II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 September 1986
relating to a proceeding under Article 85 of the EEC Treaty and Article 15 of Council Regulation No 17
(IV/31.143 — Peugeot)

(Only the French text is authentic)

(86/506/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Spain and Portugal and in particular Articles 4, 5, 6 and 15 (1) (b) thereof,

Having regard to the notification on 30 January 1963 pursuant to Article 5 of Regulation No 17 by Automobiles Peugeot SA of the standard form distribution agreement for vehicles of the Peugeot and Talbot makes,

Having regard to the Commission Decision of 1 October 1984 to initiate proceedings in this case,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission, pursuant to Article 19 (1) and (2) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 (2),

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

Whereas :

I. THE FACTS

(1) This Decision concerns the obstacles which were placed in the way of the purchase of new right-hand-drive (RHD) cars under the Peugeot group's distribution system from 1 May 1982 to 30 June 1985, and the incorrect replies given by Peugeot in response to two requests for information made by the Commission pursuant to Article 11 of Regulation No 17.

A. The firms

(2) Automobiles Peugeot SA, hereinafter referred to as 'Peugeot' — a subsidiary of Peugeot SA, Paris — produces motor vehicles and sells them under the Peugeot and Talbot marques. The group achieved a turnover of FF 75 300 million in 1982, FF 85 200 million in 1983 and FF 91 100 million in 1984.

The Companies Talbot Motor Company Limited, Coventry, (Talbot Motor), Peugeot Talbot Belgique SA, Nivelles, Peugeot Talbot Nederland NV, Utrecht, and Peugeot Automobile Deutschland GmbH, Saarbrücken, form part of the Peugeot group and import and distribute vehicles of the Peugeot and Talbot makes in their respective countries. Peugeot Talbot Belgique also ensures the distribution of such vehicles in the Grand Duchy of Luxembourg.

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 127, 20. 8. 1963, p. 2268/63.

(3) Société de Distribution et d'Exportation Automobile, Paris, (SODEXA) also belongs to the Peugeot group and is responsible for the sale of Peugeot and Talbot vehicles to purchasers temporarily resident in France who can buy cars there tax free (sales under transit agreements). To that end, Sodexa has always had access to supplies of all models meeting the specifications of the different countries of final registration (countries of destination), which are at all events already included in Peugeot's production programme. Sodexa met increasingly with demands in respect of sales outside France where the purchasers wanted a different specification from that normally offered in the country in which the order was placed. The execution of orders for RHD vehicles on the continent was also entrusted to Sodexa as part of this activity.

B. The product

(4) The products involved are new series-production cars of the Peugeot make (104, 205, 305, 504, 604) and Talbot make (Samba, Horizon, Solara, Tagora, Rancho and Murena).

Each range comprises several basic versions (models). Vehicles also have different specifications. In this respect, a distinction can be drawn between specifications which are compulsory according to the laws of the various States and those which satisfy the consumer's requirements or which the manufacturer thinks appropriate for one selling area. No Member State prescribes by law left-hand-drive (LHD) or right-hand-drive, but producing both types is economically indispensable as a manufacturer must take into account the wishes and habits of users in the country of destination.

(5) The RHD cars that are made available to British military personnel stationed temporarily on the Continent have a slightly different specification from that of vehicles intended for delivery in the United Kingdom and Ireland. They have a speedometer calibrated in kilometres per hour and exterior rear-view mirrors and headlamps designed for driving on the right. Subsequently adapting the vehicles to driving conditions in the country of destination poses no difficulties and involves little expense.

(6) The plans of the Peugeot group produce mainly LHD vehicles. In 1982, RHD vehicles accounted for 6,1 % of Peugeot production and 25 % of Talbot production. Vehicles of the latter marque are manufactured by Talbot Motor itself in the United Kingdom.

C. Distribution

(7) In France, the distribution of vehicles is handled by Peugeot's branches and subsidiaries and by its dealers. In the other Member States, they are distributed either through Peugeot subsidiaries or through independent importers, who in turn have a distribution network. Originally separate, the distribution networks for Peugeot vehicles and Talbot vehicles have gradually been merged since the autumn of 1980.

