaliteitsbonus!) verbiedt. Hierbij kunnen twee zaken als uitgangspunt gelden. Allereerst: ‘wat schaars is, hoeft niet beloond te worden’. Maar ook de ‘Europese’ problematieken zouden nog roet in het eten kunnen gooien. Hij houdt dit de commissie voor alle zekerheid voor, al schat hij de kans dat dit ook werkelijk gebeuren zal, zeer laag in.*”

⁷⁰ See pp. 8801-8804 (DVE 74): PNE circular dated 23.1.2003 to the management of all Peugeot dealers concerning the results for 2002 and the forecasts for 2003.

⁷¹ OJ L 203 of 1.8.2002, p.30. Regulation modified par Act of accession of 2003.

[●]% of the net list price, as can be seen from the data set out in the table in Annex 4B⁷².

44. This [●]% was allotted, as from 2000, to a quality bonus system: the variable part of the margin, or variable margin⁷³. The new remuneration system introduced a variable qualitative part of the margin based on satisfaction of [●] quality criteria, of equal importance ([●]%), which accordingly accounted for a total of [●]% of the car's list price⁷⁴. For the year 2002, the importer added an eleventh ([●]).
45. Another component of the remuneration system linked to the quality margin was the organisational bonus – otherwise referred to in the documents as the quality bonus⁷⁵. To be eligible for this organisational bonus, a dealer had to satisfy all the components of the qualitative part of the margin for the four quarters of the year⁷⁶.

(c) *Quantity bonus (bonus, Quantitatief deel)*

(i) Acquisition of entitlement

46. The principle of the quantitative bonus varied but little compared with the period from 1997 to 1999: entitlement was acquired by selling vehicles registered in the Netherlands. For the purposes of applying the bonus, dealers were divided first into three categories (2000 and 2001), then into two (2002 and 2003), according to the number of cars in their target (see Annex 8)⁷⁷. The bonus was determined on the basis of the model of car, the category of dealer and the percentage of target attained.

⁷² See pp. 8486-8488, in particular p. 8488 (DVE 1): record of PNE's videoconference of 28.1.2003 prepared by [Marketing Quality Director] for [Distribution Strategy Manager]; pp. 23197bis-23445, in particular p. 23429: reply dated 10.11.2003 from Automobiles Peugeot SA to a letter from the Commission requesting information under Article 11 of Regulation No 17.

⁷³ Reply dated 30.7.2004 from Automobiles Peugeot SA to the Commission's statement of objections, paragraph 456.

⁷⁴ See pp. 21038-21040, in particular p. 21039: PNE circular dated 18.11.1999 to the management of all Peugeot dealers concerning the rules on the variable qualitative part of the margin, annex to the reply from Automobiles Peugeot SA to a request for information under Article 11 of Regulation No 17 dated 8.9.2003; pp. 8539-8543 (DVE 9): PNE circular dated 27.2.2003 to the management of all Peugeot dealers concerning the organisational bonus; pp. 8756-8760 (DVE 64): PNE circular dated 18.3.2002 to the management of all Peugeot dealers concerning the organisational bonus and the components. The components of the variable part of the margin are as follows: the satisfaction [●]

⁷⁵ See pp. 8539-8543 (DVE 9): PNE circular dated 27.2.2003 to the management of all Peugeot dealers concerning the organisational bonus.

⁷⁶ See p. 7075 (Cs 14): PNE circular dated 26.3.2002 to the management of all Peugeot dealers concerning the organisational bonus in 2002.

⁷⁷ See p. 7308 (Rb 9): division of dealers into categories for the 2000 bonus; pp. 21157-21159, in particulier p. 21159; pp. 8661-8664, in particular p. 8664 (DVE 31): PNE circular dated 9.12.1999 to the management of all Peugeot dealers concerning the rules on the bonus; pp. 8666-8668, in particular p. 8668 (DVE 32): PNE internal memo concerning the 2000 bonus dated 1.12.1999; pp. 8744-8746 (DVE 58): PNE circular dated 15.9.2000 to the management of all Peugeot dealers concerning the new margin scheme as from 1.1.2000.

See pp. 21160-21163, in particular pp. 21160 and 21162: PNE circular dated 19.1.2001 to the management of all Peugeot dealers concerning the rules on the 2001 bonus; see pp. 17283-17675, pp. 17666-17670, in particular p. 17669: PNE circular dated 18.3.2002 to the management of all Peugeot dealers concerning the rules on the 2002 bonus; pp. 21168-21171, in particular p. 21171: PNE circular dated 23.1.2003 to the management of all Peugeot dealers concerning the rules on the 2003 bonus.

These categories underwent changes over the years⁷⁸. PNE started to pay the bonus to the dealer only if the latter had reached at least [●]% of his target. If he did not reach this threshold, he received no bonus. Different amounts could apply depending on the target of registrations in the Netherlands achieved by the dealer. The bonus was capped at [●]% of the registrations target agreed with the importer⁷⁹.

47. During meetings of the Commercial Committee, PNE periodically gave dealers an overview of the number of dealers who had reached a level of activity conferring entitlement to the bonus⁸⁰. The rules on and the operation of the bonus system were assessed each quarter by the importer and the VPDN's Commercial Committee⁸¹.

⁷⁸ See pp. 8789-8792 (DVE 69): PNE circular dated 19.1.2001 to the management of all Peugeot dealers concerning the rules on the bonus for 2001. In 2000, dealers were divided into categories of dealers who had to sell (1) up to [●] cars, (2) between [●] and [●] cars and (3) more than [●] cars. For the year 2001, the thresholds were raised: sales (1) up to [●] cars, (2) between [●] and [●] cars and (3) more than [●] cars. The maximum amount of the bonus for the 106 and 206 models was NLG [●], for other passenger cars NLG [●] and for light commercial vehicles NLG [●]. For the year 2002, there remained only two categories composed of dealers who had to sell (1) up to [●] cars and (2) more than [●] cars. The maximum amount of the bonus for the 106 and 206 models was EUR [●], for other passenger cars EUR [●] and for light commercial vehicles EUR [●]. For the year 2003, the two categories were composed of dealers who had to sell (1) up to [●] cars and (2) more than [●] cars. The maximum amount of the bonus for the 106 and 206 models was EUR [●], for other passenger cars EUR [●] and for light commercial vehicles EUR [●].

⁷⁹ The number of Peugeot dealers in the Netherlands who earned the bonus and the superbonus during the period 2000-03 is given in Annex 9.

⁸⁰ See pp. 17283-17675, pp. 17424-17429, in particular p. 17426: record of the Commercial Committee meeting on 10.9.2002: "In het tweede kwartaal konden [●] dealers met geel geen bonus behalen en [●] scoorden met grijs niets". pp. 17430-17433, in particular p. 17431: minutes of the Commercial Committee meeting on 11.6.2002: "[] over het eerste kwartaal er [●] dealers de maximale bonus personenauto's hebben gehaald ([●] dealers haalden geen bonus). Voor bestelwagens haalden [●] dealers de maximale bonus en [●] niets". Pages 17441-17445, in particular p. 17442: minutes of the Commercial Committee meeting on 29.1.2000: "De **[Dealer Support Manager]** deelt vervolgens een overzicht uit van de bonusresultaten over het 4e kwartaal. In dat kwartaal haalden [●] dealers de 'gele doelstelling' en [●] de 'grijze'. Over het gehele jaar gezien is er echter veel beter gescoord, getuige het totaalbedrag ('bonusbudget') dat veel hoger uitkwam dan vooraf was gebudgetteerd". Pages 17451-17456, in particular p. 17453: minutes of the Commercial Committee meeting on 6.9.2001: "De directie geeft aan dat van de [●] deelnemende dealers er [●] zijn die [●]% of meer scoren, [●] zitten nu tussen [●] en [●]%, [●] scoren tussen [●] en [●]% en [●] stuks hebben een score van minder dan [●]%. pp. 17463-17466, in particular p. 17464: record of the Commercial Committee meeting on 10.4.2001: "Bij de personenauto's hebben [●] dealers niet de eerste trede gehaald. [●] haalden trede 1, [●] trede 2, [●] trede 3 en [●] behaalden de hoogste bonustrede. Bij de bestelwagens haalden [●] dealers helaas geen bonustrede, [●] bereikten trede 1, [●] trede 2, [●] trede 3 en [●] behaalden de maximale bonus". ; pp. 17467-17470: minutes of the Commercial Committee meeting on 9.3.2001. ; pp. 17482-17486, in particular p. 17485: minutes of the Commercial Committee meeting on 4.10.2000: "Er zijn zoals het er nu naar uit ziet [●] dealers die de doelstelling personenauto's hebben gehaald en [●] bij bestelwagens". pp. 17495-17498, in particular p. 17497: minutes of the Commercial Committee meeting on 24.5.2000: "De **[Sale Commission Member]** geeft aan dat in het eerste kwartaal [●]% van alle dealers een of meer bonustreden hebben gehaald. Dat is historisch gezien geen afwijkend beeld. In het tweede kwartaal tot nu toe ziet het er naar uit dat [●]% het maximale bonusbedrag haalt, [●]% een trede en de rest het zeer waarschijnlijk niet zal halen. Er staan nu bijna [●] bestelwagens met kenteken 'in saldo'".

⁸¹ See pp. 21055-21058: PNE circular dated 19.1.2001 to the management of all Peugeot dealers concerning the rules on bonuses for 2001.

48. As a personal contribution to the remuneration system, [●]% of the dealer's fixed margin was withheld by PNE for each car giving rise to payment of the bonus⁸². This contribution was paid into a fund financed by PNE and the dealers and intended to finance the bonuses paid to the latter. Initially, [●] of the fund came from the dealers and [●] from the importer. In 2001, these proportions changed and the importer began to contribute [●]% of the financing⁸³.

(ii) Payment of entitlement

49. As explained in paragraphs 46-48, the principles governing the bonus system were only marginally altered by the new dealer remuneration system introduced as from 2000. As under the previous system, applied in the Netherlands from 1997 to 1999, only cars sold by the dealer and registered in the Netherlands were taken into account for the purposes of paying the bonus between 2000 and 2003⁸⁴. Cars sold to customers from other Member States of the European Union, which normally were not taken into account in the dealer target achievement calculations, likewise did not usually confer entitlement to payment of the bonus⁸⁵. Here, too, a number of sources confirm that the bonus constituted a special remuneration which PNE paid to dealers only in respect of the sale of vehicles to final consumers resident in the Netherlands.

50. First of all, the circulars adopted every year by PNE to update the rules on bonuses always explained how the system operated by referring to yellow or grey number plates (i.e. in the Netherlands), which were presented to dealers as being an essential precondition both for the acquisition and for the payment of entitlement to the bonus:

- *Circular of 9 December 1999 to the head offices of all Peugeot dealers concerning the rules on bonuses for 2000*⁸⁶: in this circular, PNE's sales department explained the workings of the new bonus system in force as from the year 2000; in the interests of greater clarity, an annex was attached which listed exhaustively the changes compared with the previous system. No mention was made of any change to the system of linking registrations to the bonus (acquisition or payment) compared with the period before 2000.

⁸² See pp. 8657-8660 (DVE 30): PNE circular dated 18.1.2002 to the management of all Peugeot dealers concerning the rules on bonuses for 2002; pp. 8661-8664, in particular p. 8664 (DVE 31): PNE circular dated 9.12.1999 to the management of all Peugeot dealers concerning the rules on bonuses for 2000; pp. 8801-8804 (DVE 74): PNE circular dated 23.1.2003 to the management of all Peugeot dealers concerning the results for 2002 and the forecasts for 2003.

⁸³ See pp. 17283-17675, pp. 17437-17440, in particular p. 17437: record of the Commercial Committee meeting on 12.3.2002: "*Bonuskosten over jaar 2001: in vorige vergadering al iets over gezegd. Op verzoek salescommissie heeft PNE voor deze vergadering een overzicht verstrekt waaruit duidelijker blijkt hoe het kostenverloop was in de afgelopen jaren. Van inleg [●] dealers, en bijdrage [●] importateur is er nu [●] verdeling over een aanzienlijk hoger bedrag*".

⁸⁴ As far as 2000 is concerned, see pp. 3065-3081 (CR 22), in particular pp. 3068, 3077 and 3078: Margin 2000, document on the state of play as at 17.9.1999.

⁸⁵ See pp. 21128-21129, in particular p. 21129 : letter from [dealer] dated 4.9.2003: "*Er zijn nooit separaat doelstelling voor [●] [[dealer]'s department responsible for selling cars abroad] vastgesteld of onderhandeld. De auto's die door de inspanningen van [●] verkocht werden, kwamen daardoor niet voor deze bonusregeling in aanmerking*".

⁸⁶ Circular from PNE's sales department to all Peugeot dealers, pp. 8661-8664 of the file, in particular pp. 8663 and 8664.

- *Circular of 18 January 2002 to the head offices of all Peugeot dealers concerning the rules on bonuses for 2002, and circular of 19 January 2001 to the head offices of all Peugeot dealers concerning the rules on bonuses for 2001*⁸⁷: in the circulars sent each year by PNE to Peugeot dealers' head offices concerning the bonus rules applicable to the current year, the importer explained that the bonus was paid only in respect of passenger cars and light commercial vehicles bearing a yellow or grey number plate.
- *PNE circular of 23.01.2003 to the headquarters of all the Peugeot dealers concerning the 2002 results and the forecast for 2003*⁸⁸ PNE explained in this circular that in 2003 the dealers could provisionally depend on the bonus system as it operated in 2002. On 1 October 2003, the changes necessitated by the new dealer contract structure would be introduced.

51. The payment of the bonus normally only in respect of cars registered in the Netherlands is confirmed by certain documents forming part of exchanges between PNE and dealers.

- *Record of the meeting between PNE and the VPDN's Sales Committee on 24 May 2000*⁸⁹: the importer described therein the results of the first few months of the bonus system's application. Express reference is made to the registration of vehicles with yellow or grey number plates in order to secure payment of the bonus.
- *Report of a visit by an AMD*⁹⁰ *to the dealer [●] on 12 February 2001*⁹¹: in the report on a visit to a dealer, the bonus for export vehicles was discussed. The dealer told the AMD that other car manufacturers paid the bonus also on cars sold to consumers resident abroad. The AMD replied that the dealer knew what PNE's views on the matter were (no bonus for exports – “*geen bonus op export*”).

⁸⁷ See pp. 8657-8660 (DVE 30), in particular p. 8658: PNE circular dated 18.1.2002 to the management of all Peugeot dealers concerning the rules on bonuses for 2002: “*Het doel van de bonus is uitdrukkelijk het stimuleren van verkopen en dus registraties. De regeling is daarnaast opgezet ter bevordering van een gelijkmatig verloop van die registraties.*”; see pp. 8789-8792, in particular p. 8790 (DVE 69), PNE circular dated 19.1.2001 to the management of all Peugeot dealers concerning the rules on bonuses for 2001: “*De opzet van de bonusregeling is mitdrukkelijk het bevorderen van een gelijkmatig verloop van registraties.*”.

⁸⁸ Pages 8801 à 8804 (DVE 74): *Een van de ondersteuning die op [Dealer Support Manager] termijn effect hebben is natuurlijk de bonus. Ook in 2003 zult u voorlopig kunnen rekenen op het bonussysteem zoals u daar in 2002 mee gewerkt heeft. Dat wil zeggen op 1 oktober dit jaar, want daarna zijn er natuurlijk veranderingen nodig met het oog op de nieuwe contractsstructuur. Wij melden u vast, dat ons er veel aan gelegen is om zo spoedig mogelijk aan de bonusregeling weer het karakter van een echte bonusregeling te geven.*

⁸⁹ See pp. 21017 à 21020, in particular p. 21017: record of the meeting of the VPDN's Sales Committee dated 24.5.2000: “*Om de bonus over de maand mei te kunnen halen zijn er (geel en grijs) genoeg 'registrabele' auto's*”

⁹⁰ AMDs are PNE employees belonging to the importer's Car Sales Department. Their role is described in paragraph 77.

⁹¹ See p. 8966 (TK 21): report of a visit by an AMD to the dealer [●] on 12.2.2001; in the report, the AMD mentions the numbers 1, 2 and 3: these numbers are to be understood as referring to the DIALOG codes: 1 – customer with registration, 2 – demonstration vehicles, 3 – cars registered as a fleet sale or leased vehicle, as opposed to stock, 6 - without registration.

- Letter from **[dealer]** to PNE dated 2 May 2001⁹²: in a letter to PNE, the Dutch dealer complained that he did not obtain the bonus on cars sold to diplomats (*corps diplomatiek*) and foreign consumers (*geen Nederlander*), who accounted for a substantial part of his sales since The Hague formed part of his contract territory. In his view, such vehicles required the same sales effort, were included in the allocation quota and were driven in the Netherlands for many years.
- Handwritten memo and results for the first quarter of 2003 by **[VPDN President]**⁹³: in calculating his bonus for the first quarter of 2003, **[VPDN President]**, the VPDN’s Chairman and a Peugeot dealer, used a table showing cars sold and including the registration numbers allocated to them. In the table, two of the cars were marked “export” where the registration number should have been. Beside the table, on the line corresponding to these cars, the words “no bonus” (*geen bonus*) were written by hand. It can be inferred from this that these two cars were excluded from the bonus calculation.

1.3.1.4. Confirmation of the Commission’s objections

52. It is not disputed by Automobiles Peugeot SA that the circulars addressed to dealers in 1997⁹⁴ made it clear that the aim of the system was to reward more generously, on the basis of registrations of new passenger cars on the Dutch market, dealers who were commercially active⁹⁵. But in its reply to the statement of objections, Automobiles Peugeot SA argued that this was no longer mentioned from the circular dated 24 December 1997 onwards. The reference made after 1997 to the account taken of whether the vehicles had yellow number plates (*geel kenteken*) or grey ones (*grijs kenteken*) was, according to Automobiles Peugeot SA, solely intended to establish clearly the distinction between vehicles registered as passenger cars and those registered as light commercial vehicles. The purpose of that distinction was not therefore to establish that the vehicle should be registered only in the Netherlands, but to distinguish, within the range of Peugeot vehicles, between the categories of customers for whom the vehicles were intended, and accordingly to award the corresponding bonus on that basis. Automobiles Peugeot SA relied on that interpretation with regard to the circulars issued between 1997 and 1999, as well as those issued between 2000 and 2003⁹⁶.
53. This interpretation put forward by Automobiles Peugeot SA is, however, contradicted by several items of evidence held on file.
54. First, although, as stated by Automobiles Peugeot SA, the explicit reference to registration “on the Dutch market” disappeared as such from the circulars as of 1998,

⁹² See p. 9060 (Ka 8): letter from **[dealer]** to **[Car Sales Manager]** dated 2.5.2001.

⁹³ See pp. 7637-7639 (EF 16), in particular p. 7639: handwritten memo and results for the first quarter of 2003.

⁹⁴ Circulars dated 20.1.1997 (pp. 3294-3306 of the file - cars) and 10.2.1997 (pp. 21150-21151 of the file – commercial vehicles).

