Strategic Delays of Delivery, Market Separation and Demand Discrimination

– Non technical summary –

The European car distribution system has been scrutinized by the European Commission for thirty years. After a first period during which manufacturers and retailers had to submit their contracts to the Commission in order to get an individual exemption from the application of article 81(1) (previously 85(1)) of the Treaty of Rome, the distribution of cars has been covered by a sector-specific block exemption since July 1, 1985. There was a first revision of the block-exemption in 1995 and, in 2002, a second revision that changed quite dramatically the legal framework of car distribution in the EU. In addition to the regulation of distribution agreements, the Commission is publishing since 1993 a report on car prices within the EU every six months. In the Commission's view, the report "has created greater price transparency on recommended retail prices and induced consumers to acquire cars in another Member State where prices are lower" (Commission of the European Communities (2000), *Report on the evaluation of regulation (EC) No 1475/95 on the application of the article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements*.). However consumers willing to take advantage of price differentials within the single market by purchasing their car from foreign dealers often experienced difficulties in doing so. While some dealers declare not to be interested in such sales, those dealers who are willing to sell "quote delivery times which are much longer than their normal delivery times" (see CEC (2000), *op.cit.*). The Commission was informed of many such cases of discrimination against foreign customers as compared with domestic buyers, which is a violation of the Treaty. These complaints from consumers lead the Commission to initiate several investigations between 1995 and 1999 to verify whether measures had been taken by manufacturers vis a vis dealers "with the aim of restricting or preventing sales to customers from other Member States in a way which was contrary to Regulations 123/85 and 1475/95" (CEC (2000)). The 2002 Regulation is clearly influenced by what the Commission discovered during these investigations. It sets a series of rules to prevent discrimination against customers from other parts of the single market in terms of availability, prices and delays. The point is that dealers must be able to supply customers from any part of the single market under the same conditions. Any clause that aims at preventing or discouraging dealers from selling to foreign customers is forbidden. However, the regulation does not oblige manufacturers to serve dealers everywhere within the EU with the same delay. Typically, delivery delays may differ from one country to the other. In this paper, we examine to what extend manufacturers may take advantage of this opportunity to implement a profitable fragmentation of the single market, preventing parallel trade flows from low price countries to high price countries. We show that by delivering the durable good at different dates, the producer succeeds in reducing intra-brand competition between his retailers, leading them to charge a price higher than in the situation where they can ask for an immediate delivery of the good. In that case consumers buy on the market where they are located. Consumers whose willingness to pay is the highest obtain the good as soon as they need it, while on the market where willingness to pay is the lowest consumers have to delay their consumption. The effect on Social Welfare of introducing delays of delivery is ambiguous. However starting from a situation in which it would be profitable for the producer to sell the good to consumers, increasing delays to extract the entire consumer surplus reduces the total welfare.