(8) Peugeot notified the Commission on 30 January 1963 of a standard form agreement for the distribution of Peugeot vehicles in France (Case No IV/14.056) and for imports into the other Member States (Case No IV/12.428). By letter dated 7 May 1971, Peugeot forwarded to the Commission the standard form distribution agreements for the Benelux countries, the Federal Republic of Germany and Italy. On 28 February 1972, the Commission sent Peugeot a statement of objections in Cases No IV/14.056 and No IV/12.428, following which the export prohibitions provided for in the distribution agreements were dropped. Subsequently, at the Commission's request and with a view to ensuring that Peugeot's standard form agreements were brought into line with the principles embodied in Commission Decision 75/73/EEC [1] in the BMW case, further amendments were made to those agreements. The *'Contrat de Concession Peugeot'* (Peugeot distribution agreement) used in France is considered by Peugeot to be the standard agreement for its entire distribution system in the Community.

(9) Peugeot Distribution agreements were specially notified to the Commission in respect of Germany on 10 July 1979 (Case No IV/29.900) and of the United Kingdom on 7 March 1979 (Case No IV/29.819).

(10) By registered letter dated 24 December 1985, Peugeot informed the Commission that it had modified its distribution agreements to bring them into conformity with the provisions of Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements [2].

(11) This decision concerns only the distribution agreement as it was applied by Peugeot in Belgium, the Grand Duchy of Luxembourg and the Netherlands between 1 May 1982 and 30 June 1985.

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[1] OJ No L 29, 3. 2. 1975, p. 1.
[2] OJ No L 15, 18. 1. 1985, p. 16.

(12) The main provisions of this agreement may be summarized as follows. Peugeot confers on the selected dealer the right to sell the products designated in the agreement (contract products), that is to say new vehicles of the Peugeot and/or Talbot makes, as well as spare parts and accessories in a defined territory (the allotted territory). In that territory, Peugeot undertakes to supply for resale the products specified in the agreement to that dealer alone. The dealer may sell new vehicles only to final consumers. He is forbidden to promote sales outside his territory. He may sell new vehicles of other makes only with Peugeot's consent. He is obliged to use only the genuine spare parts made available by Peugeot and, in France, by Peugeot or its suppliers.

(13) In the allotted territory, Peugeot reserves the right to sell direct to certain categories of purchaser, in particular fleet buyers, government departments, staff of the Peugeot group and other special status purchasers.

(14) One of the groups falling within these so-called 'special sales' categories is that of sales to purchasers under transit arrangements. The basic agreement thus stipulates :

> 'The manufacturer reserves the right to sell direct or through any specialized company the products it markets in the following cases :
>
> 1. ...
>
> 2. ...
>
> 3. Sales to persons normally resident outside France who wish the vehicle to be delivered to them in the area of primary responsibility allotted, registered in the TT series ;' (translated from the French).

It was for this purpose that Sodexa was set up (see point 3).

D. Price differences between the Member States

(15) The recommended final selling prices, net of tax, for Peugeot and Talbot vehicles in the Member States have shown wide divergences. In 1982 and 1983 they were lowest in Denmark and highest in the United Kingdom. Between these two extremes lay the price levels in the other countries, in the following (ascending) order : Belgium/Luxembourg, Netherlands, France, Federal Republic of Germany, Italy and Ireland. A comparison, made by Peugeot, of the prices charged for seven popular models in France, Belgium, the Grand Duchy of Luxembourg, the Federal Republic of Germany and the United Kingdom on 1 January 1982 and on 1 January 1983 shows that the level of prices in the United Kingdom was on average 40 % higher than the price level in Belgium and Luxembourg, 23 % higher than that in France and 20 % higher than that in the Federal Republic of Germany.

E. The distribution of RHD vehicles on the Continent

(16) Under the contractual system in force prior to 30 June 1985, Peugeot Talbot dealers on the Continent were unable as a rule to purchase RHD vehicles direct from the manufacturer. An order was required to be sent to Sodexa, which then exercised the direct selling right reserved for Peugeot. The dealer was treated as an agent or representative and received, instead of his usual profit margin, a commission which as a rule, came to about 8 %.

(17) In the German market, where there is a certain local demand for RHD vehicles on the part of British servicemen stationed there (in 1981, Peugeot sold approximately 500 RHD cars in Germany), dealers were, in fact, prevented from selling such vehicles. The German distribution agreement provided that the manufacturer had a direct selling right which, in practice, was exercised by Sodexa along the lines of an exclusive selling right.

