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CASE CARD | 17 May 2022

DaimlerChrysler v. Commission (T-325/01)

Genuine agency

1. CASE SUMMARY

A. Summary of facts

On 10 October 2001, the European Commission ('Commission') imposed a fine of EUR 71.825 million on DaimlerChrysler for infringing Article 101(1) TFEU in the context of the distribution of Mercedes-Benz passenger cars in Belgium, Germany and Spain.

The Commission held that DaimlerChrysler had infringed Article 101(1) TFEU by taking the following measures to restrict parallel trade:

- instructing its German agents to supply new vehicles only to customers in their own contract territory and to avoid internal competition (from 6 February 1996 until 10 June 1999), and requiring customers from other Member States outside the territory to pay a deposit of 15% of the vehicle price for orders for new vehicles (from 12 September 1985 until 10 October 2001) (measure 1);
- restricting the supply of passenger cars to foreign leasing companies where no lessee was specified by its German agents and Spanish dealers (from 1 October 1996 until 10 October 2001) (measure 2); and
- participating in agreements to restrict discounts in Belgium (from 20 April 1995 until 10 June 1999) (measure 3).

DaimlerChrysler introduced an application for annulment of the Commission's decision with the Court of First Instance ('CFI').

B. Legal analysis

First, the CFI assessed whether the agreements concluded between DaimlerChrysler and its German agents with respect to the sale of Mercedes-Benz vehicles were within the scope of application of Article 101(1) TFEU.

The CFI recalled the relevant test: agreements between a principal and its commercial agents fall outside the scope of application of Article 101(1) TFEU if the latter is an auxiliary body forming part of the principal, similar to commercial employees. In such a case, the commercial agent and the principal are part of same economic unit for the sale of the principal's products or services. The condition that had to be met is that the commercial agents did not bear more than insignificant risks when selling the Mercedes-Benz vehicles.

- The CFI found that the German agents did not bear any price risk as they were not required to purchase new vehicles for resale. Instead, they only sold new vehicles to customers on behalf of and for the account of DaimlerChrysler. The finding that the agents could grant discounts to customers by giving up part of their commission to maximize their overall commission by increasing sales, did not amount to the agents bearing a real price risk. Indeed, the agents could just as well decide to forego the sale and not to grant a discount.
- The CFI further considered that the agents enjoyed extremely little commercial freedom and were not able to influence competition on the market. Instead, it was DaimlerChrysler that decided to accept or reject orders and that bore all risks related to the transactions with customers.
- The CFI considered that the Commission overstated the degree of risk related to the transport cost and the cost of demonstration vehicles. As regards the requirement to carry out warranty work, the CFI considered that the Commission failed to prove that this requirement gave rise to material risks for the agents.

Overall, the CFI concluded that the Commission did not show how the various obligations it identified as being imposed on the agents represented meaningful material risks for the agents. It moreover noted that some of these obligations related to activities carried out on markets other than the market at issue in the present case (notably, the market of repair and maintenance and not that of the sale of new vehicles).

The CFI concluded that the German agents did not qualify as undertakings that are separate from DaimlerChrysler when selling Mercedes-Benz vehicles. Therefore, the CFI ruled that DaimlerChrysler did not infringe Article 101(1) TFEU by imposing measures 1 and 2 on its German agents.

Second, the CFI took the view that the restriction to supply passenger cars to foreign leasing companies for stock (i.e., without specification of lessee), which DaimlerChrysler imposed on its Spanish dealers, did not qualify as a restriction of competition under Article 101(1) TFEU, since Spanish law required every leasing company to have identified a lessee at the time when the vehicle was acquired. Hence, the CFI considered that the measure under (ii) was already applicable by virtue of applicable Spanish law.

Third, the CFI ruled that the Belgian subsidiary of DaimlerChrysler did indeed infringe Article 101(1) TFEU by participating in a meeting on 20 April 1995 with the Mercedes-Benz dealers' association where they agreed to restrict the granting of discounts in Belgium and by not distancing itself from this agreement. Hence, the CFI confirmed the decision of the Commission regarding this measure and also the fine as imposed on DaimlerChrysler.

