
STATUTORY INSTRUMENTS

2000 No. 2088

COMPETITION

The Supply of New Cars Order 2000

Made - - - - *31st July 2000*

Laid before Parliament *1st August 2000*

Coming into force - - *1st September 2000*

Whereas the Secretary of State, as required by section 91(2) of the Fair Trading Act 1973⁽¹⁾ (the “Act”), published a notice on 15th June 2000 of his intention to make this Order, and invited written representations to be made to him by 14th July 2000 about the provisions proposed to be contained in it;

And whereas the Secretary of State has considered the representations received;

Now, therefore, the Secretary of State, being the appropriate Minister under section 56 of the said Act, in exercise of the powers conferred on him by sections 56(2) and 90(2), (3), (4) and (7) of, and paragraphs 1, 4, 6, 7, 9, 9A and 12A of Schedule 8 to, the said Act, and for the purpose of remedying or preventing the adverse effects specified in the report of the Competition Commission entitled “New Cars: A report on the supply of new motor cars within the UK”⁽²⁾, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Supply of New Cars Order 2000 and shall come into force on 1st September 2000.

(2) In this Order—

“contract hire company” means a person to whom new cars are supplied for hire or lease which are retained in his ownership for a period of at least 6 months;

“dealer” means a person engaged in retailing new cars pursuant to a dealer agreement;

“dealer agreement” means an agreement between a supplier and a dealer governing the terms and conditions of supply of new cars and related matters;

“discount” means (except in article 5):

- (a) the difference between the list price and the price paid by a dealer or fleet customer for the supply of a new car expressed as a percentage of the list price; or
- (b) where a supplier agrees to supply a new car to a fleet customer indirectly through a dealer the sum of—

(1) 1973 c. 41.
(2) Cm 4660.

- (i) the difference between the list price and the price paid by the dealer; and
- (ii) any pecuniary inducement given to the fleet customer by the supplier in respect of the supply of the new car less a reasonable allowance in respect of the dealer's gross margin,

expressed as a percentage of the list price;

“fleet” means 25 or more cars registered as being used by the same person;

“fleet customer” means a person to whom new cars are supplied for a fleet pursuant to a fleet supply agreement but shall not include a dealer or a person carrying on the activities described at paragraphs 14 and 15 of Group 12 of Schedule 8 to the Value Added Tax Act 1994(3);

“fleet supply agreement” means an agreement between a supplier and a fleet customer relating to the supply of new cars to a fleet customer either directly or indirectly and includes an agreement for a pecuniary inducement to be given to the fleet customer in respect of the indirect supply of new cars through a dealer;

“list price” means the price set and quoted by a supplier. The list price may be pre-tax or post-tax and may be the recommended retail price;

“Member State” means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the protocol signed at Brussels on the 17th March 1993;

“new car” means a passenger car intended for use on public roads and having three or more road wheels which has not been registered;

“pre-registered car” means a new car which a supplier or dealer has caused to be registered before the terms and conditions of its supply to an end-user have been agreed, but does not include:

- (a) a car so registered because its certificate of conformity with a vehicle type approved under the EC Vehicle Type Approval Scheme is about to become invalid; and
- (b) a car retained for a period of at least three months; and

“supplier” means a person who manufactures cars for supply within, or imports new cars for supply into, the UK, who had a market share of 1% or more of the total supply of new cars in the UK in the preceding calendar year.

Non-discrimination between fleet customers and dealers

2.—(1) It shall be unlawful for a supplier to discriminate unjustifiably between fleet customers and dealers who purchase new cars outright in respect of discounts given for the supply of the same or similar number of new cars supplied over the same or similar period of time.

(2) In determining whether discrimination is justifiable in any particular case regard shall be had as to whether the value of the terms and conditions agreed with a dealer is broadly similar to the value of fleet supply agreements recently entered into by that supplier, taking into account the nature of the dealer agreement and fleet supply agreements in question and any additional benefits given or agreed which are financed by the supplier.

3. A supplier shall notify his dealers at intervals of not more than 3 months of the terms and conditions, including the discounts available, on which he is prepared to supply a range of volumes of new cars for purchase outright by the dealer.

4. If the Director General of Fair Trading notifies a supplier that he has received a complaint alleging a breach of article 2 or 3, the supplier shall provide him with details of his fleet supply

agreements relevant to the complaint and a written statement of reasons explaining how the terms and conditions notified to dealers were determined.

Prohibition of discrimination in respect of contract hire companies

5.—(1) It shall be unlawful for a supplier to discriminate in respect of the discount given for the supply of a new car to a contract hire company on the basis of whether the contract hire company supplies that new car to a fleet customer or not.

(2) In determining whether there is discrimination contrary to paragraph (1) no account shall be taken of a payment made by the supplier to the contract hire company in respect of the supply of a new car, where such payment is made at the request of a fleet customer as a result of an agreement entered into between the fleet customer and the supplier before the supply of the car to the contract hire company.

(3) For the purpose of paragraph (1) discount means the difference between the price paid by a contract hire company for the supply of a new car and the list price, expressed as a percentage of the list price.

Prohibitions relating to restrictions on advertising

6. It shall be unlawful for a supplier to withhold, or to agree or threaten to withhold, supplies of new cars from any dealer who requests supply on grounds relating to the price at which the dealer has advertised or is likely to advertise he is willing to supply a new car.

