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Motor industry

PRICE-FIXING: NEGOTIATION BETTER THAN PROSECUTION

By David Furlonger

Competition commission ready to press charges

The competition commission is finally ready to act against price-fixing in the motor industry - nearly six months after stating that it had uncovered widespread collusion and that it would be ready to deal with transgressors within two weeks.

When then-chairman Menzi Simelane announced in May that a year-long investigation had uncovered widespread pricing abuse, accused vehicle manufacturers and distributors unanimously declared their innocence and intention to fight any charges. Government insiders, however, say a number of groups have since approached the commission to negotiate a settlement rather than try to fight their case publicly before the competition tribunal.

Companies found guilty by the tribunal face a penalty of up to 10% of annual revenue. After a separate investigation last year, market leader Toyota SA preferred to pay a R12m admission-of-guilt fine.

Though the tribunal says no motor industry cases have been referred to it yet, acting competition commissioner Shan Ramburuth says an announcement is due "very soon". Depending on the outcome of final discussions with the accused companies, his staff say, it could be within two weeks.

Simelane suggested in May that the commission had found evidence of three forms of anticompetitive behaviour. He accused five companies - BMW, DaimlerChrysler, General Motors, Nissan and Volkswagen - of maintaining "vertical" marketing relationships. In simple terms, they used one-sided franchise agreements to stop dealers competing fully. Some threatened to terminate franchises if dealers disobeyed.

Seven companies - BMW, Citroën, DaimlerChrysler, GM, Nissan, Subaru and VW - were accused of either imposing minimum retail prices on their dealers, or forcing them to agree. In addition, five national dealer groups - representing BMW, DaimlerChrysler, GM, Subaru and VW - were charged with agreeing with their suppliers to fix prices and trading conditions, allocate customers and divide territories.

Simelane said at the time that the commission would seek to lay more charges under section 50 of the Competition Act, which requires special permission to prosecute if more than 12 months have elapsed since a complaint was made. But Ramburuth says there have been no section 50 applications.

Industry sources say some accused companies still maintain their innocence but are anxious to avoid the costs and publicity of drawn-out tribunal hearings. In its investigations, the commission demanded access to financial and franchise records going back years.

The commission originally tried to prove a fourth allegation: that some leading companies deliberately price their vehicles too high. In admitting failure to uncover evidence, Simelane suggested that the government-designed motor industry development programme (MIDP) was partly to blame for what he considered excessive prices.

That view will have been given added substance by a study, published this month, accusing the MIDP of distorting not just prices, but the SA economy as a whole. Frank Flatters, a semiretired Canadian academic living in Thailand, has published several studies of Southern African economies in recent years. At least three have been highly critical of the MIDP.

In the latest - "The economics of MIDP and the SA motor industry" - he dismisses other experts' views that the MIDP has been a success since it was introduced in 1995 to reintegrate the SA motor industry into the global economy. Previous studies, he says, lacked depth and understanding of the true impact.

In fact, he suggests, the MIDP has been bad for everyone except motor companies. Not only have new-vehicle prices remained high, but the bar on used-car imports has kept South Africans from cheaper alternatives.

"The MIDP works by subsidising production of vehicles and original-equipment components for both the domestic market and for export. The subsidies are paid for by domestic consumers of vehicles in the form of restricted choice and higher prices," the study says. "The system of duty credits on exports means that consumers subsidise not only vehicles produced for the domestic market but also those produced for export."

Though an import-export complementation scheme entitles companies to rebates on import duties, these savings are not passed on to consumers, Flatters says. Between 1996 and 2003, local vehicle manufacturers enjoyed over R55bn in import rebates. "This is roughly equal to SA's total customs revenue collections and is 50% higher than the national government's total annual spending on higher education."

Flatters doubts that SA government officials are able to comprehend the complexities of the MIDP. "The failure of policy makers to appreciate the costs of such an important programme raises serious questions about the government's capacity to design and manage sector-specific policies."

One piece of good news for the motor industry in the past week has been the deal between SA and the European Union to phase out EU import tariffs on SA vehicles and components by 2010. More than half of all SA automotive exports go to EU countries. Under the deal, the current 6,5% import tariff will disappear by 2010. In return, SA will cut levies on cars imported from Europe, from 25% to 18% by 2012.

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