For its sales to British servicemen, Sodexa concluded distribution agreements with two commercial companies specializing in sales to that category of purchaser. The two companies were prohibited by contract from selling RHD vehicles to persons other than members of the British armed forces stationed in Germany.

(18) In French franc terms, the prices charged by Sodexa corresponded as a rule to the list prices charged in France for sales to final consumers and did not differ, in the case of cars having the same basic specification, according to whether they were with RHD or LHD. For sales to British servicemen, Sodexa drew up special price lists expressed in pounds sterling and, inasmuch as the sales were to take place in the Federal Republic of Germany, in German marks.

(19) A slightly different situation obtained in Belgium and Luxembourg prior to March 1982. RHD vehicles could be had there direct from the importer, that is to say without the intervention of Sodexa. The prices were equivalent to those of their LHD counterparts plus a surcharge of about Bfr 5 000 to adapt them to UK specification.

(20) Only in Belgium did sales of RHD cars to persons resident in the United Kingdom reach notable proportions (150 in 1983 and 137 in 1982). They reached their highest point in the first quarter of 1982, falling off sharply thereafter. In the other continental markets, the number of sales of RHD cars to United Kingdom nationals remained very small owing to the monitoring by Sodexa and the specific measures taken by Peugeot to bring such sales by its dealers to an end (see paragraphs 22 to 27).

However, during the second half of 1982, Sodexa itself delivered RHD Talbots to the United Kingdom. Some 150 German specification RHD cars were involved, which had originally been intended for British servicemen in Germany but which could not be sold there owing to an unexpected fall in demand. Sodexa first of all offered the vehicles to its sister company Talbot Motor. Talbot Motor showed no interest, so Sodexa finally sold the vehicles to independent distributors, notably Europlan, for resale to private customers in the UK. It is clear from all this that the sole object of the sales was to rid Sodexa of this stock of ageing and otherwise unsaleable vehicles. This move by Sodexa brought forth strong protests from British dealers and from the management of Talbot Motor in the United Kingdom.

F. The dissuasive measures adopted by Peugeot

(21) According to the Commission's findings, Sodexa tried to dissuade potential buyers of RHD vehicles resident in the United Kingdom from ordering such vehicles on the Continent. Purchasers who wrote to Sodexa were systematically referred to the British dealer network.

This uncooperative attitude towards customers resident in the United Kingdom stood in sharp contrast with Sodexa's efforts to sell as many RHD vehicles as possible to other purchasers resident in third countries, on the one hand, and to British servicemen stationed on the Continent, on the other.

(a) *The measures taken on the Belgian and Luxembourg market*

(22) Following a marked increase in the demand for RHD vehicles, chiefly in Belgium, at the beginning of 1982, Peugeot-Talbot Belgique, the Peugeot group subsidiary responsible for distribution in Belgium and the Grand Duchy of Luxembourg, sent a telex to Peugeot on 23 April of that year stating that the measure introducing a six-month delivery period was not dissuasive enough as orders were still being received. Sodexa proposed, in its letter of 30 April 1982, that sales to British customers should be effected at the list prices charged by the importer in the United Kingdom (other exports price list). Nevertheless, it instructed Peugeot-Talbot Belgique to accord special treatment to British servicemen stationed in Belgium who provided proof of their belonging to the armed forces.

(23) As from the second week of May 1982, Peugeot-Talbot Belgique informed dealers that the orders they had placed since the beginning of the year had been cancelled by the manufacturer, that their profit margin had been reduced to 10 % and that a further price increase of at least 10 % was to be expected that month. Dealers were asked to indicate whether they wished to maintain the orders placed in view of the new conditions. If not, their deposits would be returned to them.

(24) The reform, in May 1982, of the system of fixing the prices of British specification RHD vehicles meant price increases of approximately 17 % on average for Peugeot vehicles and approximately 53 % for Talbot vehicles.

At the same time, the price differential in Belgium between LHD and RHD vehicles rose to 31 % on average for Peugeot vehicles and 47 % for Talbot vehicles.

The measures taken by Peugeot led in about 300 cases to the annulment of the contracts of sale concluded by Belgian dealers with British purchasers and subsequently, to the drying-up of orders from British purchasers for RHD vehicles in Belgium.

(b) *The measures taken on the Dutch market*

(25) In March 1982 there was an increased demand for British-specification RHD vehicles in the Netherlands. Orders were at that time refused by Peugeot-Talbot Nederland after consultations with Peugeot. On 13 April 1982, in a circular addressed to all dealers, the Dutch subsidiary announced that it would not accept any orders for British-specification RHD vehicles and that protential purchasers should be referred to the British dealer network.

