On 16 July 2003, the Commission adopted a decision finding that Yamaha Corporation Japan, Yamaha Europa GmbH, Yamaha Musica Italia s.p.a., Yamaha Musique France S.A. and Yamaha Scandinavia AB have infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement and imposed a 2.56 million Euro fine on them. Yamaha distributes under a selective distribution system a whole range of traditional as well as electronic musical instruments and electronic equipment to generate, amplify and modify sounds. Yamaha is the market leader in most of the relevant markets for musical instruments in Europe. The Yamaha world-wide sales of musical instruments for the fiscal year 2003 (April 1, 2002 to March 31, 2003) amounted to 2.1 billions Euro.

The case was initiated by the Commission and is based on information gathered via requests for information sent in October 2000 to the European subsidiaries of Yamaha and to several dealers. From the copies of the contracts submitted to the Commission, it became evident that Yamaha, at least since the 1970’s, had been infringing the European competition rules. Following the Commission’s intervention, Yamaha has sent circular letters to the dealers concerned to clarify and/or amend the relevant provisions. Yamaha also notified a new pan-European Agreement in March 2002.

Distinct product markets have been proposed for acoustic pianos, home digital pianos, electronic organs, portable keyboards, high tech electronic musical products, pro audio products, drums, guitars and wind instruments. With regard to the geographic market definition, national markets have been assumed.

Yamaha’s European subsidiaries and their official distributors have implemented various agreements and/or concerted practices which have as their object the restriction of competition in different Member States and EEA contracting parties (Germany, Italy, France, Austria, Belgium, The Netherlands, Denmark and Iceland) within the meaning of Article 81(1) EC and 53(1) EEA. The restrictions, which consisted of market partitioning and resale price maintenance and which were mainly contained in the distribution contracts, are the following: i) obligations on official dealers to sell only to final customers in Germany, Italy and France; ii) obligations on official dealers to purchase exclusively from the Yamaha national subsidiary in France and Italy; iii) obligations on official dealers to supply solely dealers authorised by the national subsidiary of Yamaha in France, Austria, Belgium, and in The Netherlands; iv) restrictions on exports via the internet in Austria, Belgium and Germany; v) territorial protection concerning the manufacturers guarantees in Germany, Belgium and Denmark; vi) direct restrictions of parallel trade in Iceland; vii) resale price maintenance in The Netherlands, Italy and Austria.

Territorial protection shelters distributors from intra-brand competition and deprives consumers of the benefits of an integrated market. It artificially reinforces different price levels between Member States. The agreements and/or concerted practices, by restricting sales outside the territories and limiting the dealer’s ability to determine its resale prices, were complementary and could have had the same object of artificially maintaining different price levels in different countries.

Such agreements 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 intended to bring about. On account of Yamaha’s position in affected markets and by the very nature of the restrictions involving territorial market protection and price restrictions, the potential effects on trade between Member States were appreciable.

The block exemption under Commission Regulation N° 2790/99 did not apply. For several markets, Yamaha’s market share considerably exceeds 30% which, according to Article 3 of that Regulation, rules out the application of the exemption. Even if the relevant market is taken to be those markets for musical instruments in the EEA where Yamaha’s share of total sales is below 30%, Regulation N° 2790/99 would not apply because all the above-mentioned restrictions are consid-
ered as hardcore restrictions, pursuant to Article 4(a), (b) and (d) of that Regulation.

No individual exemption under Article 81(3) was possible as the agreements in question were not notified. Even if such agreements were notified, they could not be exempted individually from the application of Article 81(1) EC Treaty and Article 53(1) EEA Agreement, since the conditions necessary for granting an exemption were not met due to the restrictions of competition identified above.

In fixing the amount of the fine under Article 15(2) of Regulation No 17, the Commission has to take account of all relevant circumstances, and in particular the gravity and the duration of the infringement. In determining the gravity of the infringement, the Commission takes account of the nature of the infringement, its actual effects on the market, in so far these can be measured, and the size of the relevant geographic market. Agreements and/or restrictive practices partitioning the national markets and fixing resale prices are, according to an extensive body of precedent of case law, contrary to the objectives of the Community. The infringement was therefore qualified as serious. However, some elements of the infringement applied to a limited number of dealers or only to some products, were not systematically included in all Yamaha agreements throughout the EEA and have not been simultaneously implemented.

The fact that Yamaha terminated a majority of the restrictions as soon as the Commission intervened was considered as a mitigating circumstance.