7. It shall be unlawful for a supplier to make an agreement or carry out an agreement (whenever made), to the extent that it restricts, directly or indirectly, a dealer's determination of the price at which he advertises he is willing to supply a new car.

8.—(1) It shall be unlawful for a supplier to give any preference to any dealer on grounds relating to the price at which he has advertised or is likely to advertise he is willing to supply a new car.

(2) For the purposes of paragraph (1), a supplier shall be regarded as giving a preference to a dealer where he treats that dealer materially more favourably than he treats another dealer with regard to—

- (a) terms or conditions as to credit, discounts, bonuses or other matters; or
- (b) times or methods of delivery or other matters arising in the execution of the dealer agreement.

Prohibition of agreements concerning pre-registered cars

9. It shall be unlawful for a supplier to make an agreement or carry out an agreement (whenever made), to the extent that it provides for the payment of bonuses or other incentives to, the imposition of conditions on, or the agreement of targets with, a dealer which relate to or include pre-registered cars.

10.—(1) It shall be unlawful for a supplier to give any preference to any dealer on the ground of the number of new cars which are pre-registered by the dealer during a specified period.

(2) For the purposes of paragraph (1), a supplier shall be regarded as giving a preference to a dealer where he treats that dealer materially more favourably than he treats another dealer with regard to—

- (a) terms or conditions as to credit, discounts, bonuses or other matters; or
- (b) times or methods of delivery or other matters arising in the execution of the dealer agreement.

Requirement to publish information about pre-registered cars

11.—(1) A supplier shall publish the following information concerning the cars which he has pre-registered and subsequently supplied, in relation to each model range:

- (a) the number of pre-registered cars supplied; and
- (b) the gross income received by the supplier from the supply of pre-registered cars.

(2) The information referred to in paragraph (1) shall be published at monthly intervals, in respect of the preceding month, in such manner as to be readily ascertainable.

Prohibition of agreements which deter imports

12. It shall be unlawful for a supplier to make an agreement or carry out an agreement (whenever made) to the extent that it provides for the termination of a dealer agreement by reason of his not endeavouring to fulfil a target for the supply of new cars unless the supply of any new cars which he has obtained from a dealer in another Member State may count towards the fulfilment of that target.

13.—(1) It shall be unlawful for a supplier to give any preference to any dealer on the grounds that the dealer does not supply new cars supplied to him by a dealer in another Member State.

(2) For the purposes of paragraph (1), a supplier shall be regarded as giving a preference to a dealer where he treats that dealer materially more favourably than he treats another dealer in respect of new cars supplied direct by the supplier with regard to—

- (a) terms or conditions as to credit, discounts, bonuses or other matters; or
- (b) times or methods of delivery or other matters arising in the execution of the dealer agreement.

Directions by the Secretary of State as to compliance

14.—(1) The Secretary of State may give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association—

- (a) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, this Order; or
- (b) to do or refrain from doing anything so specified or described which he might be required by this Order to do or refrain from doing.

(2) In paragraph (1) above “steps” includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of the supplier carries out or secures compliance with this Order.

(3) The Secretary of State may vary or revoke any directions given.

31st July 2000

Stephen Byers,
Secretary of State for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out remedies to the adverse effects on the public interest specified in the Competition Commission report entitled “New Cars: A report on the supply of new motor cars within the UK” published on 10th April 2000. Copies of the report may be obtained from The Stationery Office (Cm. 4660).

Article 1 defines various terms for the purposes of the Order.

Article 2 makes it unlawful for a supplier of new cars to discriminate unjustifiably between fleet customers and dealers with respect to discounts for the supply of similar volumes of new cars; and article 3 requires a supplier to notify dealers at intervals of discounts and other terms and conditions of supply of a range of volumes of cars. Article 4 requires a supplier to provide the Director General of Fair Trading with information following complaints alleging breach of articles 2 and 3.

Article 5 makes it unlawful for a supplier to discriminate against a contract hire company depending on whether he supplies cars to a fleet customer or not.

Article 6 makes it unlawful for a supplier to withhold the supply of new cars from a dealer because of the price at which he advertises new cars for sale; article 7 makes it unlawful for a supplier to restrict a dealer’s determination of the price at which he advertises new cars; and article 8 makes it unlawful for a supplier to give any preference to a dealer based on the price at which he advertises new cars.

Article 9 makes it unlawful for a supplier to make or carry out an agreement with regard to bonuses or targets that relates to or includes pre-registered cars; article 10 makes it unlawful for a supplier to give preference to a dealer because of the number of cars he has pre-registered in a specific period; and article 11 requires suppliers to publish on a monthly basis the number of, and the gross income received from, the supply of pre-registered cars.

Article 12 makes it unlawful for a supplier to make or carry out agreements relating to targets on which termination of a dealer’s agreement may depend unless those targets may include new cars obtained from another Member State of the European Economic Area; and article 13 makes it unlawful for a supplier to give preference to any dealer because that dealer does not supply new cars obtained from another such Member State.

Article 14 gives the Secretary of State powers to give directions in order to secure compliance with the Order.

A Regulatory Impact Assessment has been drawn up by the Department of Trade and Industry and is available from Competition Policy Directorate, Department of Trade and Industry, Room 617, 1 Victoria Street, London SW1H 0ET, telephone 020 7215 5607. Copies have been placed in the libraries of both Houses of Parliament.