(c) *The effects of these measures*

(26) The aim of the measures taken by Peugeot was to protect its sales network in the United Kingdom by blocking parallel imports from the Continent. These measures were really effective as is witnessed by two internal Talbot Motor and Peugeot memoranda of October 1982 and January 1983. The first acknowledges that Peugeot's sales department for nothern Europe had effectively prevented dealers from selling RHD cars to United Kingdom purchasers ; the second claims that Peugeot was the car producer which had imported by far the fewest vehicles into Britain.

G. Furnishing of incorrect information by Peugeot

(27) On 9 September 1982, te Commission notified to Peugeot SA a request for information pursuant to Article 11 of Regulation No 17. It asked whether the firms belonging to the Peugeot group carried out orders placed by their authorized retail dealers even where they were for vehicles whose specifications did not correspond to those of the country of sale. It also asked whether any instructions had been issued to the effect that customers resident in the country of the authorized dealer should be treated differently from customers resident in other Member States of the Community.

On 6 October 1982 Peugeot replied that any authorized dealer in the common market could obtain supplies of Peugeot and Talbot vehicles having national specifications other than those of his own market in so far as those vehicles were series produced in the desired version. Peugeot also denied having issued any instructions to the effect that customers should be treated differently according to their country of residence.

(28) Contrary to these assertions, Peugeot-Talbot dealers were not certain of being able to sell such vehicles. It was incorrect to deny the existence of any discriminatory instructions (see paragraphs 23 and 25). Peugeot was aware of the inaccuracy of this information as its management knew how vehicles, the specifications of which did not match those of the country of sale, were sold and what discriminatory treatment was applied to customers resident in the United Kingdom. This is clear in particular from an internal memorandum from the director entrusted with the task of replying to the Commission dated 6 October 1982 in which the existence of such restrictive measures is expressly recognized. The memorandum refers, moreover, to instructions whereby Peugeot-Talbot Nederland prohibited its dealers from selling RHD cars to British purchasers. The existence of such instructions is expressly denied in the information supplied that same day to the Commission.

(29) In a second request for information dated 28 January 1983, also pursuant to Article 11 of Regulation No 17, the Commission enquired about the selling prices charged in France, Belgium, the Federal Republic of Germany and the United Kingdom for RHD cars on 1 January 1982 and 1 January 1983.

In its reply of 17 March 1983 Peugeot stated that, in the continental Member States mentioned, the Sodexa selling prices to final purchasers applied. In this connection Peugeot enclosed a table setting out, for 1982 and 1983, identical price lists for France, Belgium and the Federal Republic.

(30) This reply was incorrect in several respects. Thus, in Belgium, the prices applicable on 1 January 1982 and until March 1982 to RHD vehicles of the Talbot make were not the Sodexa prices but the prices on the normal Belgian price list plus a surcharge of some 5000 Belgian francs to cover the cost of equipment changes. The prices given for Peugeot vehicles in Belgium were also incorrect. Between 1 January 1982 and the May 1982 increase, the prices asked were substantially lower than the Sodexa prices. Moreover, the prices asked as from May 1982 were appreciably higher than the Sodexa prices.

The information furnished on the German market was likewise incorrect. The list prices charged there, expressed in German marks, were based on the Sodexa prices but were in effect lower than the latter because Sodexa granted a discount to all military personnel. In addition, the information furnished on prices was misleading as it gave the impression that RHD cars were freely available in Germany. In reality, such vehicles were supplied only to servicemen who provided adequate proof that they were stationed there.

(31) In its response to the statement of objections, which it largely repeated at the oral hearing on 10 December 1985, Peugeot acknowledges that its answers were incomplete but attributes this to a lack of transparency of information within the group given the size of the firm's network and the internal division of areas of responsibility. As

regards the reply of 6 October 1982, Peugeot acknowledges that it was aware of the facts but, having considered that there was no restriction upon competition, decided nevertheless to send the letter. As regards more especially the reply of 17 March 1983, Peugeot also states that the prices mentioned in the letter are those set by the headquarters department responsible for pricing and that there may have been differences in the dates of their coming into effect owing to the managements of Sodexa and the local subsidiaries enjoying a certain latitude in fixing them in the light of the commercial context peculiar to each market.

