

China Auto Dealers Association Files Anti-Monopoly Complaint Against Beijing Benz

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The China Automobile Dealers Association recently issued a formal complaint to Mercedes-Benz Beijing regarding its allegedly illegal “double limit” policy for car dealers—minimum prices and restrictions on sales into other dealers’ territories—revealing tension between a widespread industry practice and China’s Anti-Monopoly Law.

The China Automobile Dealers Association (CADA), on behalf of Mercedes-Benz car dealers, recently issued a written notice to Mercedes-Benz Beijing regarding the latter’s allegedly illegal “double limit” policy for car dealers—minimum prices and restrictions on sales into other dealers’ territories. CADA has submitted evidence to the State Administration for Industry and Commerce for thorough investigation.

Automobile manufacturers’ control of both the upstream and downstream markets for their products has been subject to repeated criticism. The complaint concerning Beijing Benz’s Policy shows the tension between a widespread industry practice and China’s Anti-Monopoly Law (AML). The market is eagerly waiting to see how the regulators confront these restrictive policies in the automobile industry.

Setting a Minimum Sale Price

A conflict arose in early March 2011 when Beijing Benz introduced two restrictive policies for the sale of its products. Under the “Beijing Benz Commercial Policy”, Beijing Benz, within its dealership network, strictly enforces price management and prohibits the sale of products across different regions.

According to various news reports, Beijing Benz's policy forces dealers to publish only the Manufacturer Suggested Retail Price (MSRP) and prohibits media advertising of discounts. The policy allegedly also regulates the retail sale price according to the published monthly standard sale price for the Mercedes-Benz C and E class sedans. At the same time, the policy strictly forbids the sale of products outside the dealer's sales region.

Reports suggest that CADA has received complaints from virtually all Beijing Benz dealers after the policy was implemented. Although the policy created a higher margin for dealers, most were concerned that the cars would no longer be marketable under this restrictive pricing regime. CADA believes this policy will not improve Beijing Benz's management of its dealers network but will instead seriously undermine the legitimate rights and interests of consumers and dealers. Although price controls and prohibition of cross-regional sales are quite common, Beijing Benz's policy is not only opposed by many of its dealers, but also is potentially in violation of the AML.

Alleged Violation of the AML

Insiders believe that the introduction of the recent policy was a reflection of Beijing Benz's lack of control over its dealership network. Previously, the dealers were able to heavily discount the sale price in order to improve sales during the financial crisis; this latest policy merely reflects a desire to gradually raise the price back to a level desired by Beijing Benz. It is clear, however, that this approach might violate China's AML, potentially resulting in heavy regulatory fines (up to 10 per cent of annual revenues).

According to AML Article 14, the following agreements are prohibited: fixing the resale price, restricting the minimum resale price and any other monopoly agreement identified by the antimonopoly enforcement authorities. CADA claims the policy has violated AML Article 14 by setting a minimum price through the MSRP for resale to a third party.

In addition, according to AML Article 46, if there exists a monopoly agreement and it is implemented by the undertakings in violation of the AML, the antimonopoly enforcement authorities must order the undertakings to cease such act, the illegal gains are confiscated and a fine between 1 per cent and 10 per cent of the turnover in the preceding year can be imposed. If the monopoly agreement is not implemented, a fine up to 500,000 Yuan can be imposed.

According to CADA's data, in 2010 Beijing Benz sold more than 50,000 vehicles and had more than 16 billion RMB in sales revenue. Based on these industry projections, with a fine of just 1 per cent, if the allegations are proven, Beijing Benz is potentially liable for more than 160 million RMB in fines.

AML in Conflict with Customary Industry Practice and Previous Regulation

Reports indicate that Beijing Benz's policy is not the first time the company has tried to exert greater control over its dealership network, but this time the controls are more stringent. If there is a breach of the policy, the distributor's monthly sales awards (apparently paid as a type of rebate) will be withheld and monthly "penalties" can reach more than 150,000 RMB.

It is noted that policies such as Beijing Benz's are quite prevalent within the automobile industry in China. Many mainstream domestic automobile manufacturers have strictly implemented a prohibition on cross-regional sales of products by their dealerships. Before the implementation of the 2008 AML, car manufacturers frequently set a "minimum price" and "standard" prices for dealers in order to prevent competitive price discounts. In actual practice, it is reported that these restrictive policies largely imposed on dealers within the industry have continued even after the promulgation of the AML in 2008.

Many automobile manufacturers have relied upon the "Administration of Automobile Brand Sales Implementing Procedures promulgated by the Ministry of Commerce, the National Development and Reform Commission and the State Administration for Industry and Commerce in 2005", which allowed car suppliers to announce publicly their authorized list of dealers in order to strengthen the car brand and standardize sales and service. Suppliers could withhold products to unauthorized dealers or dealers that operated below the accepted standards. These standards are often set by the automobile manufacturer, and dealers who do not comply with any changes to the standards can potentially lose their source of cars from the manufacturer.

It is apparent that the 2005 Sales Procedures and customary practices within the automobile industry are in conflict with China's AML if there is no legitimate justification for restricting prices or for restricting the territories into which dealers can sell. Many legal scholars have stated that the AML should have legal precedence over the 2005

Sales Procedures, and should have been revised after the promulgation of the AML. Beijing Benz's potential violation of the AML and the protests by its dealers have brought this legal contradiction to the public's attention. It will be interesting to see how the authorities in Beijing will reconcile the 2008 AML with other (apparently conflicting) government regulations that seek to manage various industries, but which have anti-competitive effects.

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