⁹⁵ See pp. 3294-3306, in particular p. 3295: Peugeot bonus scheme, PNE circular dated 20.1.1997 to all dealers. Re: 1997 Peugeot bonus scheme (cars): “Doelstelling Peugeot Bonussysteem: Het Peugeot bonussysteem heeft tot doel: - het sterker belonen van de commercieel actieve Peugeotdealer op basis van registraties van nieuwe personenauto’s op de Nederlandse markt ...”.

⁹⁶ Reply of 30.7.2004 from Automobiles Peugeot SA, points 465-466.

it was replaced by a formula indicating that the vehicles qualifying for a bonus were those bearing yellow and grey number plates, which therefore referred explicitly to registrations in the Netherlands. Furthermore, the distinction between passenger and utility vehicles does not constitute the key element of the system. In fact, while it is true that during a certain period, one particular model of vehicle gave right to a different discount rate according to whether it was registered as being passenger or utility, it is still the case that throughout the whole of the period under consideration, there was a whole range of different discount rates corresponding to different models of passenger cars (thus a distinction as significant as that between passenger vehicles of all types and utility vehicles)⁹⁷.

55. Second, a letter from PNE⁹⁸ dated 27 March 1998 forwarded to the dealer [●] a simulation of the result of his bonus for the second quarter of 1998. The aim of this simulation was to clarify the principle of the acquisition of a right to the bonus and the superbonus by the achievement of sales targets (sales being calculated hypothetically on the basis of cars registered in the Netherlands). PNE therefore ruled out any contribution to the bonus entitlement being made by vehicles outside such targets. Continuing its example, PNE then carried out a simulation of the payment of the bonus in which it again took account only of vehicles fulfilling the target. Even hypothetically, PNE did not therefore, in this example intended to clarify the rules of the bonus system, consider the possibility that any sales outside the territory – and therefore outside the target – could be taken into account for payment of the bonus. Dealers belonging to the network could not understand the bonus system in any other way.
56. Third, the investigation measures carried out in this case have confirmed that the content of a letter such as the one referred to in recital 55 was indeed understood in that manner by the dealers, and therefore that the interpretation offered to the Commission in the reply from Automobiles Peugeot SA to the statement of objections did not correspond to the way in which the bonus rules were understood by the Peugeot network in the Netherlands. The main Dutch dealer active in export sales confirmed that vehicles sold by him for export were not taken into account for the payment of the bonus⁹⁹. Likewise, nearly all the dealers making export sales and identified in the statement of objections declared that they did not ask for the payment of a registration bonus (bonus and superbonus from 1997 to 1999) or a performance bonus (from 2000 to 2003) in respect of vehicles sold for export¹⁰⁰. Of the 14 firms that replied to the Commission's request for information dated 17 November 2004, nine (two of which have merged) explicitly stated that PNE's instructions made it sufficiently clear that exported vehicles did not count towards a performance bonus, and they therefore had not requested any bonus in respect of exported vehicles. Among these firms, the dealer [●], whose dealership contract was

⁹⁷ See the complete package of circulars to the network from 1997 to 2003.

⁹⁸ See pp. 7963-7968, in particular p. 7965 (AVH 20.19): letter dated 27.3.1998 from [Sales Director], to the dealer [●] concerning the bonus for the second quarter of 1998.

⁹⁹ Reply to a letter requesting information dated 2.9.2003 (pp. 21128-21129, in particular p. 21129) from the dealer [●] stating the following in connection with its export subsidiary ([●]): “*des objectifs séparés n'ont jamais été établis ni négociés pour [●]. Les voitures qui ont été vendues comme résultat des efforts de [●] n'ont par conséquent pas été pris en compte pour ce système de bonus*” (emphasis added).

¹⁰⁰ Reply to an Article 18 letter dated 17.11.2004 sent to ten dealers and six former Dutch dealers belonging to the Peugeot network between 1997 and 2003.

terminated in 2003, asserted that he had never requested a bonus for vehicles exported during the period covered by this Decision (from 1997 to 2003) “for fear of reprisals” in the form of delayed deliveries, reduced ordering possibilities and even loss of the dealership contract¹⁰¹. Three other firms decided not to ask for a bonus on exported vehicles for other reasons. One firm asked for a bonus for exported vehicles, but PNE refused¹⁰². Another firm asked for the bonus in respect of exported vehicles, but did not specify in its response to the request for information whether it had received the bonus.

57. Fourth, scrutiny of the internal memos of Automobiles Peugeot SA also shows that the bonus was not normally paid on sales of cars registered outside the Netherlands:

- *Internal memo dated 25 February 1997 from [Used Car Coordinator] to [Commercial Director] and [Sales Director] concerning operation of the Peugeot bonus system for light commercial vehicles (LCVs)*¹⁰³: in this document, it was recalled that the data from DIALOG (screen DS 15) should be compared with those from RDC¹⁰⁴ (which, being based on RDW’s, by definition only contain Dutch plates). The memo then mentioned the particular case of some vehicles which were converted from grey plates to yellow plates¹⁰⁵;
- *PNE internal memo dated 1 December 1999 concerning the 2000 bonus system*¹⁰⁶: two sentences in this document specify that it indeed concerns the payment (“*het hoogste bedrag betalend*”, “*het hoogste bedrag uitgekeerd*” of the bonus system for the year 2000. Later in the document the mention of the amount of the bonus per vehicle makes explicit reference to the yellow and grey plates;
- *Internal memo dated 10 July 2002 from [Legal Affairs Department] to [Legal Affairs Department Director]*¹⁰⁷: describing the situation when it was drafted,

¹⁰¹ Reply dated 10.12.2004 from [dealer] to a letter requesting information under Article 18 of Regulation 1/2003. [●]’s contract as a authorised dealer was terminated as of 1 July 2003.

¹⁰² Reply from the dealer [●] an Article 18 letter dated 17.11.2004: “*Pas reçu [de bonus pour les exportations]. Peugeot Nederland était et est d’opinion qu’ils ne devaient pas les payer!*”.

¹⁰³ See pp. 3319-3320, in particular p. 3319: internal memo dated 25.2.1997 from [Used Cars Coordinator], to [Sales Director], and [Sales Director of PNE]: Basis of the Peugeot bonus scheme for light commercial vehicles (LCVs): “*Conclusie: het is het beste het bonussysteem bestelwagens aan te sluiten bij het bonussysteem personenwagens: afmelding die DS15 gecorrigeerd aan de hand van RDC-gegevens. Dus de telmaand wordt definitief bepaald door de registratie-datum en niet door datum afmelding DS 15.*”

¹⁰⁴ RDC is a company which notably collects, processes and disseminates data on the car sector in the Netherlands. For more information see recital 65.

¹⁰⁵ « *Verder moeten we nog een besluit nemen voor een aantal Boxers ((maximaal) 50 per jaar) die iun eerste op grijs kenteken geregistreerd worden en daarna omgebouwd worden en opnieuw gekeurd worden, zodat ze op geel kenteken komen : tellen deze auto’s voor de bonus VP of VU ? »*

¹⁰⁶ See pp. 8666-8668 (DVE 32), in particular p. 8667: PNE internal memo dated 1.12.1999 concerning the 2000 bonus scheme:

“106 en 306 ...NLG

306, 406, 607, 806, geel kenteken Partner, Expert, Boxer ... NLG

alle bestelauto’s met grijs kenteken ...NLG”

¹⁰⁷ See pp. 13481-13482 (NB 2-23), in particular p. 13482: internal memo dated 10.7.2002 from [Automobiles Peugeot SA’s Legal Department], to [Head of Automobiles Peugeot SA’s Legal Department]: “*PNE m’a confirmé qu’à la demande de DEXP ils continuaient à: - ne pas primer les*

in 2002; the memo confirms that the bonus was paid only on cars registered in the Netherlands and that this policy had been adopted at the request of Automobiles Peugeot SA;

- *Internal memo from [Dealer Support Manager] to [Marketing Director] and [Sales Director] dated 14 October 2002*¹⁰⁸: this PNE internal memo gives an overview of the amounts paid by way of the quantity bonus and the additional organisational bonus ([●]%) for the first six months of 2002. In this memo, the PNE employee stated that the amount of the bonus to be paid was calculated on the basis of the number of cars and light commercial vehicles registered in the Netherlands. This demonstrates that, when the memo was sent, no bonus was paid on cars that had not been registered in the Netherlands, in other words on cars that were exported. The author of the memo went on to recommend that for the following year, and in view of the changes to the rules on motor vehicle distribution at Community level, the bonus should be paid also on cars registered in other Member States;
- *Internal memo from [Sales Director] to [Marketing Department Manager] dated 25 March 2003*¹⁰⁹: in this PNE internal memo, [Sales Director] mentioned that the dealer [●] had asked for payment of the bonus also on cars registered outside the Netherlands. In this same note it was suggested that PNE credit fifty vehicles sold in 2002. Indeed that year seventy-nine cars were exported by the dealer [●].¹¹⁰

58. Fifth, although these internal memos only relate to specific points in time during the period between 1997 and 2003, it should be emphasised that in its circulars for 2001, 2002 and 2003, PNE took the precaution of stressing that the bonus system had not undergone significant changes in comparison with each previous year¹¹¹. The wording of the circulars was therefore changed, but it always had the objective consequence of excluding from eligibility for the bonus cars not registered in the Netherlands throughout the period covered by this Decision.
59. Sixth and last, indirect evidence held on file supports the view that the bonus was paid within the Peugeot network in the Netherlands only on vehicles with Dutch

immatriculations hors Pays-Bas (ils “oublient” de le faire et payent quand un concessionnaire réclame); - calculent les incentives par rapport à la réalisation d’objectifs de vente qui ne comptent que les immatriculations Pays-Bas; - jusqu’à 1997: les concessionnaires ne faisant pas d’export recevaient des aides de PNE.”

¹⁰⁸ See pp. 9027-9028 (ka 1), in particular p. 9027: PNE internal memo from [Dealer Support Manager], to [Marketing Director] and [Sales Director], dated 14.10.2002: “Gezien de veranderende regelgeving adviseer ik om volgend jaar alle (inclusief de registraties die uiteindelijk in andere EU plaatsvinden) auto’s voor een premie in aanmerking te laten komen”.

¹⁰⁹ See p. 8986 (TK 21): internal memo from [Car Sales Manager] to [●], Head of Marketing Department, dated 25.3.2003: “... Het gaat hier om auto’s die niet in Nederland zijn geregistreerd, maar wel in het buitenland. Wij zullen aan dit verzoek moeten voldoen.”

¹¹⁰ Reply of [●] of 27.11.2004 to a request for information on the basis of Article 18 of Regulation 1/2003.

¹¹¹ See circular dated 19.1.2000, p. 21160: “De regeling voor het jaar 2001 is nagenoeg gelijk aan die van het afgelopen jaar”; circular dated 18.1.2002, p. 21164: “De regeling zelf is nagenoeg gelijk aan die van het afgelopen jaar, dus weer gebaseerd zowel op kwantiteit als kwaliteit.”; and circular dated 23.1.2003, p. 21169: “Ook in 2003 zult u voorlopig kunnen rekenen op het bonussysteem zoals u daar in 2002 mee gewerkt heeft. Dat wil zeggen tot 1 oktober dit jaar, want daarna zijn er natuurlijk veranderingen nodig met het oog op de nieuwe contractstructuur.”

registration. The first piece of such evidence is the memo from **[Marketing and Quality Director]** dating from 1998 and the statements made in 1999 by **[CEO]** of Automobiles Peugeot SA, concerning the implementation of a strategy to combat parallel trade (see paragraph 22). Further evidence of this nature is provided by the implementation of a monitoring system, which demonstrates that the basis for payment of the bonus was registration of the vehicle in the Netherlands.

1.3.1.5. Monitoring of data on vehicle registrations in the Netherlands

60. PNE set up a comprehensive system for checking the accuracy of data on registrations communicated by the dealers. The system was based during the period under consideration on two different types of checks: the DIALOG software and RDW registration data. The system was introduced no later than 1997 and remained unchanged until 2003.

(a) DIALOG

DIALOG is a multipurpose software package that enables dealers to monitor vehicle movements, from placement of the order until delivery to the customer¹¹². PNE carried out an initial check on registrations in the Netherlands using DIALOG.

61. During the period under consideration, DIALOG used different screens as user interfaces. These screens enabled data already stored in DIALOG to be consulted or new data to be entered¹¹³. When data concerning a vehicle sold or a test-drive vehicle were entered, the type of use (*soort van gebruik*) had to be input into DIALOG. The latter operation involved specifying whether a vehicle had been ordered with or without a number plate. If the answer was yes, the type of customer had to be indicated (final customer for fleet sale, leasing or test-drive vehicle). The types of use were identified by means of the following numerical codes: 1 – customer with registration; 2 – test-drive vehicle; 3 – fleet sale or leasing; 6 – stock without registration (this code was used for all the dealer’s vehicles that had not yet been entered in DIALOG with a number plate); 7 – customer with deferred number plate, not wishing to register the vehicle immediately. The dealer had the option, but not the obligation, of inputting customer names into DIALOG¹¹⁴.

62. Circulars and other communications issued by PNE frequently referred to the screen carrying access code DS15. This was the screen where the delivery of a vehicle to the final customer, or alternatively its use as a test-drive vehicle, was entered in DIALOG. The following information was shown on that screen: the vehicle’s chassis number, the dealer’s identification number, the date of the order, the date of

¹¹² See pp. 6976-7056 (Cs 5): Dutch version of the manual for the DIALOG system. DIALOG also functions as a mailbox and exchange, whereby dealers can obtain or place an option on cars offered by other dealers. The screens are identified by screen codes (e.g. DDS623N, DDN701N) and can be accessed progressively from menu screens or via an “access code” (e.g. DS23, DN01).

¹¹³ The data are entered when the following transactions take place: (i) order of a car, (ii) delivery of a car, (iii) request for a number plate (or registration) for a car in stock, (iv) delivery of a car to a customer, (v) collection of a test-drive car for use, (vi) delivery of a test-drive car to a customer.

¹¹⁴ See p. 9 of the DIALOG manual.

registration of the vehicle, the date of delivery of the vehicle, the types of use and, in some cases, the customer's contact details¹¹⁵.

63. The data entered in DIALOG were used by PNE to obtain initial information on the number of vehicles exported and the dealers who had sold them. A provisional definition of what constitutes an export was set out in a memo sent by **[Marketing Service Director]**: it was based on data from DIALOG and concerned vehicles ordered without a number plate and vehicles for which the registration application had been cancelled¹¹⁶.
64. An internal memo from **[Sales Director]** to **[Marketing Director/Sales Director]** and **[Product Manager]** shows that, unlike other motor manufacturers (Opel, Volkswagen and Ford), Automobiles Peugeot SA organised this system in such a way as to require dealers to indicate, when they received an order, whether the vehicle to be delivered would also be registered within their territory¹¹⁷. It can be seen from the way in which the DIALOG software works that if a dealer ordered a car for a final customer, he had to specify whether he was applying for a number plate¹¹⁸. Registration was identified in the DIALOG system as yellow or grey, which designated a vehicle that was to be used in the Netherlands.

(b) *Data on registrations*

65. RDC Datacentrum BV (hereinafter called RDC) is a private company that was set up in the Netherlands at the initiative of the RAI, a grouping of motor vehicle importers, and the BOVAG, an association of dealers of all makes. RDC is engaged in a wide range of activities in the motor vehicle industry. It is entrusted in particular with studies and statistical surveys and the task of collecting, processing and disseminating information in the different branches of the industry. RDC administers the Dutch motor vehicle industry's central database containing all the information on vehicles and to that end has daily access to the information on the list of vehicles and their owners stored in the register kept by the RDW, the Dutch administrative department in charge of issuing individual number plates to new owners of vehicles in the Netherlands.
66. RDC has provided services to PNE since 1977. It is clear from the documentation submitted by Automobiles Peugeot SA that RDC passes on daily to PNE the information it receives from the RDW concerning the name and address of the car

¹¹⁵ See p. 16 of the DIALOG manual.

¹¹⁶ See p. 2780 (MV 16): memo dated 19.11.1996 from **[●]**, Head of Marketing Services, to six PNE managers. Subject: Export figures: “definitie EXPORT: de cijfers hebben alleen betrekking op personen-auto's. – Auto's afgemeld in DIALOG zonder kenteken. - Auto's afgemeld in DIALOG met een BN/GN kenteken. - Auto's afgemeld in DIALOG met een normaal kenteken waarvan later blijkt dat het is vervallen of ingetrokken. (Deze auto's zijn afzonderlijk vermeld op het dealer overzicht”.

¹¹⁷ See pp. 3035-3038, in particular p. 3037 (CR15): registration procedure among competitors, memo dated 4.6.1999 from M. **[●]**, Sales Director, to **[Marketing Director]**, and **[Product Manager]**: “De meeste verkochte orders bij ons worden met kenteken aangevraagd. Dit om problemen met prijsgarantie en acties te voorkomen. Nadeel hierbij is dat gelijk bij binnenkomst van de auto in NL het kenteken automatisch aangevraagd wordt. Wanneer een dealer geen tijd heeft (of de klant wil het nog niet) om de auto af te leveren, dan krijgt de klant uiteindelijk een oud kentekennummer en staat de auto lang in het saldo van de kentekenaanvragen. Voordeel is wel dat het toch enige druk op de afleveringen geeft”.

¹¹⁸ See p. 2 of the DIALOG manual, pp. 6976-7056, in particular pp. 6996 and 7007.

owner and the registration number of recently sold Peugeot vehicles. RDC also sends PNE a monthly final recapitulative list of registrations during the month in question¹¹⁹.

67. The documentation provided by RDC shows that it provides PNE with highly detailed information on the Dutch motor vehicle market. The frequency is daily. On the basis of the subscription it has taken out with RDC, PNE receives all the information on all vehicles of the Peugeot make sold in the Netherlands, including the data contained in the first part of the registration certificate (the make, model and chassis number), the name of the owner and all the information identifying him (private individual or company, address) and the place of registration, as well as general information on cars sold, broken down by make, model and various levels of geographic detail. RDC also communicates any changes to these data¹²⁰.

¹¹⁹ See pp. 26153-26163: reply from Automobiles Peugeot SA dated 8.9.2003 to a request for information sent under Article 11 of Regulation No 17.