II. LEGAL ASSESSMENT

A. Withholding of exemption for Peugeot distribution agreements

(32) The agreements implemented within the framework of the Peugeot distribution system, and deriving from the standard form agreement notified by Peugeot on 30 January 1963, contain a series of restrictive clauses to which the prohibition laid down in Article 85 (1) of the Treaty is applicable and in respect of which the conditions for an exemption under paragraph 3 of that Article were not satisfied during the period from 1 May 1982 to 30 June 1985.

1. *Article 85 (1)*

(33) The Peugeot distribution system is based as a rule on bilateral agreements between Peugeot or its distribution companies, on the one hand, and their authorized dealers on the other. It is a system which covers the whole Community and which is applied according to uniform principles laid down by Peugeot. The standard form agreement, which formed the basis of its distribution system until 30 June 1985, served as a model or set the tone for all Peugeot distribution agreements at all stages of distribution in the common market.

The main provisions of this agreement falling under the prohibition contained in Article 85 (1) are as follows :

(34) Peugeot's basic undertaking not to conclude any distribution and servicing agreements for contract products with other firms operating within the contract territory restricts Peugeot's freedom of action and limits competition.

(35) Since dealers are authorized to sell new vehicles covered by the agreement only to final consumers, independent dealers, including parallel importers, are unable to purchase and resell new Peugeot and Talbot vehicles. This clause even prohibits sales to other authorized dealers in the Peugeot distribution network.

The ban on the marketing by dealers, save with Peugeot's consent, of new vehicles of other makes has the effect of preventing those dealers from being appointed as sales outlets by other car makers. The obligation to use only genuine parts supplied by Peugeot or, in France, by Peugeot and its own suppliers prevents other suppliers of spare parts from selling substitute parts or parts that may be rendered functionally equivalent to Peugeot or its own suppliers' parts.

Preventing dealers actively marketing contract products outside their own contract territory reduces not only the intensity of the intra-brand competition within the Peugeot distribution network but also inter-brand competition in so far as they may deal with the products of other manufacturers.

By the combined effect of such agreements within the Peugeot distribution system, competition within the common market is appreciably impeded. The restrictive effects of Peugeot's agreements within the meaning of Article 85 (1) are magnified by the existence of similar exclusive and selective distribution systems operated by other vehicle manufacturers.

(36) The agreements also have an appreciable effect on trade between Member States. Dealers not admitted to the Peugeot distribution system are prevented from buying Peugeot products or supplying them to customers in other Member States. Authorized dealers are not allowed to promote actively export sales, including exports to other Member States. Intra-Community trade is also affected by the fact that competing products, offered for sale in a given Member State and seeking outlets in another Member State, do not have access to the Peugeot dealer network.

(37) The measures taken by Peugeot (see paragraphs 22 to 26 above), which made it more difficult, and even impossible, for certain categories of consumers to purchase RHD cars on the Continent, considerably magnified the restrictive effects of the contractual provisions examined above and the degree to which trade between Member States was affected (Ground 21 of the judgment of the Court of Justice of the European Communities in Joined Cases 25 and 26/84 *Ford-Werke AG and Ford of Europe Inc. v. Commission of the European Communities* (1).

2. *Article 85 (3)*

(38) Admittedly, a system of agreements containing restrictive conditions such as those included in the Peugeot distribution agreements can, in theory, have beneficial effects, as are essential if the agreements are to qualify for exemption within the meaning of Article 85 (3). This possibility is ruled out, however, where dealers are unable to order new cars of the make in question in order to satisfy demand on the part of customers who are nationals of another Member State (always provided such cars are marketed in that other State).

A vehicle manufacturer who makes use of the differences in the specifications of cars with a view to controlling their outlets, and who limits the availability of RHD vehicles or of LHD vehicles, as the case may be, from his dealers reduces the supply of goods and the opportunities for purchasing them, to the detriment of final consumers. He thereby creates a situation in which the favourable effects which can in theory flow from a selective and exclusive distribution system, such as is habitually employed in the motor industry, are nullified (paragraph 44 of Commission Decision 83/560/EEC in the *Ford* case (2), and Article 5 (1), point 2 (d) and the 16th recital of Regulation (EEC) No 123/85).