Considering the above, the CFI concluded that DaimlerChrysler only infringed Article 101(1) TFEU by the agreement concluded between the Belgian subsidiary of DaimlerChrysler and its Belgian dealers to restrict the granting of discounts in Belgium. The CFI consequently reduced the fine from EUR 71.825 million to EUR 9.8 million.

2. QUOTES

"In summary, it is clear from the points set out above that, as regards the market in question, it is Mercedes-Benz, and not its German agents, which determines the conditions applying to all car sales, in particular the sale price, and which bears the principal risks associated with that activity, as the German agent is prevented by the terms of the agency agreement from purchasing and holding stocks of vehicles for sale. In those circumstances, it must be held that the relationship between the agents and [Mercedes-Benz] is such that the former sell Mercedes-Benz vehicles in all material respects under the direction of [Mercedes-Benz], with the result that they should be treated in the same way as employees and considered as integrated in that undertaking and thus forming an economic unit with it. It follows that, in carrying on business on the market in question, the German Mercedes-Benz agent does not himself constitute an 'undertaking' for the purposes of Article [101(1) TFEU]." (§102)

"*It follows that the categorisation of the status of the German Mercedes-Benz agent under Article [101(1) TFEU] […] is not undermined by the fact that the German Mercedes-Benz agents are required to undertake certain activities and assume certain financial obligations under the agency agreements. It should also be noted that the activities are carried out on markets other than the market at issue in the present case. Even if it must be recognised that those obligations expose the agent to certain limited risks, they do not of themselves operate to affect the relationship between the application and its agents under competition law as regards the market at issue in these proceedings.*" (§113)

"*[…] The market at issue in these proceedings is that of the retail sale of Mercedes-Benz passenger cars. An independent dealer is in a position to determine, or at the very least to influence, the terms on which the sales are made, as he is the seller, who bears the main share of the price risk in the vehicle and who maintains a stock of the vehicles. It is that negotiating margin of the dealer, which comes between the manufacturer and the customer, which exposed the dealer to a risk that Article [101(1) TFEU] may apply to his relationship with the manufacturer. The role and the status of the German Mercedes-Benz agent in the present case are very different*." (§118)

"*It is settled case-law that for there to be an agreement within the meaning of Article [101(1) TFEU] it is sufficient for the undertakings concerned to have expressed their joint intention to behave on the market in a certain way. […]*" (§199)

"*Far from requiring that an actual plan be drawn up, the criteria of coordination and cooperation laid down by case-law must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that every economic operator must determine independently the policy which he intends to adopt in the common market. Although it is true that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently tot eh existing and anticipated conduct of their competitors,*

it does however strictly preclude any direct or indirect contact between such operators, the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market […]." (§200)

"*[…] where it has been established that an undertaking has participated in meetings between undertakings of a manifestly anti-competitive nature, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention, by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs […]. In the absence of evidence of that distancing, the fact that an undertaking does not abide by the outcome of those meetings is not such as to relieve it of full responsibility for the fact that it participated in the concerted practice […].*" (§202)

3. RELEVANT LEGISLATION

- Article 101(1) TFEU

4. RELEVANT LITERATURE

On the applicability of Article 101 TFEU on agency agreements, see F. WIJCKMANS and F. TUYTSCHAEVER, *Vertical Agreements in EU Competition Law*, Oxford University Press, 2018, §9.136 – 9.167.

5. PRACTICAL SIGNIFICANCE

Subject to certain criteria being met, the agreement between a principal and its agent with respect to the agent's activities for which it is appointed by the principle fall outside the scope of application of Article 101(1) TFEU.

Since its *Pittsburgh Corning* decision in 1972, the Commission advanced two separate criteria: the agent should not bear more than insignificant financial and commercial risks when carrying out these activities, and the agent had to be integrated to a certain extent in the principal's organization.

In the *DaimlerChrysler* case, the CFI weighed the two opposing views on the integration criterion – i.e., whether or not it had to be seen as a separate and independent criterion on top of the risk criterion. The judgment places clear emphasis on the risk criterion, rather than the integration criterion. Subsequent case law of the Court (*CEEES* and *CEPSA*) confirmed this view.