¹²⁰ See pp. 26153-26163: reply from RDC dated 12.9.2003 to a request for information sent by the Commission under Article 11 of Regulation No 17. According to the information provided by RDC, the following data are periodically supplied to importers, including PNE:

Autometer gives an overview of national sales figures by make, model and percentage, by make, of the total number of cars registered in the Netherlands (since 1977, on-line);

C-statistiek gives an overview of national sales figures by make and model. Sales are shown in columns in comparison with different makes. These data can be configured in order to show the type of owner and the place of registration and a segmentation by customer (in the case of PNE) (since 1990, monthly);

Basis Registratie Bestanden (BRB) gives an overview of national sales figures by make and model and according to several levels of geographic detail (since 1990, monthly);

Voertuig gegevens systeem (VGS) gives an overview of car list prices and technical data (1991);
BPM (Belasting van Personenauto's en Motorrijwielen) retourinformatie is a database, by importer, of cars that still have to pay the BPM. The BPM is a tax payable prior to registration of the car for its first entry into service (since 1993, monthly);

A-statistiek gives an overview of national sales figures by make, model and trim level (since 1994, monthly);

AA-statistiek gives an overview of national sales figures by make and model (since at least 1997, every 10 days);

Brand-switch statistiek (kentekenmutaties) gives an overview of sales showing the link between new cars registered and the cars that the owners had before, in order to indicate the owner's brand loyalty (since 1997, monthly);

Versnelde Kenteken Regeling (VKR) is an electronic system enabling the importer to request a number plate more quickly from the RDW for new cars. The dealer can check the stage reached by the request for cars intended for it (since at least 1997);

APK-statistiek gives an overview of the number of technical inspections by make and by dealer (since at least 1997, monthly);

Medi-AOS is a database for secondhand cars (depuis 1998, journalier);

Parktelling gives an overview of cars in circulation in the Netherlands, by make, model and type of owner (since 1999, monthly);

Wagenpark CD-Rom gives an overview of cars in circulation in the Netherlands, by make, model and type of owner (since 2002, monthly);

Automonitor gives an overview of car sales figures with several technical selection criteria (since 2002, monthly);

After-sales mailing gives data on owners with a view to commercial offers in the period preceding the car's technical inspection (monthly);

OccasionMonitor is a database for secondhand cars (since 2003);

Nationale Auto Pas (NAP) is a database in which the mileage of cars is recorded when they are sold, repaired or maintained (on-line);

ORB is a program for declaring to the RDW the number of cars in stock.

68. RDC has also stated that it periodically sends the VPDN information on national sales figures, in particular from the database called AA-statistiek, which contains sales figures divided into ten-day periods and broken down by make and model.
69. The checking of registrations using the RDW data also has effects on payment of the bonus. Where the RDW data do not confirm the data recorded in DIALOG, the importer apparently amends the latter¹²¹. The document in question shows in particular that one of PNE's aims is to check that cars sold fulfil the requisite criteria for being included in the bonus system (without any distinction being made between acquisition of the bonus entitlement and actual payment of the bonus).
70. PNE corrects the information communicated by the dealers in DIALOG after checking the data supplied by RDC on registrations¹²². During the period covered by this Decision, the bonus was paid only on vehicles registered in the Netherlands and therefore was not granted where data were deleted from the system because the vehicles were not registered in the Netherlands. The basis for payment of the bonus on light commercial vehicles was established using the data in screen DS15 (i.e. the DIALOG screen to be filled in when a vehicle is ordered with a number plate), corrected by the data on registrations supplied by RDC¹²³.
71. Documents held on file clearly show that actual payment of the bonus took place only after checking with RDC the data entered in DIALOG. In a letter from PNE to the dealer [●] dated 27 March 1998 concerning the bonus for the second quarter of 1998¹²⁴, the importer informed the dealer that actual payment (*uitkering*) of the bonus rewarding his results could not be effected before these were confirmed by the information obtained from RDC.

¹²¹ See p. 3273: circular sent by PNE on 17.9.1998 to all dealers. Re: Interim status of the bonus for the 3rd quarter: *"Het is en blijft echter een momentopname die gebaseerd is op de afmeldingen in DIALOG zoals die door u werden gedaan. Door correcties via de controle met de RDW-gegevens en bijvoorbeeld auto's die niet onder de Bonusregeling vallen, kunnen deze gegevens alsnog wijzigen. Een controle met uw eigen gegevens blijft dus van belang!"*.

¹²² See pp. 3319-3320, in particular p. 3319: internal memo dated 25.2.1997 from [Used Car Coordinator] to [Director Commercial] and [Sales Director]. Basis of the Peugeot bonus scheme for light commercial vehicles (LCVs): *"Conclusie: het is het beste het bonussysteem bestelwagens aan te sluiten bij het bonussysteem personenwagens: afmelding DS15 gecorrigeerd aan de hand van RDC-gegevens. Dus de telmaand wordt definitief bepaald door de registratie-datum en niet door datum afmelding DS 15."*

¹²³ See p. 3325: memo dated 5.3.1997 from JdK to MS - cc. JB etc. Re: Bonus scheme for light commercial vehicles (LCVs): *"Wij zullen hetzelfde systeem volgen als bij de personenauto's, dus de afmelding DS15 wordt gecontroleerd aan de hand van de RDC-gegevens: de telmaand wordt definitief bepaald door de registratiedatum."*; pp. 3335-3337: circular dated 10.2.1998 from P-NL to all dealers. Re: 1998 Peugeot bonus scheme – interim status 1st quarter (passenger cars) – interim status 1st quarter (light commercial vehicles) *"Bijgaand zenden wij u de overzichten waarop de tussenstanden van de registraties personenauto's en bestelwagens 1998 tot en met januari. Deze tussenstanden zijn gebaseerd op uw afmeldingen in DIALOG. Hieraan kunnen overigens geen rechten worden ontleend, omdat er nog geen eindcontrole heeft plaatsgevonden aan de hand van de RDC-gegevens."*

¹²⁴ See pp. 7963-7968, in particular p. 7965 (AVH 20.19): letter dated 27.3.1998 from [Sales Director], of PNE, to the dealer [●] concerning the bonus for the second quarter of 1998: *"NB: De 'realisaties 1^e kwartaal' en de daarvan afgeleide uitkering over het 1^e kwartaal zijn nog niet definitief, aangezien nog geen volledige controle met de RDC-gegevens heeft plaatsgevonden. Dietsgevolge kunnen aan deze opgave geen rechten worden ontleend."*

72. The same checks were set in place for the margin system that operated during the period between 2000 and 2003. At a meeting of the Commercial Committee held on 1 March 1999¹²⁵, PNE announced that the information concerning the two components of the new system for remunerating dealers, based on registrations to be made in the Netherlands, in the national territory (i.e. the bonus) and in the contract territory (i.e. [●] part of the variable margin), was to be checked on the basis of the DS15/RDC combination, in other words the data introduced into DIALOG and the definitive data on registrations. The method adopted by PNE is also confirmed by the circulars sent periodically by the importer to the Peugeot dealers to inform them of the results obtained in the preceding period and confirm the targets they had to achieve. These circulars always referred to the need to check the data on registrations stored in DIALOG against the information supplied by RDC before the bonus could be paid¹²⁶.

1.3.2. Pressure exerted on dealers

73. Documents held on file demonstrate that Automobiles Peugeot SA not only set in place a remuneration system as described above, but also put pressure on dealers in the Netherlands through its subsidiary PNE in order to limit sales to consumers established outside the contract territory and, in particular, non-national consumers and intermediaries acting on their behalf.

¹²⁵ See pp. 7466-7478 (RB 45), in particular p. 7477: PNE tables dated 1.3.1999 concerning the 2000 margin.

¹²⁶ See pp. 7998-7999 (SPL A11), in particular p. 7998: circular from PNE dated 11.1.2002 to all dealers, on registrations and payment of the bonus for the fourth quarter of 2001, payment of the quality bonus for 2001, payment of the quality margin for the fourth quarter of 2001; pp. 7649-7650 (EF 20), in particular p. 7649: circular from PNE dated 15.10.2002 to all dealers, on registrations and payment of the bonus for the third quarter of 2002, targets for the 2002 bonus; p. 8304 (SPL 16): circular from PNE dated 20.2.2003 to all dealers, on registrations and interim status of the bonus for the first quarter of 2003; pp. 21059-21060, in particular p. 21059: circular from PNE dated 12.3.2001 to all dealers, on registrations up until February and adjustment of the targets for the bonus. pp. 21062-21063, in particular p. 21062: circular from PNE dated 7.6.2001 to all dealers, on registrations up until May and adjustment of the targets for the interim bonus for the second quarter of 2001. pp. 21066-21067, in particular p. 21067: circular from PNE dated 8.10.2001 to all dealers, on registrations up until the third quarter of 2001 and adjustment of the targets for the interim bonus for the fourth quarter of 2001; pp. 21077-21078, in particular p. 21077: circular from PNE dated 14.6.2002 to all dealers, on an overview of registrations up until May 2002 and adjustment of the targets for the passenger cars bonus; pp. 21079-21080, in particular p. 21079: circular from PNE dated 11.7.2002 to all dealers, on an overview of registrations in the second quarter of 2002 and adjustment of the bonus targets for the third quarter; pp. 21081-21082, in particular p. 21081: circular from PNE dated 15.10.2002 to all dealers, on an overview of registrations in the third quarter of 2002 and adjustment of the bonus targets for the fourth quarter. pp. 21087-21088, in particular p. 21087: circular from PNE dated 19.3.2003 to all dealers, on registrations up until February and adjustment of the targets for the bonus: here too, the link between registrations, the target and the bonus for the following quarter was established. PNE referred to registrations in the Netherlands in order to indicate Peugeot's position on the market and the targets for the following quarter. The information provided by the dealers was always checked against data supplied by RDC. pp. 21091-21092, in particular p. 21091: circular from PNE dated 12.6.2003 to all dealers, on registrations up until May 2003 and changes to the bonus scheme for light commercial vehicles: "Bijgaand vindt u de 2e tussenstand van uw bonusscore in het twerde kwartaal aan. Zoals gebruikelijk wijzen we erop dat dit overzicht gebaseerd is op uw afmeldingen in DIALOG. Omdat de eindcontrole aan de hand van de RDC-gegevens nog niet heeft plaatsgevonden kunt u er geen rechten aan ontleen. Het biedt u wel een inzicht in de knidige stand van zaken".

1.3.2.1. Development of practices deterring exports

74. Discussions began as early as 1996 within the Dutch Peugeot network on the long-term advantage for dealers of not selling outside their contract territory, including to consumers not resident in the Netherlands.
75. In the first place, the manufacturer invited PNE to minimise the volume of vehicles exported by raising the matter direct with dealers¹²⁷. To that end, PNE involved the dealers, through their association the VPDN, in a discussion aimed at raising their awareness of the need to limit re-exports of Peugeot vehicles. At a meeting between PNE (at the time Peugeot Talbot Nederland) and the VPDN Advisory Committee held in September 1996, the dealers' representatives acknowledged that deliveries to customers in the Netherlands should always take priority over exports. PNE undertook to issue a circular to the network reminding dealers of the strict rules in force for deliveries outside the Netherlands and the heavy penalties incurred for non-observance¹²⁸.
76. Secondly, from 1997 onwards, the VPDN decided to urge dealers to limit exports by stressing that such action was in their long-term interest¹²⁹. Furthermore, at a meeting between PNE representatives and the VPDN Commercial Committee, [●], CEO of PNE, announced in 1997 the manufacturer's desire to prohibit all exports¹³⁰.

1.3.2.2. Practical application of the pressure on dealers

77. PNE exerted direct pressure by occasionally acting to limit the export sales of certain dealers. It brought such pressure to bear among other things through its Account Managers Dealernet (AMDs). The AMDs are PNE employees belonging to the importer's Car Sales Department whose role is periodically to visit dealers and

¹²⁷ See pp. 1105-1106: express report on a visit to the Netherlands by [●], Area Manager, to [●] and [●], European Subsidiaries Sales Manager, on 4-5.9.1996: "5.) réexport: le nombre croissant des réexportations amène PTNE à minimiser ce volume par CRE [dealers] dans le strict respect des lois".

¹²⁸ See pp. 20985-20990, in particular p. 20989: record of the meeting between PNE and the VPDN Advisory Committee held on 24.9.1996: "De directie van PTN zegt ontstemd te zijn over het feit te constateren dat er, los van de discussie met Automobiles Peugeot over de prijspolitiek die dit fenomeen met zich meebrengt, leveringsproblemen voor de Nederlandse markt ontstaan door (re-)export activiteiten van de dealers. Met name de Peugeot 806-leveranties worden hierdoor zwaar getroffen. De dealercommissie vindt dat orders voor levering in de Nederlandse markt altijd voorrang moeten krijgen op exportorders. PTN is het hiermee eens en zal de backordersituatie dienaangaande inventariseren. Daarnaast zal PTN middels een dealerrondschrijven de dealers nogmaals wijzen op de strikte regels met betrekking tot leveringen buiten Nederland, waarbij PTN de intentie heeft zware sancties te treffen, wanneer geconstateerd wordt dat een dealer niet strict volgens deze regels heeft gehandeld. De dealercommissie ondersteunt deze visie".

¹²⁹ See pp. 4676-4681, in particular p. 4677: record of the meeting of the association of Peugeot dealers held on 11.7.1997; pp. 4682-4687, in particular p. 4684: record of the meeting of the association of Peugeot dealers held on 26.5.1997: "On constate que la livraison de voitures en Europe par des concessionnaires néerlandais cause une perte de chiffre d'affaire auprès des clients existants. Les prix de certains modèles dans le marché néerlandais sont trop élevés car l'ajustement des prix amène encore plus de clients étrangers. Donc, l'exportation semble un atout pour l'instant mais sur long terme elle sera une perte" (p. 4677); "Il est suggéré d'envoyer une lettre demandant aux membres de ne plus faire de l'exportation" (p. 4681).

¹³⁰ See pp. 17579-17582, in particular p. 17581: record of the meeting of 21.8.1997 between the VPDN Commercial Committee and PNE: "De General Director voegt er aan toe dat ook export uit den boze is".

agents operating in a particular territory in order to check that their activities meet the requirements laid down by PNE. At the end of each visit to the dealer's premises, the AMD drafts a dealer inspection report (*dealerbezoekrapport*) which is then sent to PNE's Car Sales Manager¹³¹. Some of the inspection reports copied during the investigation mention sales of vehicles to consumers living abroad. On these occasions, the AMD indicated whether the dealer was involved in export business and sometimes also put forward certain proposals to the management regarding the strategy to be adopted. Having due regard to the context in which they were made, these remarks can only be explained as a very hasty summary of Automobiles Peugeot SA's position with regard to the dealers visited. They make sense only in a context in which exports were, in Automobiles Peugeot SA's view, to remain exceptional:

- *Report on the visit made to the dealer [●] on 26 February 1999*¹³² ("*dealerbezoekrapport*"): the AMD noted that the dealer had resumed exports. The dealer is reported to have admitted that he needed export sales in order to survive financially;
- *Report on the visit made to the dealer [●] on 8 May 2001*¹³³: the AMD concluded that the dealer achieved a high percentage of his sales within his contract territory, but noted that he exported too much in relative terms;
- *Internal memo from [AMD] to [Sales manager] and [Sales Director] dated 2 November 2001*¹³⁴: this document monitors the export activities of two dealers, [●] and [●]. Concerning [*the first of these two*], the author of the memo reports having expressed deep disappointment to the dealer and having stressed that exports were not conducive to cooperation with PNE. In future, if necessary, this would be highlighted. According to the author, the dealer expressed "surprise" and "alarm" when hearing these remarks. Like [●],[●] gave abundant justification for having engaged in such business and expressed his regrets.

78. Other examples confirm that pressure was brought to bear for the same purpose without involving the AMDs. On 31 July 1997, the dealer [●] informed SEP¹³⁵ that his large export business had been identified by Peugeot and was liable to create difficulties with the latter. [●] consequently had to cancel or refuse purchase orders for new vehicles¹³⁶. He then drastically reduced his exports in 1998 with a view to

¹³¹ Most of the reports drafted by the AMDs were found during the inspections of 3 and 4 April 2003 on the computer of [●], Car Sales Manager for PNE.

¹³² See p. 4934: report on the visit made on 26.2.1999 to the Peugeot dealer [●]: "*Export weer opgepakt, plm. 50 stuks per jaar. RH zegt geen 206 te exporteren, vindt dit niet kunnen gezien schaarste op Nederlandse markt. RH zegt export ook nodig te hebben om financieel een acceptabel resultaten te draaien*".

¹³³ See p. 9011 (PdW 8): report on the visit made on 8.5.2001 to the dealer [●]: "*Dealer haalt hoog eigen percentage. Scoort naar verhouding te veel buiten*".

¹³⁴ See pp. 8975-8976 (TK 11), in particular p. 8976: PNE internal memo of 2.11.2001 from [●], AMD, to [●], Car Sales Manager; and [●], Marketing Director.

¹³⁵ *Système Européen Promotion*, a French broker and one of the complainants in this case.

¹³⁶ Complaint DG COMP/F2/36.623, p. 23911: letter from the Peugeot dealer in the Netherlands to SEP dated 31.7.1997, Case 36623: "... *Avec ces 5 commandes, nous avons fait le maximum que nous pouvons faire pour cette année. Si nous allons exporter plus de voitures nous aurons des problèmes avec Peugeot Pays-Bas.*".

ending them completely as from 1999¹³⁷. [●] also stated that he had not requested payment of the bonus on vehicles exported during the period covered by this Decision (from 1997 to 2003) for “fear of reprisals”, including “loss of the dealership”¹³⁸. Likewise, following the “huge” pressure exerted by PNE, the dealer [●] decided in the second half of 1997 temporarily to stop exporting new cars (until 1999), as the penalties he was threatened with were “too painful” and could, as he understood them, go as far as termination of the dealership contract¹³⁹. Certain dealers also had to justify their export business: in a letter to Automobiles Peugeot SA dated 19 November 2001, the dealer [●] replied to certain questions that the importer had asked him by telephone. In particular, he replied that the commercial problems he had experienced had forced him to export, stressing that exporting had never formed part of his business strategy. The dealer had to justify his behaviour by explaining that exporting was for him only a short-term policy dictated by the need to control his costs¹⁴⁰.

79. From 1997 onwards, this pressure on certain dealers also took the form of threats to reduce supplies, in particular of the most commonly exported models. At a meeting between the VPDN Commercial Committee and PNE representatives, the participants agreed that in 1997 certain models such as the 406 Airlines and the 106 Accents would be regarded as strictly reserved for the Dutch market, the export of which would constitute improper conduct for which the exporting dealer would be held responsible¹⁴¹. In this connection, the VPDN supported from 1997 onwards the adoption of such measures to limit supplies of certain models and remove the most commonly exported models from the range¹⁴².

¹³⁷ Reply of [dealer] of 10.12.2004 to a request for information on the basis of Article 18 of Regulation 1/2003.

¹³⁸ Reply dated 10.12.2004 from [dealer] to a letter requesting information under Article 18 of Regulation 1/2003. [Dealer]'s contract as a [●] dealer was terminated as of 1 July 2003.

¹³⁹ Reply dated 22.11.2004 from [dealer] to a letter requesting information under Article 18 of Regulation 1/2003. [Dealer]'s contract as a [●] dealer was terminated in March 2000.

¹⁴⁰ See pp. 8913-8914 (La 29), in particular p. 8913: letter from the dealer [●] to [Support Dealer Manager] of PNE dated 19.11.2001.