(39) Peugeot argues that the agreement it notified should be interpreted as meaning that Peugeot reserves, in the agreement itself, the exclusive right to sell to consumers, resident outside the area of the dealer concerned, cars having specifications other than those stipulated in the dealer's contract: this also means that it was protected from fines in so far as it did not go beyond the limits of the notified agreements. It need not be decided whether the agreement permits dealers to order such cars as, at all events, exemption under Article 85 (3) cannot be granted (paragraphs 40 to 46) and as it is not appropriate in this case to impose fines on account of Peugeot's past behaviour (paragraph 47).

(40) Where a producer reserves to himself the right to sell, in an exclusive manner, models having specifications different from those normally made available in the contract territory to local consumers, competition in its products in trade between the Member States can scarcely take place. Where a producer systematically refuses to sell goods or renders their sale practically impossible, this unilateral conduct has the same effects as a reserved exclusive selling right.

All these measures led to a partitioning of the market.

(41) In the Dutch market, the blocking of deliveries of RHD vehicles to Dutch dealers was absolute (see paragraphs 25 and 26). In Belgium, the supplements demanded had the same effects as a total refusal to supply RHD cars. These supplements were so high and were introduced in such a manner that British consumers lost all interest in buying cars in that country (see paragraphs 22, 23, 24 and 26).

(42) The considerable reduction in supplies in the Peugeot distribution network to purchasers resident in the United Kingdom contrasts with the fact that Peugeot itself by no means brought the distribution of RHD cars on the Continent to an end. RHD cars having the specifications of third countries continued to be made available, and the sale to military personnel of British specifications vehicles even continued to be encouraged by special prices and conditions which remained attractive (see paragraph 20).

(43) During he hearings, Peugeot claimed that Peugeot Talbot dealers faced serious difficulties in the years 1981 to 1983, arising partly from the merging of the Peugeot annd Talbot network (number of sales outlets reduced from 647 to 518), partly from the economic situation (100 car dealers left the market), and finally from the growth of parallel imports into the United Kingdom caused by the differences in the economic policies of the Member States (11 % difference between the price-indexes of the United Kingdom, on the one hand, and Belgium and

(1) Not yet reported in the *Official Journal of the European Communities.*
(2) OJ No L 327, 24. 11. 1983, p. 31.

Luxembourg on the other). It claimed that such a situation, by giving rise to abnormal patterns of trade in a common market, could have caused irreparable damage to its sales network in the United Kingdom. However, it must be stated that such a concern cannot justify a partitioning of the markets such as was brought about by Peugeot. The British dealers' association, when faced with the situation described above, called upon Peugeot to reduce the prices charged in the United Kingdom so as to make them more competitive.

(44) Since, for most consumers, cars are one of the most expensive single items which they buy, and since consumer demand in the United Kingdom is almost exclusively for RHD cars, their interests were very seriously damaged by Peugeot's refusal to supply RHD cars on the Dutch market.

(45) The obstacles placed in the way of the supply of vehicles to purchasers resident in the United Kingdom render the restrictions on competition stemming from the Peugeot distribution system unexemptable under Article 85 (3).

(46) Although Peugeot communicated to the Commission on 24 December 1985 that it had amended the distribution agreements to make them comply with Regulation (EEC) No 123/85, the agreements in question cannot benefit from the block exemption provided for in Article 8 of that Regulation in respect of the period from 1 May 1982 to 30 June 1985. Where the Commission has initiated, before the entry into force of Regulation (EEC) No 123/85, that is to say before 1 July 1985, the procedure laid down in Article 9 of Regulation No 17 in an individual case, as happened in this case, such communication cannot have the retroactive effects provided for in Article 8 of Regulation (EEC) No 123/85.

(47) It is not appropriate to impose a fine pursuant to Article 15 (2) (a) of Regulation No 17 with regard to the measures taken by Peugeot to prevent the sale of RHD vehicles, for two reasons.

If the distribution agreement is to be interpreted as giving Peugeot and Sodexa the exclusive right to sell RHD vehicles (paragraph 39 above), then the notification extends to the refusal to supply, and precludes the imposition of a fine (Article 15 (5) of Regulation No 17).

A fine also cannot be imposed in respect of behaviour prior to 30 June 1985 if the distribution agreement permitted the continental dealers to place orders for RHD cars, because it was not until the Judgment of the Court of Justice of the European Communities of 17 December 1985 in Joined Cases Nos. 25 and 26/84, Ford, that the necessary clarification of this subject was forthcoming. After that date it must be presumed that, if RHD vehicles are not available, exemption pursuant to Article 85 (3) of the Treaty will not be considered (cf. the Judgment under reference, *passim*). Furthermore, since that Judgment, undertakings that take part in a systematic refusal of supplies within a distribution system must reckon with a direct application of Article 85 (1) of the Treaty.

