The Peugeot decision, adopted by the Commission on 5 October 2005, imposed a fine of 49.4 million euros for breach of Article 81 EC on the motor vehicle manufacturer Automobiles Peugeot SA (‘Peugeot’), and its subsidiary Peugeot Nederland NV, which is tasked with importing vehicles of the Peugeot brand into the Netherlands from other Member States, in particular France.

The decision is directed at an infringement implemented in the context of selective and exclusive distribution agreements regulating the relations between Peugeot and its Dutch dealers. The addressees of the decision have committed one infringement composed of two measures, which had for object and effect to restrict competition. The first measure, applied from 1997 to 2003, consisted in a system of bonuses paid to dealers and discriminating against export sales; this system of bonuses, viewed from the angle of its objective modus operandi, went beyond what was necessary to induce Dutch dealers to devote their best sales efforts to their contract territory. The second measure impugned by the decision, which was applied from 1997 to 2001, consisted in Automobiles Peugeot SA bringing pressure to bear on dealers active in export sales — a direct measure which strengthened the impact of the discriminatory bonus.

In respect to both measures, it has been possible to show the existence of an agreement, of a restriction by object — but also a concrete effect on the market.

The discriminatory bonus

As concerns the first measure, it is worth recalling that in the Netherlands, dealer remuneration was made up of a fixed portion (the margin on invoices (1)) and a portion linked to the dealer’s results (the bonus (2)), which the dealer needed in order to earn a profit from his business. This bonus could be obtained by the Dutch dealer only if the cars sold by him were registered in the Netherlands. The system put in place by Peugeot had two distinct phases regulating the mechanism for granting a bonus: the right to the bonus was established on the basis of a progressive scale of annual sales targets established at the start of the exercise: these targets related to sales to be made in the dealer’s territory. Later, when the volumes corresponding to the sales targets were reached, bonus payments were also calculated on the basis of the number of vehicles sold in the territory. In other words, registration in the Netherlands was required by Peugeot for the purpose of (1) achieving any sales target leading to the acquisition of entitlement to the bonus and the determination of the level of discount per car, and (2) identifying each vehicle sold by Peugeot eligible for such remuneration (the payment of the bonus).

The annual circulars sent to all dealers from 1 January 1997 until 30 September 2003 concerning implementation of the new bonus scheme provided that only private cars registered in the Dutch market would count for the payment of the bonus. In its reply to the statement of objections, Peugeot argued that its network remuneration policy was pro-competitive and had the ‘sole, manifest objective’ of motivating dealers by offering them the necessary economic incentives, in the form of bonuses, to concentrate their best sales efforts on their own area and thereby enable Peugeot to increase its market share in the Netherlands.

In the light of this agreement, the Commission decision does not call into question the possibility for the manufacturer to tailor its commercial policy according to the requirements of different

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(1) The dealer’s margin is the difference between the net recommended list price of a given model 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.

(2) 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 quality and quantity targets.
national markets with a view to achieving better penetration rates in those markets. It does not dispute the manufacturer's freedom to agree with its dealers sales targets set in terms of sales to be achieved in the contract territory or its freedom to adopt appropriate incentivisation schemes, in the form of performance bonuses in particular, in order to urge its dealers to increase their sales volumes in the territory allocated to them. This possibility, which stimulates inter-brand competition was furthermore expressly provided for by exemption Regulation 1475/95 (3).

However, any dealer of the Peugeot Dutch network who had fully achieved his territorial sales targets and had therefore acquired entitlement to the bonus was nevertheless denied the benefit of the bonus thus acquired when it came to payment of that entitlement with respect to cars sold to non-resident consumers. Such a system, viewed from the standpoint of its objective modus operandi, therefore went beyond what was necessary to encourage Dutch dealers to devote their best sales efforts to their contract territory. It was an infringement of one of the black clauses banned by Regulation 1475/95, Article 6(1)(8) of which provides 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'.

In its reply to the statement of objections, Automobiles Peugeot SA also questioned the effectiveness of such a measure, maintaining that the amount of the bonus was too small for its non-payment to act as a disincentive for dealers to export. The evidence held on file bears out the objections about the measures' significant impact by showing that the bonus was important to dealers throughout the period and that its loss on export sales significantly affected dealer interest in selling to non-resident consumers (4).

Pressure put on dealers

It is worth highlighting at this point that the strategy employed by Automobiles Peugeot SA was known to the members of the distribution network, who feared the long-term effects of exports on their profits and who indicated, in the context of certain meetings of their national and regional associations, that they agreed with the measures taken by it. Where exports took place, the importer intervened through direct threats and delivery restrictions with a view to maintaining the discipline thereby established. Notably, from 1997 onwards and until a more recent period in 2001, Peugeot 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 Dealeernet (AMDs), who were employed by its Car Sales Department. In addition, specific versions of certain Peugeot models were ear-marked for the national market, and therefore excluded from exports.

The pressure put on Dutch dealers was intended to hinder cross-border trade in cars between the Netherlands and other Member States with a view to walling off the Dutch market from the other markets in the European Union. Such a strategy strengthened therefore the impact of the discriminatory remuneration system described above.

Measures having a significant and measurable effect

As regards the discriminatory bonus, it is possible in the present case to determine the concrete

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(3) Article 4(1): The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to: ... (3) endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties by common agreement or, in the event of disagreement between the parties as to the minimum number of contractual goods to be sold annually, by an expert third party, account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level.

(4) It should be noted that the defence put forward by Peugeot is somewhat paradoxical. On the one hand, Peugeot argues that the level of the bonus maintained in place between 1997 and 2003 was too low to have had any effect on dealers' behaviour. On the other hand, it stresses that the system at issue, and in particular the level of the discounts granted to dealers who had achieved their sales targets, was essential to providing appropriate financial incentives to ensure that dealers devoted their best sales efforts to their respective contract territories.
impact that the measures in question have actually had on parallel imports. Exports declined after 1997, the year in which the remuneration system was implemented, then fell sharply after 1999. In its reply to the statement of objections, Automobiles Peugeot SA attributes this to factors other than the remuneration system at issue, namely the ‘essential role’ played by diminishing price differentials. However, several factors contradict this analysis. First, there was no significant variation in the price differential at Community level during the period concerned. And second, internal Peugeot documentation quantifies precisely the negative impact of the measure for the non-resident final consumer, stating that, if the bonus was paid in respect of vehicles sold for export, this would have generated additional sales to non-resident final consumers amounting to more than 50% of the current level of exports.

In addition, as regards pressure put on dealers, 24 consumers lodged a complaint before the Commission for the damage caused by delivery delays linked to the Peugeot threats against dealers. One of the complainants informed the Commission that twelve orders had been cancelled as a result of similar behaviour obstructing parallel trade from the Netherlands.

**Fines**

The Commission considered that, taking into account both its gravity and duration, the infringement committed by Automobiles Peugeot SA and its subsidiary Peugeot Nederland NV was a very serious infringement of Article 81. This was true both as regards the bonus policy applied from January 1997 to September 2003 and the other supporting measures taken by Peugeot. The Commission and the Court of Justice have already ruled on remuneration systems that discriminate according to the vehicle’s destination (\(^5\)). The evaluation of the gravity of this infringement in this case was strictly based on the provisions of the Guidelines for calculating fines, confirmed by other previous decisions of the Commission in the motor vehicle sector (Volkswagen I, Opel).

The present case is therefore fully in line with the Commission’s decision-making practice, as confirmed by the Court of Justice, which has as its guiding line the protection of parallel trade of motor vehicles in view of the importance that this trade has taken on over the years for the consumer in a context of price differentials between Member States.