¹⁴¹ See pp. 17612-17616, in particular p. 17612: record of the meeting of the VPDN Commercial Committee on 12.11.1996: “[De [Commercial Director]] *Het is hem zelfs gebleken dat er dealers zijn die exporteren en ook voor die auto's gebruik maken van actiemiddelen. Volgens de commerciële commissie is dat een zeer laakbare zaak en vraagt om achtergrond informatie. De [Commercial Director] geeft aan dat er bijvoorbeeld 500 stuks 806 in back-order staan. Uiteraard krijgen de op de Nederlandse markt verkochte exemplaren de voorrang, maar gezien de nieuwe wetgeving moeten wij leveren. Aan de andere kant, op het moment dat wij ontdekken dat er 406 Air-Lines of 106 Accenten zijn geëxporteerd, dan gaan wij die dealers uiteraard wel belasten. Accent en Air-Line zijn actiemodellen om de verkoop op de Nederlandse markt te stimuleren.*”

¹⁴² See pp. 17595-17599, in particular p. 17596: record of the meeting of the VPDN Commercial Committee on 16.6.1997: “*Als “intermezzo” komt aan de orde dat de export-activiteiten van sommige dealers nog steeds een grote zorg zijn. Meer dan de zaken goed in het oog houden kunnen wij niet doen. De mogelijkheid van quotering van bepaalde modellen c.q. uitvoeringen is wel in overweging genomen, evenals het schrappen van modellen uit het gamma wanneer deze vooral voor exportdoeleinden worden gebruikt. De buitendienst houdt in ieder geval steeds de vinger aan de pols. De [Sales Director] meent dat het in ieder geval al zou helpen wanneer er geen extra kortingen gegeven zouden worden. Zou dat over de hele linie worden gevolgd, dan lost dat mogelijk de problemen al voor een groot deel op. De ondersteuning van de commerciële commissie op dit gebied is en blijft natuurlijk meer dan welkom.*”

80. Thus, in May 1997, PNE had the idea of pruning the models which were exported the most, such as the 806¹⁴³. However, since 1996, Automobiles Peugeot SA had drawn the attention of PNE to the legal risk which could stem from this strategy of limiting exports of this very popular model (see paragraph 75).
81. Furthermore, dealers showed themselves to be willing parties to such a practice, notably with respect to deliveries of the Peugeot 206 model. In particular, dealers in the western region of the country put on record, at a meeting of their regional association in 1998, their interest in putting an end to exports¹⁴⁴.
82. Thirdly, real restrictions on delivery took place on an individual basis in 1997, notably by means of significant delays. The first example of the application of this policy is described in a letter from the broker SEP to PNE dated 11 February 1997, concerning a car purchased in the Netherlands with a surcharge to be paid in accordance with the importer's instructions, which mentioned a particularly long delivery period¹⁴⁵. Following the repeated occurrence of problems of this type, SEP and 22 of its customers jointly filed a complaint with the Commission¹⁴⁶.
83. Subsequently, on several occasions in 1997, sales of the 306 Estate model were reserved for the domestic market. It can be seen from a letter sent by the [●] on 2 July 1997 to the French broker SEP that delivery of Peugeot cars had been delayed and made conditional on payment of a deposit amounting to 25% of the total price. In other cases, the deposit demanded was NLG 5 000¹⁴⁷. The limitation of the supply of vehicles also had effects on relations between Peugeot dealers and intermediaries acting on behalf of non-resident consumers: as can be seen from a letter dated 16 July 1997 from PNE to the [●], which was mistakenly forwarded to an intermediary, 306 Estate cars were supplied only with a registration application¹⁴⁸. The meaning of this phrase is clearly spelled out in a fax on the same incident sent on 18 July 1997 by PNE to Automobiles Peugeot SA Paris, in which the Dutch importer explained that deliveries were effectively limited to orders with an application for

¹⁴³ Pages 1726 to 1727, in particular page 1727 : memo on the network plan for The Netherlands of 30.05.1997: “[...] 806/ PTNE is thinking about a reduction in the supply of the 806, in pruning the models which are re-exported the most.”

¹⁴⁴ Pages 7910 to 7914 (AVH 20.9), in particular page 7914: minutes of the meeting of VPDN members of the West region, of 08.06.1998: “*Gevraagd wordt de 206 niet te exporteren en deze te behouden voor de Nederlandse markt!*”

¹⁴⁵ Complaint DG COMP/F2/36.623, pp. 23867-23868: letter from SEP to PNE dated 11.2.1997.

¹⁴⁶ Complaint DG COMP/F2/36.623, pp. 23835-23836: complaint from 18 consumers; Complaint DG COMP/F2/36.623, p. 23902: letter dated 11.8.1997 in which a further four consumers filed a complaint.

¹⁴⁷ Complaint DG COMP/F2/36623, Annex 7: letter dated 2.7.1997 from the dealer [●] to SEP, p. 23858: “*Just to inform you, that for most of all the orders you got outstanding there is a delay in delivery. Peugeot Holland is unable to tell us how long it will take now before delivery. As you might know, Peugeot Holland is not getting enough cars from Peugeot France, therefore we've got long outstanding orders for most of our models. On all the delivery dates we've quote you, they are just an indication of how long it might take, if there are any delays (like now) then the customer can never claim any rights or what so ever. If you don't accept the delay in delivery, we would be very happy to cancel all your outstanding orders. If you don't want us to cancel your orders, you have to let us know before 15.00 hour today (02-07-1997). If you do accept the delay in delivery we would require a 25% down-payment for all the outstanding orders*”.

¹⁴⁸ Complaint DG COMP/F2/36623, pp. 23853-23857: letter from PSA to the [●] dated 16.7.1997: “*... ci-joint vous trouvez les dates de livraison concernant +les commandes pour SEP. Les livraisons sont basées sur le planning de fabrication que PSA France nous a communiqué. Comme connu les 306 break seront livrées uniquement avec demande d'immatriculation ...*”

registration in the Netherlands¹⁴⁹: “The mistake made at this level appears to be due to the fact that the dealer inadvertently forwarded to SEP, together with the printout showing delivery periods, the cover letter specifying that, for the 306 Estate, the only orders that could be accepted were for cars with a registration application (“Kentekenaanvrag”: this being understood as an application for registration in the Netherlands ...). With, what is more, a reference to the cover letter on page 1 of the printout, opposite the four 306 Estate cars for which no indication was given as to a delivery date”.

84. After this episode, the same Peugeot dealer had again to refuse to supply the 306 Estate model to foreign customers¹⁵⁰: no car without a Dutch number plate was delivered until domestic demand was satisfied. Finally, by letter of 25 July 1997, SEP announced that delays in delivery by PSA Nederland had caused 12 orders to be cancelled¹⁵¹.
85. In 2001, the unexpected success of the different versions of the HDI engine resulted in very long delivery times on the Dutch market¹⁵², a phenomenon which particularly affected sales to final consumers residing abroad and their intermediaries. Automobiles Peugeot SA did not deliver cars ordered through Dialog under code 6 (used when the dealer does not immediately request a number plate for the vehicle ordered). The dealer concerned explained that given that he had delivery problems, he ought rather to have cheated the system (and used alternatively one of the codes 1, 2 or 3, for which a Dutch number plate has to be requested when ordering the vehicle) in order to receive the cars¹⁵³.

2. LEGAL ASSESSMENT

2.1. Article 81(1) of the Treaty

86. Automobiles Peugeot SA sells vehicles in the Netherlands through its wholly owned subsidiary, the importer PNE. Following the entry into force of Regulation 1475/95, Automobiles Peugeot SA has concluded, via its subsidiary PNE, dealership agreements with dealers belonging to the national network in the Netherlands on the basis of a standard dealership contract for the sale of all models in the Peugeot range and other contract goods (in particular spare parts) through a selective, exclusive distribution system. In the present chapter, any reference to Automobiles Peugeot SA will designate without distinction both the parent company (Automobiles Peugeot SA) and its Dutch subsidiary (PNE).

¹⁴⁹ See pp. 1743-1751, in particular p. 1743: letter from [●], European Subsidiaries Sales Manager, to [Legal Affairs Department Director] dated 18.7.1997 on a complaint from the broker SEP against PNE concerning delays in delivery.

¹⁵⁰ Complaint DG COMP/F2/36623: letter from the dealer [●] to the broker SEP dated 28.11.1997, p. 23917: “*The policy of Peugeot concerning the 306 Estate orders are as follow: all cars without dutch license will not be delivered until there are enough cars for Holland*”.

¹⁵¹ Complaint DG COMP/F2/36.623, pp. 23904-23905.

¹⁵² See pp. 7859-7862 (AVH 20.2), in particular p. 7860: record of the meeting between PNE management and the Advisory Committee of the VPDN on 2.11.1999.

¹⁵³ See pp. 9062-9068 (KA 10), in particular p. 9067: report on the visit to the dealer [●], 22.8.2001.

87. The Court of Justice of the European Communities has consistently held that agreements between traders at different levels in the economic process – “vertical agreements”, such as selective and exclusive motor vehicle distribution – may be caught by the prohibition laid down in Article 81(1)¹⁵⁴.

2.1.1. Undertakings

88. Automobiles Peugeot SA and its Dutch subsidiary PNE, as well as the Peugeot dealers in the Netherlands, are undertakings within the meaning of Article 81(1).

2.1.2. The agreement

2.1.2.1. The agreement in the selective distribution network for vehicles of the Peugeot make

89. The measures adopted by Automobiles Peugeot SA with a view to restricting export sales and intra-brand competition were not unilateral practices. On the contrary, they fell within the scope of Article 81(1). They formed part of the contractual relations between Automobiles Peugeot SA, on the one hand, and the dealers belonging to its selective and exclusive distribution networks in the Netherlands, on the other, concerning the sale of Peugeot vehicles and other contract goods.

90. In this regard, the Court of First Instance held in *Adalat*¹⁵⁵ that a distinction should be drawn between cases in which an undertaking has adopted a genuinely unilateral measure, and thus without the express or implied participation of another undertaking, and those in which the unilateral character of the measure is merely apparent. Whilst the former do not fall within Article 85(1) (now Article 81(1)) of the Treaty, the latter must be regarded as revealing an agreement between undertakings and may therefore fall within the scope of that Article. That is the case, in particular, with practices and measures in restraint of competition which, though apparently adopted unilaterally by the manufacturer in the context of its contractual relations with its resellers, nevertheless receive at least the tacit acquiescence of those resellers.

91. The Court of Justice has already ruled that the admission of a dealer to a distribution network implies that the dealer accepts, expressly or tacitly, the policy pursued by the manufacturer and his supplier. Consequently, circulars and/or calls issued by a motor vehicle manufacturer to its authorised dealers do not constitute a unilateral act which falls outside the scope of Article 81(1) of the Treaty but an agreement within the meaning of that provision if they form part of a set of continuous business relations governed by a general agreement drawn up in advance¹⁵⁶ and if they are

¹⁵⁴ See, for example, Case C-266/93 *Bundeskartellamt v Volkswagen and VAG Leasing* [1995] ECR I-3477, paragraph 17.

¹⁵⁵ Case T-41/96 *Bayer v Commission (Adalat)* [2000] ECR II-3383, paragraph 71.

¹⁵⁶ Joined Cases 25 and 26/84 *Ford v Commission* [1985] ECR 2725, paragraph 21; Case C-70/93 *Bayerische Motorenwerke* [1995] I-3439, paragraph 16; Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 236; Case C-338/00 P *Volkswagen v Commission* [2003] ECR I-9189, paragraph 60. *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG versus Commission of the European Communities*. Case 107/82 R. See ECR 1983 page 3151, paragraph 39. See also CFI’s judgment in *Adalat* case, mentioned above, paragraph 170, and in the same case Judgment of the Court (Full Court) of 6 January 2004. *Bundesverband der Arzneimittel-Importeure eV and Commission of the European Communities v Bayer AG*. Joined cases C-2/01 P and C-3/01 P. See ECR 2004 Page I-00023, paragraphs 143 and 144.

tacitly or expressly accepted by the authorised dealers. That case law applies here. It is also worth noting that in the absence of an acceptance on the part of the dealers, the anti-competitive objective would not have been attainable: the participation of the dealers was indispensable in order to achieve Peugeot's objective of slowing down parallel imports.²

2.1.2.2. Role of the VPDN

92. VPDN is a representative body for Dutch Peugeot dealers, and acts on their behalf in their relations with Automobiles Peugeot SA. It should be stressed for the purposes of this Decision that through this association the Peugeot dealers were fully aware of the importer's position with regard to the commercial policy of Automobiles Peugeot SA and that they cooperated through this association in shaping and applying certain aspects of the importer's commercial strategy (see paragraph 9)¹⁵⁷.
93. On several occasions, the VPDN expressed its members' willingness to embrace the strategy of Automobiles Peugeot SA, since it was aimed at limiting competition between them by restricting sales outside their respective contract territories, and in particular to consumers not resident in the Netherlands. As far as the latter are concerned, the dealers' support for PSA's strategy stemmed, among other things, from the realisation that an increase in re-exports could have prompted PSA to raise its selling prices in the Netherlands, which would in turn have led to a deterioration in the dealers' trading position¹⁵⁸. To strengthen the objectives of the remuneration system, the VPDN therefore sent a circular to its members to ensure compliance with the rules laid down by Automobiles Peugeot SA and urge them to concentrate their efforts on their own territory in order to be able to qualify for financial support from the importer¹⁵⁹. It is worth highlighting at this point that the agreement that is the subject of the present decision results from the meeting of minds of Automobiles Peugeot SA, on the one hand, and of its individual dealers, on the other, VPDN having acted as a channel for dialogue and common action between the parties to the dealer contract, in other words, between PNE and the dealer members of the Dutch network.

2.1.2.3. The agreement for each measure at issue

94. More specifically, the elements of fact which are set out above in connection with each measure in question, come to confirm the existence of a distinct agreement. These measures, adopted and agreed with the dealers pursued the goal of reducing exports from the Netherlands, and became an integral part of the distribution agreements concluded between Automobiles Peugeot SA and its Dutch network:

¹⁵⁷ See pp. 17503-17510, in particular p. 17505: record of the meeting between the VPDN management, the VPDN Sales Committee and the PNE management held on 15.3.2000; pp. 17309-17319a: record of the meeting between the VPDN management, the VPDN Sales Committee and the PNE management held on 3.12.2002.

¹⁵⁸ See also pp. 7884-7890 (AVH 20.6), in particular p. 7886: minutes of the meeting of all regions of the Peugeot dealers association held on 10.3.1999.

¹⁵⁹ See pp. 3054-3056, in particular p. 3055: confidential circular dated 12.9.1999 from the VPDN to all dealers and agents.

(a) *Remuneration system depending on the vehicle's geographic destination*

95. First of all, the practical arrangements for operation of the Peugeot network between 1997 and 2003 show that there was acquiescence on the part of the Peugeot dealers in the Netherlands, and therefore a meeting of minds, when each sales transaction took place. The manufacturer's will was embodied in the circular received by the dealer at the beginning of each year, laying down the conditions for the dealer's remuneration (margin and bonus). Those conditions were accepted by the dealers in the Dutch network each time they filed a purchase order for a vehicle, which was the act that made the vehicle count towards the sales targets, in line with the conditions set by the circulars sent by PNE. Physically speaking, the dealer signalled his acceptance by entering the car's order details in the software by means of which the manufacturer managed relations with its network (DIALOG). The Peugeot importer checked these data against those of the national registration authority. The measure at issue was thus consented to by the dealers concerned since, in any event, they carried out sales within this system¹⁶⁰.
96. Secondly, according to the jurisprudence of the Court, even if the existence of an agreement does not necessarily result from the fact that there is a system of subsequent monitoring and penalties, the establishment of such a system may nevertheless constitute an indicator of the existence of an agreement¹⁶¹. The existence of such a system is stated in the case in question, as much in the level of control (see recitals 60 to 72), as in the sanctions possible (see recitals 77 and 78).
97. In the third place, in the case in question, the dealer remuneration systems introduced in the Netherlands in 1997 and 2000 were the result of long discussions with the VPDN aimed at getting the members of the Dutch network to support the commercial conditions set by Automobiles Peugeot SA/PNE in its circulars (see recitals 30 and 39-42). In its circular dated 21 January 1997¹⁶², the importer referred to contacts with the VPDN Commercial Committee. Automobiles Peugeot SA also discussed the planned remuneration system to be put into effect as of 1 January 2000 with the association. At a meeting on 31 August 1999¹⁶³, the VPDN registered its agreement on the plan. The changes to the remuneration systems were agreed jointly with the VPDN and communicated to the dealers by means of circulars¹⁶⁴. In the

¹⁶⁰ See the Decision in *Opel, loc. cit.*, paragraph 114, and Case T-368/00 *General Motors Nederland and Opel Nederland v Commission* [2003] II-4491, paragraph 98.

¹⁶¹ See the Adalat judgement C-2/01 of 6 January 2004, paragraph 83..

¹⁶² See pp. 3294-3306, in particular p. 3294: Peugeot bonus scheme, circular dated 21.1.1997 to all dealers, Re: 1997 Peugeot bonus scheme (passenger cars).

¹⁶³ See pp. 3057-3064 (CR 21), in particular p. 3057, and pp. 7849-7856 (AVH 8), in particular p. 7849: record of the meeting of 31.8.1999 at PNE between a delegation from the VPDN management and the VPDN Sales Committee on the 2000 margin scheme, followed by a normal meeting of the Sales Committee; pp. 7236-7249, in particular p. 7236 (CS 25): tables presented at the meeting of 31.8.1999.

¹⁶⁴ See, for example, pp. 3294-3306: Peugeot bonus scheme, circular dated 20.1.1997 to all dealers, Re: 1997 Peugeot bonus scheme (passenger cars) - Annex I: operation of the Peugeot bonus scheme (33 questions and answers), Annex II: financing of the Peugeot bonus scheme, Annex III: the Peugeot bonus scheme and the margin; pp. 21038-21040: circular from PNE dated 18.11.1999 to the management of all Peugeot dealers concerning the rules on the variable qualitative component of the margin, Annex to the reply by Automobiles Peugeot SA to a request for information under Article 11 of Regulation No 17 dated 8.9.2003; pp. 8539-8543 (DVE 9): circular from PNE dated 27.2.2003 to the management of all Peugeot dealers concerning the organisational bonus; pp. 8756-8760 (DVE 64):

context of these discussions, the rules on dealer remuneration were amended at least once at the initiative of the VPDN (see paragraph 30).

98. Even if, as claimed by Automobiles Peugeot SA, the VPDN's role was limited to acting as a sounding-board and a medium for informing the dealers¹⁶⁵, the detailed information which the VPDN distributed to its members had the effect of making them perfectly clear as to Automobiles Peugeot SA's position on the application of its remuneration system, that position having already been set out explicitly in the circulars. This confirms that the dealers on the whole clearly saw the remuneration system as forming an integral part of their distribution contract.

99. It is clear from the above facts that the existence of the agreement does not hinge solely on the dealers' tacit acceptance of the application of the remuneration system, required by Automobiles Peugeot SA from the beginning of 2000 until October 2003 (see paragraph 40)¹⁶⁶. The fact that, from 2000 onwards, in the circulars it sent to dealers at the beginning of each year Automobiles Peugeot SA requested any dealer disagreeing with the remuneration system to explicitly oppose it by letter¹⁶⁷ represented only the explicit manifestation of an offer of agreement that had already given rise to a real meeting of minds since 1997.

(b) *Pressure on dealers*

100. In the context of the implementation of the selective distribution agreements concluded between Automobiles Peugeot SA and the members of its Dutch dealer network (see paragraphs 89 to 93), the manufacturer had put pressure on its dealer network in the Netherlands to limit sales to consumers established outside the contract territory and, in particular, to consumers not resident in the Netherlands and intermediaries acting on their behalf (see paragraphs 73-85, in particular paragraphs 77-85 for the practical application of the pressure on dealers). Automobiles Peugeot SA gave a clear invitation to its dealers, using the VPDN as a go-between, aimed at introducing a regime limiting exports to other Member States, since at least 1997 (see recitals 74 to 76). Next, Automobiles Peugeot SA, through the Account Managers Dealernet, checked the activities of all the dealers in the network. If, in the light of such checks, the importer found that dealers had made export sales, it brought pressure to bear with a view to inducing the dealers to reduce or stop them (see paragraph 77). Furthermore, a limitation of the supply of vehicles had also had an effect on the relations between members of the Peugeot dealer network and the intermediaries who were acting on behalf of non-resident consumers: as indicated in a letter of 16 July 1997 from PNE to [●], which was sent in error to an intermediary,

circular from PNE dated 18.3.2002 to the management of all Peugeot dealers concerning the organisational bonus and its components.

¹⁶⁵ Points 530-536 of the reply from Automobiles Peugeot SA of 30.7.2004 to the Commission's statement of objections of 29.4.2004.

¹⁶⁶ Paragraphs 522-538 of the reply from Automobiles Peugeot SA of 30.7.2004 to the Commission's statement of objections of 29.4.2004, in which the carmaker supported the opposite view. See also paragraph 69 of Automobiles Peugeot SA dated 27 June 2005 to the letter of the Commission dated 26 May 2005.

¹⁶⁷ See pp. 21055-21058, in particular p. 21056: circular from PNE dated 19.1.2001 to the management of all Peugeot dealers concerning the rules on the 2001 bonus; pp. 21068-21071, in particular p. 21069: circular from PNE dated 18.1.2002 to the management of all Peugeot dealers concerning the rules on the 2002 bonus.

the 306 Estates were only delivered in response to orders with a registration application (see paragraph 83). Moreover, some dealers who had made export sales were furthermore enjoined by the importer to refrain from doing so in future under the threat of “reprisals” which could, as they understood them, go as far as termination of the dealership contract (see, in this connection, the dealers [●],[●] and [●], paragraph 78). This strategy led certain dealers to suspend exports. In 1997, for example, [dealer] was forced to refuse to supply vehicles to final consumers living abroad (see paragraph 78). Furthermore, the strategy of Automobiles Peugeot SA was known to the members of the distribution network, who feared the long-term effects of exports on their profits and were in favour of the measures taken by the importer. They accordingly agreed, within the VPDN, to send the dealers a circular urging them to cease export sales¹⁶⁸ (see paragraph 76). Their support was all the more understandable in view of the fact that Automobiles Peugeot SA was implementing a policy of drastically reducing the number of dealers in the Dutch network: the number of Peugeot dealers in the Netherlands shrank from 163 to 59 between 1995 and 2003 (see paragraph 7). These episodes show that the invitation that Automobiles Peugeot SA had addressed to its dealers, aimed at ensuring that their export activities would continue to take place only on a purely exceptional basis, was supported in principle by all network members, apart from occasional interventions by which the manufacturer was able to maintain discipline.

101. It is settled case law that instructions issued to dealers do not constitute a unilateral act which falls outside the scope of Article 81(1) of the Treaty but an agreement within the meaning of that provision if they form part of a set of continuous business relations governed by a general agreement drawn up in advance, such as a network of selective distribution agreements¹⁶⁹. In the case of the Netherlands, the pressure exerted on dealers to prevent parallel exports therefore formed an integral part of the distribution agreements concluded between Automobiles Peugeot SA and the members of its network in the Netherlands.

2.1.3. *Restriction of competition*

2.1.3.1. Restriction of competition as the object of the agreement

102. The Commission has already found, in a number of decisions, that agreements or practices concerning a dealer remuneration system which are conditional on the customer not exporting the product purchased, or concerning limitations of exports, have as their object the restriction of competition within the meaning of Article 81 and are therefore prohibited. These decisions have subsequently been upheld by the Court of First Instance and the Court of Justice¹⁷⁰. In addition, the Court’s judgments

¹⁶⁸ See pp. 4676-4681, in particular p. 4677: minutes of the meeting of the Peugeot dealers association held on 11.7.1997; pp. 4682-4687, in particular p. 4684: minutes of the meeting of the Peugeot dealers association held on 26.5.1997.

¹⁶⁹ Joined Cases 25 and 26/84 *Ford v Commission* [1985] ECR 2725, paragraph 21; Case C-70/93 *Bayerische Motorenwerke* [1995] I-3439, paragraph 16; Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 236; Case C-338/00 P *Volkswagen v Commission* [2003] ECR I-9189, paragraph 60.

¹⁷⁰ Case T-62/98 *Volkswagen v Commission* [2000] II-2707, paragraphs 193-194; Case C-338/00 P *Volkswagen v Commission* [2003] ECR I-9189, paragraphs 44-45; Case T-368/00 *General Motors Nederland and Opel Nederland v Commission* [2003] ECR II-4491, paragraph 102; Commission

and the approach taken by the Commission clearly class measures aimed at restricting parallel imports of cars as measures which have as their object the restriction of competition.

103. It should be stressed here that in the above-mentioned¹⁷¹ *Volkswagen* the CFI and then the Court upheld the Commission Decision establishing a complex infringement, stressing that behaviour restricting parallel trade in cars can result from a the interaction of several measures. In particular, nothing precludes the items of evidence on which the Commission relies in order to prove the existence of an infringement of Article 81(1) of the Treaty from being assessed as a whole rather than separately¹⁷².
104. Secondly, the classification of the measures covered by this Decision as measures which have as their object the restriction of competition can also be assessed in the light of the abovementioned judgment of the Court of First Instance in *Opel Nederland*¹⁷³. The CFI ruled that the Commission had rightly argued that, as performance bonuses similar to those involved in the case in point were no longer granted for export sales, the margin of economic manoeuvre which dealers had to carry out such sales was reduced, all other things being equal, in comparison with that which they had to carry out domestic sales. Dealers were 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. The CFI consequently found that, through the withdrawal of bonuses for export sales, the latter became less attractive to foreign customers or to dealers.
105. In the present case, the restrictive object of the infringement derives both from the way in which the remuneration system is applied and from the way in which it is reinforced by the pressure exerted on certain dealers.
- (a) *Dealer remuneration*
106. It is appropriate here to determine the nature of the restriction of competition by object, in accordance with Article 81, paragraph 1, of a remuneration system which was implemented by Automobiles Peugeot SA in the framework of a distribution network based on exclusive territories and the quantitative selection of authorised dealers¹⁷⁴. As to this remuneration system, this Decision does not dispute the manufacturer's freedom to agree with its dealers sales targets set in relation to sales to be achieved in the contract territory or its freedom to adopt appropriate incentives,

Decision 93/46/EEC of 15.12.1992 in Case IV/31.400 - *Ford Agricultural* (OJ L 20, 28.1.1993, p. 1), paragraph 12.

¹⁷¹ See paragraph 102.

¹⁷² Paragraph 234 of the CFI's judgment (Case T-62/98). In *Volkswagen*, the different measures adopted by VW formed part of a series of acts with one economic objective, namely walling off the Italian market.

¹⁷³ Case T-368/00 *General Motors Nederland and Opel Nederland v Commission* [2003] ECR II-4491. In this case, the Commission took the view that a bonus which discriminated against exports was capable of having the objective result of restricting exports. The Court of First Instance largely upheld the Commission's analysis, even though it considered that the facts which the Commission had taken into account were not sufficient to demonstrate the existence of restrictions on the supply of cars for export.

¹⁷⁴ Any pro-competitive aspects of this remuneration system will be examined in more detail in the section on Article 81, paragraph 3.

in the form of performance bonuses in particular, in order to urge its dealers to increase their penetration of the territory granted to them.

107. On the other hand, this Decision does find fault with the restrictions on the payment of this bonus. The system for the payment of the performance bonus set in place by Peugeot in the Netherlands operated as a two-stage process: (1) determination of the base, in other words the volume of sales to be achieved within the contract territory, expressed as the number of registrations actually obtained by each of the dealers concerned, conferring entitlement to the bonus, and (2) determination of the total amount of the bonus paid at the end of the contract period, which resulted from applying the percentage bonus to which the dealer was entitled to the value of the vehicles he had sold to final consumers.
108. It is clear from the evidence held on file, however, that throughout the period under consideration, sales to non-resident consumers were not only left out of the calculation of the sales target, achievement of which conferred entitlement to the bonus, but were also ignored when it came to determining the total amount of the bonus payable. During the period between 1 January 1997 and 31 December 1999, Automobiles Peugeot SA applied a dealer remuneration system which consisted in paying the dealer a flat-rate additional amount (“bonus” and “superbonus”) for the sale of all passenger car models and the Boxer light commercial vehicle registered in the Netherlands after 1 January 1997 (see paragraphs 30-38). Subsequently, during the period between 1 January 2000 and 1 October 2003, Automobiles Peugeot SA modified the dealer remuneration system in order to introduce a variable margin component while retaining a “quantity bonus” paid to dealers who achieved their targets for the registration of Peugeot vehicles in the Netherlands (see paragraphs 39-51).
109. It should first be noted here that Annex I to the circular dated 20 January 1997 to all dealers concerning the 1997 Peugeot bonus system (passenger cars) shows that the passenger cars taken into account for the payment of the bonus were those registered after 1 January 1997 on the Dutch market, it being specified that the bonus would be paid on the basis of the same vehicles as those included in the calculation of the target (see paragraphs 36-38). In effect, no document makes any distinction, in the description of the bonus system set in place, between the rules applicable to acquisition of entitlement to the bonus and those applicable to payment of the bonus; it must therefore be deduced from this that the rules presented or referred to in each of the circulars apply in the same way to both stages in the process of obtaining the bonus. No evidence held on file provides any basis for disputing the fact that, other than in exceptional cases, dealers who had qualified for a bonus were not paid any bonus on vehicles sold for export (see paragraphs 49-51). Second, the inspections carried out in this case confirmed that dealers belonging to the Peugeot network in the Netherlands did indeed understand the bonus rules in that way: it was sufficiently clear from the instructions issued by Automobiles Peugeot SA that exported vehicles did not count towards the performance bonus, and hardly any of the dealers who achieved the volume of sales at national level entitling them to the bonus asked for a bonus on exported vehicles, with one of them even refraining from requesting it for fear of reprisals that could go as far as termination of the dealership contract (see paragraph 56). Third, it is also clear from several Automobiles Peugeot SA internal memos that, although occasional exceptions were not precluded in principle, the rule was that payment of the bonus was exclusively reserved for cars registered in the

Netherlands (see paragraph 57). Fourth and last, statements made by Automobiles Peugeot SA's CEO at the meeting of the Association Européenne des Concessionnaires Peugeot (AECF) in 1999 revealed the objectives pursued by Automobiles Peugeot SA in implementing this system: they left little doubt as to Automobiles Peugeot SA's determination to significantly hinder parallel trade, among other things in the form of sales from the Netherlands to non-resident consumers (see paragraph 59).

110. Moreover, from the elements held in the file, it emerges that the bonus system put in place by Peugeot had the goal of inciting dealers to give up sales which would have been possible if they had benefitted from the supplementary margin provided by the bonus. The remuneration system put in place by Automobiles Peugeot SA reduced incentives for Dutch dealers to undertake export sales (i), in a context of shortage (ii), and in a legal framework characterised by systematic a posteriori checking by Automobiles Peugeot SA regarding the registration of vehicles benefiting from the bonus (iii).

(i) The remuneration system put in place by Automobiles Peugeot SA reduced incentives for Dutch dealers to export

111. In its reply, Automobiles Peugeot SA contended that the bonus accounted for a small share of a dealer's remuneration¹⁷⁵. It concluded from this that, throughout the period from 1997 to 2003, export sales, which were only incremental sales for the dealer, complementing his local sales within his territory, were still as interesting if not more so than sales in the Netherlands, even when the bonus was not paid¹⁷⁶, and for two reasons. First, purchasers in other Member States had on average not been penalised compared with domestic purchasers, since many of them asked for and obtained comparable discounts. According to Automobiles Peugeot SA, the wide spread of discounts granted to different purchasers, whether domestic consumers or export buyers, was explained by the fact that for many the level of discount depended on the negotiating power of the purchasers, and in particular the brokers representing final customers living abroad¹⁷⁷. Second, the business costs incurred through "export" sales, which are passive sales, are generally very low according to Automobiles Peugeot SA and do not involve extra expenditure on sales remuneration, showroom, test-drive fleet and advertising¹⁷⁸. The similarity of the discounts, coupled with lower business costs, resulted therefore in a differential in average unit charges between domestic sales and export sales which Peugeot estimated at [●] % of the vehicle's list price. Since the dealer, according to Automobiles Peugeot SA, could earn an average bonus of some [●] % (between 1997 and 1999) and [●] % (between 2000 and 2003),

¹⁷⁵ In 1999, the average bonus (all vehicles) earned by a dealer of average size and performance was only about [●] % of the list price of the vehicle; assuming an average margin of [●] %, the bonus would not have been more than [●] % of the dealer's remuneration. For the years 2000 to 2003, Peugeot considered that the average bonus (all vehicles) was only [●] % of the list price, accounting for [●] % of the dealer's remuneration, in 2000, and [●] % of the list price, accounting for [●] % of the dealer's remuneration, in 2003. See paragraphs 502 to 505 of Automobiles Peugeot SA's reply to the statement of objections, dated 31 July 2004, and also paragraph 12, and paragraphs 64 to 68 of Automobiles Peugeot SA's reply of 27 June 2005 to the letter of facts sent by the Commission on 26 May 2005

¹⁷⁶ Paragraphs 510 and 521 of Automobiles Peugeot SA's reply of 31.7.2004 to the statement of objections.

¹⁷⁷ Paragraphs 513 and 514 of Automobiles Peugeot SA's reply of 31.7.2004 to the statement of objections.

¹⁷⁸ Paragraphs 515 and 516 of the reply of Automobiles Peugeot SA of 31.7.2004 to the statement of objections.

the average unit margin realised on a given volume of export sales was comparable to, if not greater than, that achieved on an identical volume of domestic sales¹⁷⁹.

112. This argument can be refuted. In the first place, Automobiles Peugeot SA's argument that the amount of the bonus is too small to affect exports contains a paradox. As explained by Automobiles Peugeot SA (see paragraph 21), the dealer remuneration system was intended to encourage Dutch dealers to do all they could to expand sales in the territory which had been assigned to them. There are two possibilities: either the amount of the bonus in question was too small so that its refusal discouraged exports, in which case it was also too small to encourage dealers effectively to concentrate on their territory: it is unlikely that Peugeot, which rightly attaches importance to motivating its dealers, would have maintained an ineffective quantity motivation system until 2003; or, one acknowledges that Peugeot maintained a bonus system that was sufficiently generous to encourage dealers to concentrate on their territory, in which case one must acknowledge that the bonus was large enough to discourage export sales. Moreover, the wide spread of the discounts granted to different purchasers, whether domestic consumers or export buyers, actually reflects only the general economic reality that discounts vary according to the market power of the buyer. Such a general affirmation is not in itself likely to alter the discriminatory nature of a system which specifically penalises sales to consumers not resident in the Netherlands.
113. In the second place, the approach of Automobiles Peugeot SA, such as is summarised in paragraph 111, parts from the imprecise hypothesis according to which there exists a constant foreign demand, which the dealer can satisfy, without obtaining a bonus, and all the while making a profit. In fact, of the margin for manoeuvre represented by the obtention of a bonus enabling him to reduce his prices, all while gaining an identical average profit, it would be normal to expect an increase in sales¹⁸⁰.
114. Thirdly, the evidence supporting the argument that export sales continued to be as profitable as sales in the Netherlands, if not more so, even when the bonus payment was not granted, is not confirmed by the facts gathered during the investigation. These elements concern both the global commercial costs of dealers and the real perception of the importance of the bonus by them.
115. First of all, all things being equal, such a system of discriminatory bonuses represents a disincentivisation of sales to non-resident consumers. The dealer is in effect led to prefer a sale to a resident consumer in order to maximise his margin, the sale to a Dutch dealer being at equal price more interesting than the sale to a non-resident consumer. This discriminates against the non-resident consumer in favour of the resident consumer. Moreover, it is not accurate to claim that the business costs incurred through "export" sales, which are passive sales, are very small and actually separate from those associated with the remuneration of sales, in particular showroom, test-drive fleet and advertising. It is only through effective, continual and significant investment in his territory that the dealer acquires sufficient reputation and size to attract non-resident customers ahead of his competitors. The costs associated with the expansion of active local sales should therefore be taken into

¹⁷⁹ Paragraphs 517 to 521 of Automobiles Peugeot SA's reply of 31.7.2004 to the statement of objections.
¹⁸⁰ PNE had itself foreseen this in the internal document cited below in paragraph 134.

account in assessing the overall cost of the dealer's sales, including the cost of export sales. This principle applies in the case in point as well. Finally, if the cost of a vehicle over its lifetime is considered, export sales represented a lesser profit opportunity for dealers, given that in general, a dealer cannot normally expect to deliver an after-sales service for a vehicle which is sold for export. After-sales service represents a more significant proportion of a dealer's revenues than his sales¹⁸¹.

116. The evidence held on file shows that the bonus was important for dealers throughout the period and that its loss for export sales was susceptible to significantly affect dealer interest in selling to non-resident consumers. On several occasions, Automobiles Peugeot SA and dealers maintained that the quantity bonus was essential to dealers' survival:

- *Record of the general meeting of the VPDN on 9 March 2000*¹⁸²: Automobiles Peugeot SA itself acknowledges that earning the bonus was essential for dealer profitability: “It is rightly pointed out that the bonus is largely crucial for the dealer's return”.
- *Record of the general meeting of the VPDN on 9 March 2000*: Mr. [●], a Peugeot dealer and member of the VPDN's Sales Committee, submitted a report on the committee's findings at the annual meeting of the Association, when he stated that the bonus was essential if the dealer was to earn a profit: “the bonus is not regarded as a bonus, but is 100% part of the profit, with an average dealer size of 1 000 cars, an annual turnover of NLG [●] million and a return of [●]%. It's impossible to do without it therefore!”¹⁸³.
- *General meeting of the VPDN on 3 December 2002* : “PNE wanted to withhold [●]% of the margin. The costs would have run into millions, because the [●]% bonus would also have been lost”. The [●]% refers to the organisational bonus, linked to [●], which amounted to between [●]% and [●]% of the RLP. If such a small amount was absolutely necessary for dealers, the [●]% of the RLP which a bonus amounted to were also important for dealers¹⁸⁴.
- Finally, the replies provided by Dutch dealers to the supplementary inquiries following Automobiles Peugeot's reply to the statement of objections are also enlightening, despite further elements subsequently provided by Automobiles Peugeot SA¹⁸⁵. One question concerned the reasons why some dealers had not asked to be paid a registration premium (bonus and superbonus from 1997 to 1999, “quantitative part” from 2000 to 2003) for exported vehicles. One of the

¹⁸¹ See Automobiles Peugeot SA's response to the complaints, dated 30 July 2004, notably table 9, page 98 and point 59.

¹⁸² See p. 17345.

¹⁸³ See pp. 7754-7761 (EF 42), in particular p. 7756: record of the general meeting of the VPDN on 9.3.2000: “*Bonus is geen bonus, maar behoort voor 100% toe aan de winst, bij een gemiddelde dealergrootte van 1000 auto's, een jaaromzet van [●] miljoen gulden en een rendement van [●]%. Dit kan dus niet gemist worden*”; pp. 7774-7777 (EF 44), in particular p. 7775: memo from certain Dutch dealers to the VPDN, 28.2.2000.

¹⁸⁴ See page 17310.

¹⁸⁵ See on this point the content of the reply of Automobiles Peugeot SA of 27 June 2005 to the letter of facts of the Commission dated 26 May 2005.

proposed answers was that the premium was too small to warrant a request from the dealers. Only one dealer ticked this explanation.

- (ii) A situation of shortage of products reinforcing the impact of the remuneration system in question

117. The recurrence of shortages affecting the delivery of Peugeot vehicles to the Dutch market reinforced the anti-competitive arrangements introduced by Peugeot. In Peugeot's own words¹⁸⁶, periods of shortage are frequent in the motor industry and are caused by the industrial plant being temporarily out of step with demand. Periods of shortage are in particular quite common at each launch of a new vehicle or the introduction of new machinery (engines), or because of the industrial constraints associated with stepping up production, the need to build up a stock prior to launch and the staggering of launches in different countries. Similarly, changes in the trend of consumption (e.g. the growing preference of consumers for diesel engines) may create difficulties in products for which demand is stronger.
118. Even if shortages, which affect all countries¹⁸⁷, are usually resolved fairly quickly, it may not be possible to meet demand over a longer period if the success of a model requires a change in the scale of production and an increase in industrial capacity. During the period in question, the problem of the insufficient availability of cars was a general one for Automobiles Peugeot SA and its dealers. Delivery times for cars ordered by final consumers were increased, sometimes by several months. The activities of the two main organs of the VPDN (general meeting and Commercial Committee) show how important these excessive delivery periods were. Between 1997 and 2003 the question was raised eleven times at a general meeting: nine times in order to examine specific delivery problems¹⁸⁸, and twice to discuss the vehicle quota systems introduced to resolve them in extreme cases¹⁸⁹. As for the Commercial Committee, between 1997 and 2003, it discussed the problems of delivery times in detail on at least 24 occasions, reviewing on two of them the quotas introduced by Automobiles Peugeot SA¹⁹⁰.

¹⁸⁶ Peugeot's reply to the statement of objections: paragraphs 56 to 58 (shortages in the automobile market in general) and 588 to 594 (shortages in the Dutch market).

¹⁸⁷ Minutes of the general meeting of the VPDN on 25.10.1999, p. 17355 of the file: “[Sales Director] comprend les frustrations concernant le caractère douteux des livraisons. L'année passée, chaque pays a communiqué à Peugeot France les nombres qu'il leur faut. Additionnés, on a un déficit de quelques centaines de milliers d'unités vis-a-vis de la production.”

¹⁸⁸ See minutes of the meetings of 11.11.1997, p. 17394; 8.10.1998, p. 17386; 11.11.1998, p. 17374; 9.3.2000, p. 17345; 15.6.2000, p. 17340, which state that “La livraison de la 607 est ressentie comme dramatique.”; 2 November 2000, which state that “PNE en a assez, tout comme les concessionnaires, du retard des livraisons. L'usine tourne à une capacité de 120%. Néanmoins, des problèmes surgissent si une usine s'arrête.”; 1.11.2001, p. 17326; 16.4.2002, p. 17322 ; and 1.7.2003, p. 17303.

¹⁸⁹ See minutes of the meetings of 25.10.1999, p. 17355 “Aussi en 2000, les 106 et 206 seront rares. La demande est plus grande que l'offre. Les deux modèles sont contingentés. Cela vaut non seulement pour les lignes de modèles, mais aussi pour les équipements de moteurs.” and of 2.11.2000, p. 17331 “La pénurie de modèles (206) et de moteurs diesel 1.9 HDI continue malheureusement jusqu'à certainement mi-2001. Les systèmes de quotas restent par conséquent en vigueur.”

¹⁹⁰ See minutes of the Commercial Committee of 19.2.1997, p. 17600; 16.6.1997, p. 17596; 6.11.1997, p. 17578 (3 times); 19.3.1998, p. 17566; 6.6.1998, p. 17564; 22.9.1998, p. 17562; 22.9.1998, p. 17561; 15.10.1998, p. 17558; 10.12.1998, p. 17550; 1.4.1999, p. 17548; 31.8.1999, p. 17529 and 15.3.2000, p. 17510; 4.4.2000 (twice), p. 17499 and 17501; 24.5.2000, p. 17497; 29.6.2000, pp. 17487-89; 4.10.2000 (twice), p. 17485; 10.4.2003 (twice), pp. 17410 and 17414. For the quotas, see minutes of the

119. Between 1999 and 2001, the unexpected success of the different versions of the HDI engine resulted in very long delivery times¹⁹¹. The short supply of these versions on the Dutch market particularly affected sales to final consumers residing abroad and their intermediaries. In a letter to Automobiles Peugeot, the intermediary [●] complained of the lack of flexibility in the manufacturer's production system, mentioning a situation which had persisted for several months with the result that 20 orders signed in July 1999 were still unmet six months later. Because of this situation, [●],[●]'s usual supplier, had decided to accept no more orders from the intermediary and to offer it lists of vehicles in stock but not corresponding to its customers' orders¹⁹².
120. This shortage of vehicles therefore reinforced the dealer remuneration factors that discriminated against exports. It is normal that a dealer operating in complete uncertainty as to the level of future supplies that can be expected could only react by limiting his activity to the national market, where he was sure (unlike in export sales) to recover the performance bonus on each vehicle sold. A specific example shows how such a shortage, namely the lack of Peugeot 206s in 2000, affected dealers' decisions on export sales¹⁹³: in a fax to the Netherlands Sales Manager at the Paris head office of Automobiles Peugeot concerning certain delays in deliveries of the 206 to UK final consumers, the CEO of PNE explained that the Dutch dealer [●] only had a few vehicles available for export¹⁹⁴. In the documentation sent on 8 September 2003¹⁹⁵, Automobiles Peugeot SA explained that the scarcity of the 206 model had led the dealer [●] to deliver the cars to local customers rather than foreign ones.
121. Moreover, on a limited basis, PNE put in place restrictions of supply, notably through important delays. These measures, implemented all throughout 1997, and later in 2001, have reinforced the predictable effect of a non-payment of the bonus for vehicles sold to export (see paragraphs 82 to 85).

Commercial Committee of 27.4.1999, p. 17539, and 3.12.1999, p. 17512 (permanent quota for the 106 and 206).

¹⁹¹ See pp. 7859-7862 (AVH 20.2), in particular p. 7860: record of the meeting between PNE management and the Advisory Committee of the VPDN on 2.11.1999.

¹⁹² See pp. 8886-8888 (La 24), in particular pp. 8887 and 8888: the letter from [●] to [●], Automobiles Peugeot's Sales Manager in the Netherlands, dated 24.12.1999, transmitted to Mr. [●] of Automobiles Peugeot's Legal Department: *"notre fournisseur habituel [dealer] a décidé de ne plus accepter nos commandes, se contentant de nous proposer des listes de véhicules de stock qui ne correspondent pas à la demande de nos clients, qui ne comportent pas absolument aucun véhicule à motorisation HDI, et que de toutes façon, selon la réglementation 1475/95, nous ne pouvons pas acheter, puisque nous ne sommes pas mandatés pour"*.

¹⁹³ See pp. 17676-17678, in particular p. 17678: this was confirmed in the reply from [dealer] of 15.7.2003.

¹⁹⁴ See pp. 8883-8884 (La 23), in particular p. 8884: fax from Mr [●], CEO of PNE, to [●], Automobiles Peugeot's Sales Manager for the Netherlands, 22.5.2000: *"Position PNE: En ce qui concerne l'affaire en question, il est clair que PNE n'a pas beaucoup de possibilité d'intervenir. De plus, il y a des quota pour la 206, ce qui fait que nous ne pouvons pas donner de délais de livraisons généraux pour un tel ou tel modèle. Le groupe [dealer] n'a pas beaucoup de véhicules disponibles pour l'exportation, mais il nous a promis de respecter en tout cas les délais de livraison convenus pour les commandes acceptées"*.

¹⁹⁵ See pp. 20888 - 20909, in particular p. 20905: reply of Automobiles Peugeot dated 8.9.2003 to a request for information sent under Article 11 of Regulation No 17.

- (iii) A legal framework characterised by a systematic a posteriori check by Automobiles Peugeot SA regarding the registration of vehicles benefiting from the bonus

122. The implementation of Automobile Peugeot's remuneration system was followed by systematic checks carried out by Automobiles Peugeot SA with a view to ensuring the effectiveness of the measures taken to restrict re-exports from the Netherlands. The checks were made according to two different methods described in paragraphs 60-72: checks on data relating to new vehicles ordered and entered in the DIALOG system, and checks on data relating to registrations in the Netherlands supplied by RDC. Through this monitoring system, Automobiles Peugeot SA was able to ascertain whether each vehicle ordered was intended for the Dutch market or for export, since the dealer had to specify in the DIALOG system, at the latest when delivering the vehicle to the final consumer, whether he intended to request a Dutch number plate. Subsequently, the accuracy of the data entered in DIALOG was compared with the data supplied by RDC concerning vehicle registrations in the Netherlands. Through this source of information, Automobiles Peugeot SA checked the sales performed by each dealer within his contract territory or the Netherlands. After checking the data provided by the dealers via DIALOG against the data obtained from RDC, Automobiles Peugeot SA notified the dealers of the results they had achieved each quarter and paid the bonus¹⁹⁶. The systematic use of checks by Automobiles Peugeot SA strengthened the strategy of walling off the Dutch market undertaken by the importer. The importer was able to ascertain within a short time (not later than one month after the sale) whether a vehicle sold had been registered in the Netherlands or outside the dealer's contract territory.

123. In conclusion, the dealer remuneration systems devised by Automobiles Peugeot SA objectively made it considerably less attractive for dealers to sell to non-residents or intermediaries acting on their behalf. This in itself constituted a measure which had as its object the restriction of competition within the meaning of Article 81. It emerges from elements of the file that Automobiles Peugeot SA itself had had some legitimate doubts as to the compatibility of such a regime with the competition rules (see paragraph 41).

(b) *Pressure on dealers*

124. From 1997 onwards and until a more recent period in 2001, Automobiles Peugeot SA occasionally intervened to deter certain Dutch dealers from supplying vehicles to final consumers from other Member States. The pressure put on Dutch dealers, such as the aspects of the remuneration system that actually discriminated against exports, was intended to hinder cross-border trade in cars between dealers in the Netherlands and those in other Member States with a view to walling off the Dutch market from the other markets in the European Union. It is in the context of this strategy that the documents held on file should be assessed.

125. In the months preceding introduction of the new remuneration system, Automobiles Peugeot SA began by referring in internal communications to the need to minimise

¹⁹⁶ See, for example, pp. 7997-7999 (SPL A11), in particular p. 7998: circular from PNE dated 11.1.2002 to all dealers, on registrations and payment of the bonus for the fourth quarter of 2001, payment of the quality bonus for 2001, payment of the quality margin for the fourth quarter of 2001.

parallel exports from the Netherlands. Later, the manufacturer repeatedly drew the dealers' attention to that need, stressing on occasion that their long-term interest lay in a common strategy enabling parallel trade in cars from the Netherlands to be restrained (see paragraphs 74-76).

126. It is also clear from evidence obtained during the investigation that certain dealers were subjected to direct pressure from the importer, who urged them to refrain from making export sales, and had to suspend deliveries to intermediaries and foreign consumers for fear of their distribution contract being terminated. The importer brought such pressure to bear among other things through the Account Managers Dealernet, whose warnings specifically targeted at least five dealers active in parallel trade and, in their own words, caused some of them "surprise" and "alarm" (see paragraph 77).
127. In addition to acting through the AMDs, Automobiles Peugeot SA occasionally took similar measures with regard to other dealers active in exporting, forcing them to cancel or refuse orders from non-resident consumers for fear of "reprisals" that could, as two dealers understood them, go as far as termination of the dealership contract (see paragraph 78).
128. The use of direct pressure was accompanied by the practice, which had been implemented early for certain models (see paragraph 79) and regularly noted for the period under consideration, of limiting and delaying deliveries of vehicles intended for non-residents, including by introducing special promotional lines onto the Dutch market (the 406 Airlines and 106 Accents models) which were subject to a condition forbidding export, and by delivery restrictions involving the models that were exported the most, notably the 806, 206 and 306 estate (see recitals 79-85). In addition, it appears from elements in the file that PNE constantly monitored the export activities of those dealers that were so engaged. When PNE detected activities that were out of line, it didn't hesitate to intervene to re-establish the discipline that it required. For example, in a letter to the [dealer] dated 16 July 1997, Automobiles Peugeot SA explained unambiguously that certain Peugeot models were supplied only if the order was accompanied by a registration application¹⁹⁷. Despite suspicion harboured by Automobiles Peugeot SA that such measures might be illegal (see paragraph 80), they were repeated, prompting consumers to cancel orders (see paragraph 84) and some of them to file a complaint with the Commission (see also paragraph 82). In 2001, following very long delivery times on the Dutch market which particularly affected sales to final consumers residing abroad and their intermediaries, the dealer [●] mentioned that he should rather have manipulated the system (and used alternatively one of the codes 1, 2 or 3, for which a Dutch number plate has to be requested when ordering the vehicle) in order to receive the cars sold to export (see paragraph 85).
129. These measures were consequently aimed at restricting parallel trade in new cars and therefore constitute an infringement of Article 81(1)¹⁹⁸. That the measures taken had as their object the restriction of competition within the meaning of Article 81(1) is

¹⁹⁷ Complaint DG COMP/F2/36623, pp. 23853-23857: letter from PSA to the [dealer] dated 16.7.1997.
¹⁹⁸ Commission Decision 98/273/EEC of 28.1.1998 in Case IV/35.733 - *VW* (OJ L 124, 25.4.1998, p. 60), paragraph 142.

apparent both from the combination of the different measures in question and from each measure taken separately¹⁹⁹.

2.1.3.2. Restriction of competition: effect of the measures

(a) Dealer remuneration

130. Firstly, according to established case law, for the purpose of the application of Article 81(1) there is no need to take account of the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved²⁰⁰.
131. Secondly, in the case in point, however, it is possible to observe a decline in exports after 1997, followed by a fall of around 50% after 1999 (see Annex 3). In its reply to the statement of objections, Automobiles Peugeot SA attributes this fall to factors other than the disputed system of remuneration, namely the “essential role” played by diminishing price differentials²⁰¹. According to Automobiles Peugeot SA, taking the example of the 306, the sharp decline in exports between 1998 and 1999 was contemporaneous with a sudden fall in the list price differential between the Netherlands and France, which fell by more than half, from over 20% to roughly 10%, in two years²⁰². According to Automobiles Peugeot SA, the change observed in the trend of exports from the Netherlands in 1999 can largely be explained simply by the changes in the price differentials between the Netherlands and other European countries²⁰³.
132. However, and contrary to the declarations of Automobiles Peugeot SA in its reply to the statement of objections, the price differentials between the Netherlands and other countries remained significant after 1999, even staying above 12% in the case of some models, for example vis-à-vis Germany, Austria and Italy. Moreover, in a study drawn up by the Business Results Committee of Automobiles Peugeot SA (*Convergence des prix en Europe en 2002*), the maximum price differences desired by Automobiles Peugeot SA in the European Union were EUR 1 000 compared with the price net of tax in France²⁰⁴. This maximum discrepancy of €1000 net of tax with

¹⁹⁹ Joined Cases 25 and 26/84 *Ford v Commission* [1985] ECR 2725, paragraph 21; Case C-70/93 *Bayerische Motorenwerke* [1995] I-3439, paragraph 16; Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 236; Case C-338/00 P *Volkswagen v Commission* [2003] ECR I-9189, paragraph 60; Commission Decision 98/273/EEC of 28.1.1998 in Case IV/35.733 - *VW* (OJ L 124, 25.4.1998, p. 60), paragraph 128; Commission Decision 2001/146/EC of 20.9.2000 in Case COMP/36.653 - *Opel* (OJ L 59, 28.2.2001, p. 1), paragraph 111.

²⁰⁰ Joined Cases 56/64 and 58/64 *Consten and Grundig v Commission* [1966] ECR 429, 496, and Case C-219/95 P *Ferriere Nord v Commission* [1997] ECR I-4411, paragraph 31; Case T-62/98 *Volkswagen AG v Commission of the European Communities* [2000] ECR II-02707, paragraph 178.

²⁰¹ Annex A to Automobiles Peugeot SA's reply of 30.7.2004: “Preliminary analysis of the dynamics of exports in the Netherlands”. Automobiles Peugeot SA also considers, more briefly, that the global dynamics of a model's sales help explain the dynamics of its exports.

²⁰² See paragraph 483 of Automobiles Peugeot SA's reply to the statement of objections.

²⁰³ See paragraph 485 of Automobiles Peugeot SA's reply to the statement of objections.

²⁰⁴ See pp. 11947 - 11978 (VGK 14), in particular p. 11948: the table on the harmonisation of prices in Europe, dated 22.10.2002: “*Les écarts maximums autorisés /France sont de [●]€ en HT et [●]% en écart PVR. Le délai retenu est de [●] ans maximum ([●])*”.

France, during 2002, never represented more than 10-11% of the price net of tax of a vehicle from the range, except for the 106. And, for top of the range Peugeot, this ceiling represented less than 4% of the price (net of tax) of a vehicle. From this, it can be concluded that Automobiles Peugeot SA considered that the price differential should have been at a level which would give no incitation to consumers from purchasing in a different Member State. The price differentials with the Netherlands remained significant throughout the period in question, compared with the most expensive markets. It is therefore difficult to attribute the decline in exports from 1997 to a simple fall in price differentials.

133. Thirdly, it is appropriate to recall that the price differentials in question in paragraph 132 are calculated in relation to recommended retail prices in the mentioned countries. Dealers normally give to potential purchasers rebates which are calculated in relation to the recommended retail price. In this respect, bonuses are supposed to give more flexibility to dealers in order to allow more sales. But the restriction on the right to the bonus with regard to export sales, removed from Dutch dealers a part of their flexibility, independently of possible variations of these price differentials.
134. Fourthly, it is appropriate to recall that, in general, it is difficult to quantify precisely the effect of such measures, and nigh impossible to determine the number of exports which were effectively impeded. However, in the case in question, the elements of fact gathered in the course of the investigation, of which some are already mentioned above in paragraphs 106 to 123, prove the existence of a significant effect of the remuneration system in question on the evolution of flows of parallel exports coming from the Netherlands:
- Contrary to what Automobiles Peugeot SA maintains in its reply to the statement of objections, the measures concerned by this Decision definitely had a significant impact on the trend of re-exports from the Netherlands. It is possible to quantify the impact of the restrictive arrangements introduced by Automobiles Peugeot SA for imports from the Netherlands. An internal memo of Automobiles Peugeot SA from 2002²⁰⁵ stated that, if Automobiles Peugeot SA decided to award a bonus for vehicles registered in other Member States as from 2003 (which, it is assumed, was not the case up to that point), the sales forecasts (PIC 2003²⁰⁶) would show that for that year it would be necessary to pay the bonus for an extra [●] vehicles compared with the existing arrangements. The author of the memo also considered that, if the bonus were paid for exports, the number of extra bonuses which would have to be paid would, in his experience, have been higher than Peugeot's forecasts for 2003, and would in the case in point have been as many as [●] units²⁰⁷, which is a considerable amount²⁰⁸. The payment of the bonus for exports

²⁰⁵ PNE internal memo of 14.10.2002 (pp. 9027 and 9028 of the file). A full translation is given in Annex 13.

²⁰⁶ *Plan Industriel et Commercial*. These are sales, production and stock forecasts (in EUR thousand) per month/year for each attribution in the PIC (See site: www.seriem.com/pro/production1.htm).

²⁰⁷ PNE internal memo of 14.10.2002 (pp. 9027 and 9028 of the file).

²⁰⁸ Equivalent to a 50% "loss of profit" on the amount of intra-Community exports of the make from the Netherlands in 2003. The figure of [●] vehicles represents more or less the sales in volume terms of [●] average Peugeot dealerships in the Netherlands in 2002 (approximately [●] cars), or [●]% of Peugeot's sales in the Netherlands in 2002.

would have resulted therefore in a very significant increase in the volume of exports to other Member States: [●] vehicles a year in the case in point.

- Moreover, Peugeot’s reasoning according to which the amount of the bonus would have been too weak to have had an influence on exports (see paragraph 111), does not take account of the increase in sales foreseeable if the margin for manoeuvre represented by the obtention of the bonus enabled the dealer to lower his prices, while still earning an identical average profit (see paragraph 113). Finally, this reasoning is weakened by the elements of fact gathered during the course of the inquiry, concerning both the global commercial costs of the dealers and the real perception of the importance of the bonus by the dealers (see paragraphs 114 to 116).
- Lastly, the effect of the restrictive competition regime put in place by Peugeot was reinforced by the situation of shortage affecting deliveries of Peugeot vehicles on the Dutch market (see paragraphs 117 to 120). It is in fact normal that a dealer operating in uncertainty as to the foreseeable level of future supplies would only be able to react to the risks of non-delivery by limiting his activity to the domestic market, on which he was sure (contrary to export sales) of recovering a performance bonus on each vehicle sold (see paragraph 120).

(b) Pressure on dealers

135. The effect of these measures, implemented by means of agreements concluded between PNE and the member dealers of the Dutch network, can be gauged by their direct negative consequences for parallel trade and the loss to non-resident consumers. First, at least one dealer refused to accept orders following the threats from Automobiles Peugeot SA (see paragraph 78). In addition, 24 consumers lodged a complaint before the Commission for the damage caused by delivery delays linked to the Peugeot threats against dealers (see paragraph 82). Moreover, in a context where, since 1997, VPDN acceded to the invitation of Automobiles Peugeot SA to encourage dealers to limit exports by stressing that this was in their long-term interest (see paragraph 76), VPDN petitioned its members as regards the adoption of measures to strictly limit supplies of certain models in the national market, as well as the elimination of the product range of the most exported models (see paragraph 79). Furthermore, one of the complainants informed the Commission that 12 orders had been cancelled as a result of similar behaviour obstructing the parallel trade from the Netherlands (see paragraph 84). Thus the measures adopted by Automobiles Peugeot SA and PNE had the effect of restricting the cross-border sale of vehicles. Finally, in the case in question, it is possible to observe a decline in exports after 1997, then a fall after 1999, which can only be attributed to the concurrent price differentials (see recitals 131 and 132).

2.1.3.3. Conclusion

136. Automobiles Peugeot SA and PNE adopted a strategy aimed at limiting export sales from the Netherlands. The strategy, implemented with the agreement of the dealers and in contact with VPDN, and each of its constituent measures, had the object and effect of restricting competition within the meaning of Article 81(1).

2.1.3.4. Appreciable effect on trade between Member States

137. Trade between Member States was affected, since the export ban and/or restriction introduced by Automobiles Peugeot SA, PNE and the VPDN tended to limit cross-border trade. The Dutch market suffered restrictions as a potential source of exports, while the destination markets for these exports, where the price level was generally significantly higher, were protected against those imports. To this it is appropriate to add that the PSA group is a big supplier of new cars in the Community as a whole, with a market share between 12% (in 1995) and 15.3% (in the first six months of 2003) based on new registrations²⁰⁹.
138. According to the Community lawcourts, practices restricting competition and extending over the whole territory of a Member State are by their very nature capable of reinforcing the compartmentalisation of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is intended to bring about²¹⁰.

2.2. Article 81(3)

2.2.1. Block exemption Regulation (EC) No 1475/95

139. Commission Regulation (EC) No 1475/95 of 28 June 1995 was in force until 30 September 2002. It applied until 30 September 2003 in the case of agreements already in force at 30 September 2002.
140. Automobiles Peugeot SA states in its reply that Article 4 (1) (3) of (EC) Regulation 1475/95 provided that “the exemption shall apply notwithstanding any obligation whereby the dealer undertakes to ... endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties, ... account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level”. The (EC) Regulation 1475/95 therefore takes into consideration the interests of the manufacturer by allowing it, as part of a selective distribution system, to encourage dealers which are members of its network to do all they can to develop the territory assigned to them.
141. In its reply to the statement of objections, Automobiles Peugeot SA argued that its network remuneration policy was procompetitive and had the “sole, manifest objective” of motivating dealers by offering them the necessary economic incentives to concentrate their best sales efforts on their own area and thereby enable Automobiles Peugeot SA to increase its market share in the Netherlands. In such a context, Automobiles Peugeot SA claimed, the results achieved by a dealer in his contract territory should be able to serve as a basis for setting the amount of the dealer’s performance related bonuses.

²⁰⁹ See, on this point, the information contained in paragraph 13. The Peugeot brand had a market share of 8.9% in the Community in 2002, while Citroen’s market share was 6.2%.

²¹⁰ Court of Justice: Case 42/84 *Remia and Others v Commission* [1985] ECR. 2545, paragraph 22, and *Bayerische Motorenwerke, loc. cit.*, paragraphs 19 and 20; Court of First Instance: Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 179.

142. In the first place, it is appropriate to recall that the system of acquisition of right to a bonus in itself is not the object of the present decision, in which no conclusion is drawn on the eventual object or restrictive effect which could result from such a system. It is appropriate simply to observe here that in any case the system of acquisition of right to a bonus was not based on sales made within a dealer's territory, but on those within the Member State. It is equally important to note that if the goal of the bonus was to encourage Dutch dealers to make their best efforts to develop sales in the territory allocated to them, this does not explain why the bonus rewarded all sales within the Netherlands, and not only those within the territory of each dealer.
143. Secondly, Regulation (EC) 1475/95 did not exempt agreements limiting, whether directly or indirectly, export sales to final consumers or their appointed intermediaries resident in other Member States. In particular, Article 6(1)(8) states that the exemption does not apply "where the supplier, without any objective reason, grants dealers remunerations calculated on the basis of the place of destination of the motor vehicles resold or the place of residence of the purchaser". The system put in place by Automobiles Peugeot SA, considered under the objective angle of its *modus operandi*, went beyond that which was necessary to encourage Dutch dealers to dedicate their best efforts to sell within their contracted territory and was of such a nature as would infringe one of the black clauses²¹¹ of Regulation 1475/95. In fact, from elements contained in the file it results that sales made to non-resident consumers were, throughout the whole period, not only excluded from the appreciation of the achievement of the sales target which opened up the acquisition of rights to the bonus, but equally excluded from the payment of the global amount of the bonus (see paragraphs 107 and 108).
144. Third, it is appropriate to recall that the proportion of the remuneration linked to the dealer's performance was conceived with progressive rates even after the targets had been fully achieved (see Annexes 7 and 8). It is clear from the information in the file that export sales could not be counted, either as regards verifying that the initial amount of the sale gave entitlement to the bonus or as regards progression from one stage to the next towards achieving the target – and hence to receiving the supplementary bonus per vehicle. Article 6(1)(8) of (EC) Regulation 1475/95 excludes from the benefit of Regulation 1475/95 distribution agreements according to which a dealer who has reached a certain level of sales giving rise to the right to a definite bonus, should not be eligible for the bonus calculated in this way in the event of an export sale (see paragraphs 36 to 38 and 49 to 59). This is why the system, considered from the objective angle of its *modus operandi*, went beyond what was necessary to encourage Dutch dealers to devote their best efforts to selling in their contract territories and infringed Article 6(1)(8).
145. Lastly, if one considers Automobiles Peugeot SA's actions from a subjective angle, a large number of items in the file show that the undertaking had, on several occasions, made plain its intention to restrict parallel trade (see paragraphs 77 to 85).

²¹¹ The word "black clause" designates a provision of the block exemption Regulation whose infringement causes the withdrawal of the benefit of this exemption.

146. The measures restricting export sales taken by PNE with the support of the VPDN in the Netherlands are not exempted by Regulation (EC) No 1475/95. They are aimed at end-users and their authorised intermediaries residing abroad.

2.2.2. *Application of the criteria of Article 81(3) of the treaty*

147. An exemption was neither requested nor granted in the framework of the notification system which existed under the application of Regulation 17/62 until 1 May 2004.

148. In the framework of the current administrative procedure, Automobiles Peugeot SA did not raise any argument suggesting that the conditions of Article 81(3) of the Treaty had been satisfied in the case in point, and the Commission considers that these conditions are not satisfied. According to established case law, Article 85(1) of the Treaty may not be declared inapplicable where the parties to a selective distribution contract conduct themselves in such a way as to restrict parallel imports²¹². According to this case law, to satisfy the tests of Article 81(3), selective distribution agreements must ensure that users will, through the possibility of parallel imports, be allowed a fair share of the benefits resulting from the agreements in question²¹³. Even if it is considered that such a limitation of exports helped to improve the distribution of the products, the final consumer did not share in the resulting benefit. Consumers were prevented from enjoying the benefits of the single market and the differences in the price of motor vehicles between one Member State and another, since their right to buy products of their choice where they wanted, in the territory of the single market, was restricted.

2.3. **Duration of the infringement**

149. As a preliminary point, it must be recalled that the requirement of legal certainty, on which economic operators are entitled to rely, entails that when there is a dispute concerning the existence of an infringement of competition law the Commission should adduce evidence of facts sufficiently close in time for it to be reasonable to accept that infringement continued uninterruptedly between two specific dates²¹⁴.

150. To determine the duration of the infringement of Article 81(1) of the treaty, the Commission used the facts set out in paragraphs 20 to 85 and the documents cited therein.

151. The measures restricting parallel exports started in different years:

- the restrictive policy on dealer remuneration started in 1997, when Automobiles Peugeot SA communicated the new remuneration system to dealers by circular dated 20 January 1997 (see paragraph 37). The VPDN played an active part in designing the two remuneration systems introduced by Automobiles Peugeot SA and clearly shared the importer's position (see

²¹² Case 86/82 *Hasselblad v Commission* [1984] ECR 883, point 35; *Dunlop Slazenger v Commission* cited above, paragraph 88; Case T-49/95 *Van Megen Sports v Commission* [1996] ECR II-1799, paragraph 35; T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 241.

²¹³ Cases T-141/89 *Tréfileurope v Commission* [1995] ECR II-791, paragraph 119 and T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 241.

²¹⁴ Case T-43/92 *Dunlop Slazenger v Commission* [1994] ECR II-441, paragraph 79; T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 188.

paragraphs 30 and 38). The system of remuneration remained in force until October 2003 (see paragraphs 49 to 51);

- the strategy of pressurising dealers was implemented through two types of measure: after a period of general consideration on how to limit exports from the Netherlands, direct pressure in the form of warnings addressed to several dealers and delivery restrictions implementing the export ban started in 1997 (see paragraph 77). Automobiles Peugeot SA pressured the dealers involved in the exports into supplying no more vehicles abroad. The file shows that such pressure was exerted by Automobiles Peugeot SA until 2001 (see paragraphs 77 to 85). The measures concerning restricted supplies to dealers were formally adopted by Automobiles Peugeot SA and the VPDN in 1997 (see paragraph 79). Even if it is supposed that these measures accompanied, and complemented, those which used dealer remuneration to restrict parallel imports, the information collected in the course of the investigation reveals a continuity in the behaviour attributable to Automobiles Peugeot SA with regard to the two measures considered above only up to November 2001.

152. In the framework of the current administrative procedure, the Commission considers, therefore, that Automobiles Peugeot SA and PNE implemented these measures from 1997.

153. There is nothing in the file to indicate that the infringement continued after November 2001, as regards the pressure on dealers, and October 2003, when the system of remuneration which is the subject of this Decision was changed.

2.4. Article 7(1) of Regulation 1/2003

154. Pursuant to Article 7(1) of Regulation (EC) 1/2003, the Commission may, if it has established that an infringement of Article 81 of the treaty had taken place, oblige companies involved to terminate the established infringement. In the present case, while no evidence has been found that the infringement has been pursued after 2003, it is not entirely certain whether, the infringement has not, in fact, been continued. The Commission therefore requests the addressees of this Decision to terminate the established infringement, to the extent that this has not already been done, and to refrain from repeating or continuing the measures in question, and from adopting other measures with the same object or effect.

2.5. Addressees of the Decision

155. PNE committed the infringements established in the current decision. Moreover, the Commission considers that, during the period of the infringement, Automobiles Peugeot SA constituted an economic entity with PNE. This economic entity was responsible for the production and for the sale of cars in the Community, and implemented the infringement, in agreement with its dealers. Within the framework of its car manufacturer activity, Automobiles Peugeot SA was in a position to exert a decisive influence on the commercial policy from PNE, its 100 % subsidiary

company, and one can presume that it actually did so²¹⁵. In fact, the strategy of PNE vis-à-vis the dealers was known to Automobiles Peugeot SA and was approved by it:

- as regards the restrictive policy on dealer remuneration, Automobiles Peugeot SA knew about the remuneration scale for Dutch dealers and checked that it was applied when payments were made (see paragraph 57);
- as regards the the implementation of the pressure put on dealers, Automobiles Peugeot SA supported the initiative of PNE to reduce exports, (see paragraph 75).

156. Consequently, Automobiles Peugeot SA is also responsible for the infringement²¹⁶, and is this Decision is therefore also addressed to it.

2.6. Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) of Regulation No 17)

157. Article 23(2) of Regulation (EC) No 1/2003 states that the Commission may impose fines on undertakings and associations of undertakings where, either *intentionally* or negligently they infringe Article 81 or Article 82 of the Treaty. Article 15(2) of Regulation No 17, which was applicable when the infringement was committed, stated that the fine could not exceed 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement. Article 23(2) of Regulation (EC) No 1/2003 applies the same limitation.

2.6.1. Imposition of a fine

158. The *Commission* has consistently held that barriers to exports infringe the Community competition rules²¹⁷.

159. The Commission considers it necessary in this particular case to impose a fine on Automobiles Peugeot SA and PNE, its wholly-owned subsidiary. It considers that Automobiles Peugeot SA acted intentionally through PNE and was aware that the measures restricted competition. It could not have been unaware that the contested measures had as their object the restriction of competition²¹⁸, since the Commission and the Court of Justice have already ruled on systems of remuneration that discriminate according to the vehicle's destination in the car distribution sector²¹⁹.

160. The members of the distribution network (i.e. the Peugeot dealers in the Netherlands), as addressees of the general and individual invitations from Automobiles Peugeot SA through PNE, were certainly also party to the agreements

²¹⁵ Judgment of the Court of First Instance (Third Chamber, extended composition) of 14 May 1998. *Stora Kopparbergs Bergslags AB v Commission of the European Communities*. Case T-354/94. ECR 1998 Page II-02111, paragraph 84.

²¹⁶ C-286/98 *Stora v Commission* [2000] ECR I-9925, paragraph 37; T-305/94 *PVC v Commission* [1999] ECR II-931, paragraph 953.

²¹⁷ See the following decisions: *Hasselblad*, confirmed by the Court of Justice in Case 86/82 *Hasselblad (GB) Ltd v Commission* [1984] ECR 883, paragraph 35; *John Deere*; *Sperry New Holland*; *Volkswagen*; and *Opel*.

²¹⁸ See Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 334.

²¹⁹ Commission Decision of 28.1.1998 in Case IV/35.733 - *Volkswagen* (OJ L 124, 25.4.1998, p. 60), paragraph 129; Commission Decision of 20.9.2000 in Case COMP/36.653 - *Opel* (OJ L 59, 28.2.2001, p. 1), paragraph 117.

infringing the competition rules, but the Commission thinks it is not appropriate to fine these companies as well. The initiative for the infringement lies with Automobiles Peugeot SA, which through PNE also exerted, where necessary, considerable pressure on the dealers. This shows that, without the initiative of Automobiles Peugeot SA, acting through PNE, and in certain cases the pressure it exerted on dealers, who were economically weaker than it, the infringement in question would not have taken place. This conclusion is not affected by the fact that the representatives of the dealers' interests (the VPDN) generally welcomed the initiatives taken by PNE to tighten discipline on export restrictions.

2.6.2. *Amount of the fine*

161. In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Article 15(2) of Regulation (EC) No 17 and in Article 23(3) of Regulation No 1/2003. This basic amount will be increased to take account of aggravating circumstances or reduced to take account of mitigating circumstances.

2.6.2.1. Basic amount of the fine

162. The basic amount is determined according to the gravity and duration of the infringement.

(a) *Gravity*

163. To assess the gravity of the infringement in this case, the Commission has taken account of its nature, its effect on the market where this can be measured and the size of the geographic market in question.

164. The Commission finds that all the measures in question were intended to prevent export sales to final consumers and their appointed representatives through the Peugeot network in the Netherlands.

165. The Commission has shown that the system of remuneration introduced by Automobiles Peugeot SA, through its subsidiary PNE, had the object of reducing trade between Member States whether during the period 1997 to 1999 (see paragraphs 36 to 38) or between 2000 and 2003 (see paragraphs 49 to 51). This analysis was confirmed after Automobiles Peugeot SA's reply to the statement of objections, in particular by supplementary instructions (paragraphs 52 to 59).

166. By acting in this way, the undertaking has obstructed the achievement of the objective of the single market as set by the Treaty, and nature of the infringement should be described as very serious for that reason alone. One of the most important achievements of the European project is the Single Market which entitles consumers to buy a car of the make of their choice in any Member State²²⁰. Through the

²²⁰ See Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 336; see also Commission notice concerning Regulation (EEC) No 123/85 (OJ C 17, 18.1.1985, p.1) and European Commission, Directorate-General for Competition, Explanatory brochure: Distribution of Motor Vehicles (Regulation (EC) No 1475/95), Question 29.

measures it took, Automobiles Peugeot SA actually restricted that freedom, through PNE, to a considerable extent. As the Commission has established, for example in paragraphs 18 and 19, the potential demand for exports was substantial, and Automobiles Peugeot SA itself monitored it comprehensively. The fact that export sales concluded with non-resident customers continued after the introduction of measures does not make the infringement any less serious. Through PNE, Automobiles Peugeot SA made considerable efforts, which, on an objective view, were all capable of seriously restricting exports. This applies to each of the two contested measures.

167. The Peugeot make holds an important position in the relevant markets in the Community. As the Commission has shown in paragraphs 5 and 13, the Peugeot make has large market shares in the Member States, both in the passenger car sector as a whole and in its various segments. From 1999 Peugeot has been the second supplier of passenger cars after the Volkswagen group.
168. The infringement concerned the sale of new motor vehicles by Dutch dealers to non-resident consumers. The effects of the infraction therefore took place on the markets for the sale of new motor vehicles in other Member States, by rendering considerably more difficult the sale of vehicles for export to final consumers from these countries. Dealers in these markets were to be protected against price competition from the Netherlands. Although, in certain documents found, PNE explicitly referred to French customers, all those Member States where the prices, net of tax, of Peugeot cars were substantially higher than in the Netherlands have to be regarded as current or potential sources of export demand. In addition, the Commission underlines that it is the right of consumers to purchase a car wherever they want within the single market, as is explained in paragraph 1.
169. Apart from the exact amount of the bonus in the dealers' remuneration, the information in the file shows that the bonus was important for dealers throughout the period and that its loss in respect of export sales had a very significant effect on dealers' return on sales and their ability to sell for export. (see paragraphs 112-116).
170. In addition, as members of a large industrial group, Automobiles Peugeot SA and its subsidiary, PNE, had legal departments capable of advising them appropriately as to the lawfulness of the actions undertaken. The group's Legal Department was informed, moreover, as is clear from a Legal Department internal memo of 10 July 2002²²¹ describing the situation when the memo was written and confirming that the bonus was paid for vehicles registered in the Netherlands and that this policy had been adopted at the request of Automobiles Peugeot (see paragraph 57). It follows that Automobiles Peugeot SA could not have been ignorant of the anti-competitive nature of the implemented action.

²²¹ See pp. 13481-13482 (NB 2-23), in particular p. 13482: internal memo of 10.7.2002 from [●], Automobiles Peugeot's Legal Department, to [●], Head of Automobiles Peugeot SA's Legal Department: "PNE m'a confirmé qu'à la demande de DEXP ils continuaient à: - ne pas primer les immatriculations hors Pays-Bas (ils oublient de le faire et payent quand un concessionnaire réclame); - calculent les incentives par rapport à la réalisation d'objectifs de vente qui ne comptent que les immatriculations Pays-Bas; - jusqu'à 1997 : les concessionnaires ne faisant pas d'export recevaient des aides de PNE."

171. Lastly, to the extent that a doubt still existed, neither Automobiles Peugeot SA nor its subsidiary PNE contacted the Commission with a view to clarifying the question. Back in 1988 the Commission had explained its view on the policies which consisted in excluding sales of new cars to non-resident final consumers from special promotional offers²²², declaring that export sales must not be treated less favourably than domestic sales. In the present case, the elements in the file are of such a nature as to also prove, Automobiles Peugeot SA's subjective intention to reduce trade between Member States. This intention was notably evidenced by the direct pressure on dealers, which could include punishing them (paragraphs 73 to 85).

172. In conclusion, the Commission considers that, taking into account all these considerations, the infringement committed by Automobiles Peugeot SA and its subsidiary PNE is a very serious infringement of Article 81 of the treaty. This is true both of the bonus policy applied from January 1997 to September 2003 and of the other measures taken during that period in order to further impede or prevent export sales. The evaluation of the seriousness of the infringement in the present case also takes into account the fact that the measure reinforcing the infringement (pressure placed on dealers) was not applied for the whole of the period covered by this present decision. A fine has to be imposed which punishes this very serious violation in an appropriate way and has a sufficient deterrent effect.

173. The Commission considers that, in view of the very serious nature of this infringement, the starting amount of the fine should be fixed at EUR 30 million.

(b) Duration

174. Pursuant to Article 23(3) of Regulation (EC) No 1/2003, another factor determining the amount of the fine is the duration of the infringement.

175. It is clear from section 2.3 above that the infringement committed by Automobiles Peugeot SA and its subsidiary PNE lasted, when all its aspects are considered, from the beginning of January 1997 to the end of September 2003, i.e. six years nine months.

176. In this case, therefore, the company to which the two legal persons who are the subject of this present decision belong committed a long-term infringement, the amount of which may be fixed for each year at 10% of the amount determined for the gravity of the infringement.

177. In weighing the duration for the purposes of the fine, the Commission takes into account that:

- from the beginning of January 1997 to the end of September 2003 (six years and nine months), PNE renewed the discriminatory system of remuneration for exports in its annual circulars;
- during this long period, PNE also supplemented its export restriction strategy with, between January 1997 and November 2001 (four years and eleven

²²² See Commission press release IP/88/778, 6.12.1988.

months), direct warnings and orders to its Dutch network, including restrictions specific to exports vis-à-vis several dealers.

178. The Commission nevertheless considers that this justifies an increase of the amount mentioned in recital 172 by 10% a year of infringement, and 5% per past semester, i.e. in the present case 65% to a basic amount of EUR 49,5 million.

2.6.2.2. Mitigating and aggravating circumstances

179. Any mitigating and aggravating circumstances should be taken into account in determining the fine.

The Commission considers that the various aspects of the duration of the infringement have already been taken into account.

No aggravating circumstances have been taken into account in this Decision.

2.6.2.3. Application of the 10% threshold

180. It goes without saying that the final amount calculated according to the following method, i.e. basic amount increased or reduced on a percentage basis, may not in any case exceed 10% of the worldwide turnover of the undertakings, as laid down by Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17. The accounting year on the basis of which the worldwide turnover is determined must, as far as possible, be the one preceding the year in which the decision is taken or, if figures are not available for that accounting year, the one immediately preceding it.

2.6.2.4. Amount of the fine

181. For these reasons, the amount of the fine to be imposed in respect of the infringement identified in this Decision should be EUR 49,5 million for Automobiles Peugeot SA, which is jointly and severally liable with its subsidiary PNE,

HAS ADOPTED THIS DECISION:

Article 1

Automobiles Peugeot SA and its subsidiary Peugeot Nederland NV have infringed Article 81(1) of the Treaty by concluding agreements with dealers in the Peugeot distribution network in the Netherlands having as object and effect the impediment of sales to final consumers in other Member States, whether in person or represented by intermediaries acting on their behalf. The infringement started in the beginning of January 1997, and lasted until end September 2003.

Article 2

The undertakings mentioned in Article 1 shall henceforth bring to an end the infringement referred to in Article 1, to the extent that they have not already done so. To this end, they shall refrain from repeating or continuing any of the measures constituting this infringement and shall refrain from adopting any measures having equivalent object or effect.

Article 3

For the conduct referred to in Article 1, a fine of EUR ... is hereby imposed on Automobiles Peugeot SA and its subsidiary Peugeot Nederland NV, which are jointly and severally liable.

The fine shall be paid in euros, within three months of the notification of this Decision, into the following bank account:

Account No 001-3953713-69 - European Commission, at FORTIS BANK S.A., Rue Montagne du Parc 3, B-1000 BRUSSELS (IBAN: BE71 0013 9537 1369; SWIFT code: GEBABEBB).

After expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision was adopted, plus 3,5 percentage points.

Article 4

This Decision is addressed to

Automobiles Peugeot SA,
75 avenue de la Grande Armée
F-75016 PARIS

and to

Peugeot Nederland NV,
Uraniumweg 25
NL-3542 AK UTRECHT.

It shall be enforceable pursuant to Article 256 of the Treaty.

Done at Brussels,

For the Commission
Neelie Kroes
Member of the Commission

ANNEX

Annex 1 – List of persons mentioned in the Decision, their positions and the period they occupied them for

The employees of the undertakings mentioned in the documents cited occupied the following positions:

Automobiles Peugeot

<i>Name</i>	<i>Position</i>	<i>Year(s)</i> ²²³
[●]	Manager, Legal Affairs	2001
[●]	PSA/DJUR/JUR/GEN	1999-2000
[●]	Distribution Strategy Manager	2002-2003
[●]	Head of Legal Department	2002-2003
[●]	DEX/DIR	1993-1996
[●]	Marketing Quality Department	2003
[●]	Not specified	2003
[●]	European Subsidiaries' Sales Manager/Manager in the DEXP	1993, 1996-2000, 2002-2003
[●]	Marketing and Quality Manager	1996, 1998
[●]	CEO	1996, 1999, 2001-2002
[●]	Legal Department	2001-2002
[●]	Area Manager, Importers, Europe	1996, 1998-2001, 2003

Peugeot Nederland

<i>Name</i>	<i>Position</i>	<i>Year(s)</i>
[●]	Marketing Manager	1996-1998, 2000

²²³

The years or periods indicated are those in which the person occupied the position according to the documents mentioned in the Decision.

	Sales Manager	2001-2003
[●]	Sales Manager	1996-2000
[●]	Car Sales Manager	2000-2003
[●]	Not specified	1996-1998, 2000, 2002-2003
[●]	Head Domestic Sales	1996-2000
	Dealer Support Manager	2001-2003
[●]	Member of the Sales Committee	2000, 2002-2003
[●]	Marketing Manager	2002-2003
[●]	Used Cars Coordinator/LCV Department	1997
[●]	Account Manager Dealernet (AMD)	2001
[●]	CEO	2002-2003
[●]	CEO (General Manager)	1996-2002
[●]	Sales Manager	1996-1997
[●]	Not specified	1996-1997, 2003
[●]	Product Manager	1999

VPDN:

<i>Name</i>	<i>Position</i>	<i>Year(s)</i>
[●]	Member of the Advisory Committee	1996
	Chairman, West Region (a)	1997-1998 (a)
	Regional Deputy Chairman/ Chairman Sales C'ttee (b)	1999-2003 (b)
[●]	Chairman	1996-2003
	Regional Chairman	1998-2000
	Member of the Sales Committee	2000-2003

[●]	Member of the Sales Committee	1996-2000
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Annex 2 – Market shares of the Peugeot make in the European Union, France and the Netherlands

Figures in percent. The figures for 2003 are provisional.

Country	Segment/model	1995	1996	1997	1998	1999	2000	2001	2002	2003
Community	A - B (106 205 206) C ((306 307 309 Partner) D (405 406) E+F (605 607) G (806 807 Expert Boxer)	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
France	A - B (106 205 206) C ((306 307 309 Partner) D (405 406) E+F (605 607) G (806 807 Expert Boxer)	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
N'lands	A - B (106 205 206) C ((306 307 309 Partner) D (405 406) E+F (605 607) G (806 807 Expert Boxer)	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]

Source: Reply dated 11 July 2003 from Automobiles Peugeot SA to the Commission's request for information dated 11 June 2003.

Annex 3 – Exports from the Netherlands – 1995-first six months of 2003

<i>Year</i>	<i>Cars exported</i>	<i>% of total sales</i>
<i>1995</i>	[●]	[●]
<i>1996</i>	[●]	[●]
<i>1997</i>	[●]	[●]
<i>1998</i>	[●]	[●]
<i>1999</i>	[●]	[●]
<i>2000</i>	[●]	[●]
<i>2001</i>	[●]	[●]
<i>2002</i>	[●]	[●]
<i>June 2003</i>	[●]	[●]

Annex 4 : Dealer remuneration in the Netherlands – fixed margin

Table 4A : 1997-99

Model	1997/1998/1999
106/206	[•]
205	[•]
306	[•]
406	[•]
806	[•]
Partner	[•]
Expert	[•]
Boxer	[•]

Table 4B : 2000-2003

Model	2000	2001	2002	2003
106/206	[•]			
306	[•]			
307	[•]	[•]		
406	[•]			
607	[•]			
806		[•]		[•]
807	[•]		[•]	
Partner	[•]			
Expert	[•]			
Boxer	[•]			

Annex 5 – Financing of the changeover to the bonus system

<i>Model</i>	<i>Margin in %</i>	<i>Revised margin in %</i>	<i>Difference in the margin</i>	<i>Difference in the average margin (NLG)</i>
106	[●]	[●]	[●]	[●]
205	[●]	[●]	[●]	[●]
306	[●]	[●]	[●]	[●]
406	[●]	[●]	[●]	[●]
605	[●]	[●]	[●]	[●]
806	[●]	[●]	[●]	[●]

Annex 6 – Peugeot dealers in the Netherlands who earned the bonus and the superbonus in 1997-99

Passenger cars - bonus

Year	1 st quarter		2 nd quarter		3 rd quarter		4 th quarter	
	yes	no	yes	no	yes	no	yes	no
1997	<input type="checkbox"/>							
1998	<input type="checkbox"/>							
1999	<input type="checkbox"/>							

Passenger cars - superbonus

Year	1 st quarter		2 nd quarter		3 rd quarter		4 th quarter	
	yes	no	yes	no	yes	no	yes	no
1997	<input type="checkbox"/>							
1998	<input type="checkbox"/>							
1999	<input type="checkbox"/>							

Light commercial vehicles - bonus

Year	1 st quarter		2 nd quarter		3 rd quarter		4 th quarter	
	yes	no	yes	no	yes	no	yes	no
1997	<input type="checkbox"/>							
1998	<input type="checkbox"/>							
1999	<input type="checkbox"/>							

Annex 7 – Breakdown of Peugeot dealer by category in the Netherlands in the period 1997-99

1997/1998

		<i>Amount of the bonus and superbonus (in %) achieved compared with the target (private vehicles and utility vehicles)</i>								
		%	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
<i>Group</i>										
[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]	[●]

1999

		<i>Amount of the bonus and superbonus (in %) achieved compared with the target (utility vehicles)</i>						
		%	[●]	[●]	[●]	[●]	[●]	[●]
<i>Group</i>								
[●]		[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]		[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]		[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]		[●]	[●]	[●]	[●]	[●]	[●]	[●]
[●]		[●]	[●]	[●]	[●]	[●]	[●]	[●]

Annex 8 - Breakdown by category of Peugeot dealer in the Netherlands and maximum amount of the bonus in the period 2000 to 2003

2000 (NLG)

<i>Category/target</i>	<i>Peugeot 106/206</i>	<i>Passenger cars</i>	<i>Light commercial vehicles</i>
DEALER [●]	[●]	[●]	[●]
DFEALER [●]	[●]	[●]	[●]
DEALER [●]	[●]	[●]	[●]

2001 (NLG)

<i>Category/target</i>	<i>Peugeot 106/206</i>	<i>Passenger cars</i>	<i>Light commercial vehicles</i>
DEALER [●]	[●]	[●]	[●]
DEALER [●]	[●]	[●]	[●]
DEALER [●]	[●]	[●]	[●]

2002/2003 (EUR)

<i>Category/target</i>	<i>Peugeot 106/206</i>	<i>Passenger cars</i>	<i>Light commercial vehicles</i>
DEALER [●]	[●]	[●]	[●]
DEALER [●]	[●]	[●]	[●]

Annex 9 – Peugeot dealers in the Netherlands who earned the quantity bonus and the quality or organisational bonus in the period 2000-2003

Passenger cars - bonus

Year	1 st quarter		2 nd quarter		3 rd quarter		4 th quarter	
	yes	no	yes	no	yes	no	yes	no
2000	<input type="checkbox"/>							
2001	<input type="checkbox"/>							
2002	<input type="checkbox"/>							
2003	<input type="checkbox"/>							

Light commercial vehicles - bonus

Year	1 st quarter		2 nd quarter		3 rd quarter		4 th quarter	
	yes	no	yes	no	yes	no	yes	no
2000	<input type="checkbox"/>							
2001	<input type="checkbox"/>							
2002	<input type="checkbox"/>							
2003	<input type="checkbox"/>							

Passenger cars and light commercial vehicles – quality or organisational bonus

Year	yes	no
2000	<input type="checkbox"/>	<input type="checkbox"/>
2001	<input type="checkbox"/>	<input type="checkbox"/>
2002	<input type="checkbox"/>	<input type="checkbox"/>
2003	<input type="checkbox"/>	

Annex 10A – Summary of dealer remuneration in 1999

<i>Model</i>	<i>1999</i>	
<i>Targets</i>	<i>No bonus/superbonus</i>	<i>bonus/superbonus</i>
<i>106</i>	[•]	[•]
<i>806</i>	[•]	[•]

Annex 10B – Summary of dealer remuneration in 2000 and 2003

<i>Model</i>	<i>2000</i>			<i>2003</i>		
<i>Targets</i>	[•]	[•]	[•]	[•]	[•]	[•]
<i>106</i>	[•]	[•]	[•]	[•]	[•]	[•]
<i>806</i>	[•]	[•]	[•]	[•]	[•]	[•]
<i>807</i>	[•]	[•]	[•]	[•]	[•]	[•]

Annex 11 – Translation

Memo, 14.10.2002

To: see below

From: [Support dealer Manager]

Subject: Forecast bonus 2003

For: [Marketing Director]

[Sales Director]

Dear Sirs,

The bonus payments for the first half are as follows:

	First quarter	Second quarter	Total
Paid	[●]	[●]	[●]
[●] reserve for quality bonus	[●]	[●]	[●]
Total	[●]	[●]	[●]
PCs and LCVs registered	[●]	[●]	[●]
Paid per car	[●]	[●]	[●]
Budgeted per car for 2002			[●]

The amount paid per car will probably increase slightly in the third quarter.

I therefore propose to increase the amount to be included for 2003 to EUR [●] per car.

On the basis of the data available to me, this would give a total amount for 2003 of [●]

Given that changes are currently being made to the rules, I recommend entering all cars (including registrations which ultimately take place in other [countries of the] EU) for a bonus next year. In that case, either the budget will have to be increased or the amount per car will have to be reduced. Since I understand that the total amount will not be increased, this means a reduction of [●]% per car to [●].

I am assuming [●] extra registrations (PIC 2003: [●] units (sales), which could be too low).

In my view, these will have to be included in the targets.

It is probably necessary, as in 2002, to guarantee a number of dealers a certain bonus. This is not a real guarantee, but a realistic, somewhat ambitious target, which enables the dealers concerned to earn the maximum bonuses. In 2002 we took [●]% of the total amount for this. For the first half, the actual percentage is [●]%. For 2003 I propose to take [●]% of the total amount, because the number of realistic targets for 2003 will (has to) decline.

Breakdown of bonus

Normal budget EUR [●]

Exceptional aid ([●]%) EUR [●]

Total EUR [●]