B. Applicability of Article 15 (1) (b) of Regulation No 17

(48) Under Article 15 (1) (b) of Regulation No 17, the Commission may impose on undertakings fines of from 100 to 5 000 units of account where, intentionally or negligently, they furnish incorrect replies in response to a request for information made pursuant to Article 11 (3) or (5) of the said Regulation. As detailed above (paragraphs 27 to 31), Peugeot furnished incorrect replies in response to two requests for information made by the Commission.

(49) Peugeot's statement on 6 October 1982, that any authorized dealer in the common market could obtain supplies of Peugeot and Talbot vehicles having national specifications other than those of his own market and resell them to his customers without discrimination as to their country of residence was objectively incorrect: Peugeot had, in reality, either refused to supply cars or adopted measures having an effect equivalent to a blocking of supplies. Moreover, Peugeot could not deny the existence of any discriminatory instructions, having given its dealers in the Netherlands specific instructions to treat British customers differently.

(50) At the time of its reply, Peugeot was perfectly aware of all the elements of the false statement. It therefore furnished incorrect replies intentionally, as it has acknowledged, while seeking justification in the claim that it did not consider the actions in question to have been caught by Article 85. As a result of the incorrect replies, the Commission resumed its investigations only after fresh complaints were submitted to it.

(51) As regards the reply of 17 March 1983, concerning the retail selling prices of RHD vehicles in Belgium and Germany, the information was also incorrect as Peugeot stated that the Sodexa prices were applicable in 1982. In reality the prices charged in Belgium from 1 January 1982 until March 1982 for cars of that type made by Talbot were the normal Belgian list prices. In that same country, preferential prices were charged for RHD Peugeots until May 1982 : after that date, the prices asked were appreciably higher than the Sodexa prices. In Germany, the Sodexa prices generally did not apply : they were reserved for foreign servicemen who, what is more, were entitled to substantial discounts.

(52) Peugeot pleads that the persons to whom it had entrusted the drafting of the reply were not fully acquainted with the prices charged in Belgium and Germany on the dates in question, and that they did not know that the new prices which had just been adopted by Sodexa were liable, owing to the requirements of the respective markets, not to be applied automatically by domestic dealers. Even if one accepts in Peugeot's favour this line of argument, the company did not exercise sufficient supervision within the group to prevent a false statement from being made. The incorrectness of the information sent is therefore, at the very least, the result of negligence.

(53) The Commission's two letters of 9 September 1982 and 28 January 1983 can be considered, in Peugeot's favour, to constitute only one request for information pursuant to Article 11 of Regulation No 17, because they put a series of questions in a single context and because the second letter made reference to the first. Following those questions, Peugeot furnished incorrect information, partly intentionally (paragraph 50) and partly negligently (paragraph 52). Taking these facts together, it accordingly appears appropriate to impose a fine of 4 000 ECU.

HAS ADOPTED THIS DECISION :

Article 1

The standard form distribution agreement notified by Automobiles Peugeot SA on 30 January 1963, which formed the basis of its system of distribution in the Member States of the European Economic Community until 30 June 1985, restricted competition and affected trade between Member States within the meaning of Article 85 (1). An exemption under Article 85 (3) for that agreement, insofar as it was applied by Peugeot in Belgium, the Netherlands and the Grand Duchy of Luxembourg, is hereby refused in respect of the period from 1 May 1982 to 30 June 1985.

Article 2

A fine of four thousand (4 000) ECU or 27 413 FF is hereby imposed on Automobiles Peugeot SA pursuant to Article 15 (1) (b) of Regulation No 17 in respect of incorrect information furnished deliberately on 6 October 1982 and negligently on 17 March 1983.

This fine shall be paid within three months of the date of notification of this Decision to Automobiles Peugeot SA into an account of the Commission of the European Communities with Société Générale, Agence internationale, Paris, account No 5.770.006.5 for FF, or account No 000-7.729.105.5 for ECU.

Article 3

This Decision is addressed to Automobiles Peugeot SA, 75, avenue de la Grande Armée, 75116 Paris.

This Decision is enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 25 September 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission