

Paris on April 01, 2021,

Austrian Supreme Court confirms: Peugeot Austria accused of abuse of dominant position for years in relations with its network of independent dealers.

On March 22, 2021, the Austrian Supreme Cartel Court confirmed the earlier decision of the cartel court of May 12, 2020 in a dispute between the Austrian Peugeot dealer Büchl and Peugeot Austria (PSA), according to which the general importer of Peugeot vehicles in Austria abused its market power vis-à-vis the independent car dealer Büchl in violation of Austrian and European competition law. Büchl had gone to the cartel court because, like many other Peugeot dealers in Austria and Europe, it claimed to be suffering from PSA's stifling system of requirements and non-transparent repayment conditions.

The Supreme Court upheld Peugeot's prohibition on linking bonus payments to dealers to customer satisfaction surveys, on reducing dealers' margins if they failed to meet PSA's ambitious and inflated sales targets, and on competing with dealers by subsidizing vehicle prices in the end-customer market at PSA's vertically integrated outlets. These prohibitions also apply to PSA's control system for warranty work, the hourly rates of which do not cover dealers' costs, since these measures make warranty work unprofitable for the dealers. Finally, PSA can no longer pass on to dealers the costs of its mystery shopping and auditing system for the new car and workshop business.

The Supreme Court recognizes that PSA's economic obligation against dealers to participate in promotions also severely restricts the dealers' freedom to set their own prices. While the Court of First Instance in charge of cartels is invited to complete its findings and rule again on this point, all other points are now legally binding and must be implemented by PSA within three months.

The Supreme Court emphasizes that its decision applies to all contractual relationships in which similar economic dependencies exist and expects considerable changes in PSA's compensation system. The Supreme Court also clearly underlines the parallel applicability of European competition law and expands on the finding of a dominant position on the part of the importer as well as on the treatment of unfair terms in contractual relations under Article 102 TFEU.

PSA's remuneration system must be adapted within the time limit set by the Supreme Court. For other brand networks - including those of the new Stellantis group directly affected by the ruling - the judgment can serve as a valuable guide to legal certainty. It will also be necessary to discuss how the many Peugeot dealers subject to the abusive conditions can be reimbursed for the loss of remuneration they have suffered over the years as a result of PSA's violation of the prohibition against abuse of a dominant position.

This decision has been welcomed by many organizations defending the interests and rights of dealers such as CECRA and its Austrian member WKÖ, who state that this Supreme Court decision is a historic breakthrough for the Networks in their more than ten-year struggle for more fairness in the relationship between manufacturers and dealers in the Austrian and European automotive markets.

Sources:

- Peter Thyri of Competition Counseling & Research, who represented the Austrian dealer Büchl in the antitrust court proceedings.
- Klub der Österreichischen Peugeot-Händler / Austrian Peugeot Dealers Club
- CECRA: The voice of European car dealers and repairers