

COMMISSION

COMMISSION DECISION

of 29 June 2001

relating to a proceeding under Article 81 of the EC Treaty
(Case COMP/F-2/36.693 — Volkswagen)

(notified under document number C(2001) 1698)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/711/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by Council Regulation (EC) No 1216/1999 ⁽²⁾, and in particular Article 15(2) thereof,

Having regard to the Commission decision of 21 June 1999 to initiate proceedings in this case,

Having given the parties concerned the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19(1) of Regulation No 17 and Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty ⁽³⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

1. INTRODUCTION

1.1. Procedure

- (1) A Volkswagen AG circular dated 17 April 1997 was brought to the Commission's attention in the form of an annex to a complaint from a car buyer. In it, Volkswagen's Marketing Director for Germany called on Volkswagen dealers and garages to sell the new VW Passat Variant model, introduced in Germany on 6 June 1997, for not less than the recommended retail price and to observe 'strict price discipline'.
- (2) In its reply to a formal request for information sent by the Commission pursuant to Article 11 of Regulation No 17 ⁽⁴⁾, Volkswagen AG submitted two further circulars concerning the price of the new VW Passat dated 26 September 1996 and 26 June 1997.

⁽¹⁾ OJ L 13, 21.12.1962, p. 204/62.

⁽²⁾ OJ L 148, 15.6.1999, p. 5.

⁽³⁾ OJ L 354, 30.12.1998, p. 18.

⁽⁴⁾ Request for information sent by the Commission to Volkswagen AG on 17 July 1997, and reply sent by Volkswagen AG on 22 August 1997.

- (3) On the basis of this information and of further details provided by Volkswagen AG ⁽⁵⁾, the Commission sent Volkswagen AG a statement of objections on 22 June 1999. In the statement of objections, Volkswagen AG is charged with having infringed Article 81 of the EC Treaty by agreeing, with the German dealers belonging to its distribution network, on strict price discipline in connection with the sale of the VW Passat model.
- (4) Volkswagen AG replied to the statement of objections by letter dated 10 September 1999 and confirmed that the facts set out in the statement of objections of 22 June 1999 were essentially correct ⁽⁶⁾. For the rest, it set out its views on the legal assessment and the Commission's objections in particular. It did not request a hearing.
- (5) This Decision is addressed to Volkswagen AG.

1.2. The undertaking

- (6) Volkswagen AG, with its registered office in Wolfsburg, is the parent company of the Volkswagen group. The group's business includes the manufacture of motor vehicles of the Volkswagen, Audi, Seat and Škoda makes, and the manufacture of components and parts for its worldwide group structure. The group's business also includes industrial motors, spare parts, financial services and insurance operations.
- (7) Volkswagen AG's turnover in the period 1995 to 2000 was as follows:

(in billion DEM)

	1995	1996	1997	1998	1999	2000
Worldwide	44,598	49,891	54,285	74,381	78,417	84,975
Germany	20,672	22,140	23,101	31,340	30,232	28,936

1.3. The position of the new VW Passat on the market

- (8) The new VW Passat B 5 limousine was introduced in Germany on 11 October 1996, and the VW Passat B 5 Variant, which has a different body style based on the limousine, on 6 June 1997.
- (9) New registrations of the new VW Passat in the EU were as follows (in number of cars):

	1996	1997	1998	1999	2000
Passat B 5 limousine	42 592	177 846	n.a.	n.a.	n.a.
Passat Variant B 5	177	95 413	n.a.	n.a.	n.a.
Total	42 769	273 259	349 378	322 588	297 341

⁽⁵⁾ Volkswagen AG's reply of 9 November 1998 to a second request for information sent by the Commission on 8 October 1998.

⁽⁶⁾ Volkswagen AG's reply of 10 September 1999 to the Commission statement of objections, points 1 and 5 (file, pages 139 et seq.).

- (10) Supplies to customers in Germany were as follows (?):

	(number of cars)				
	1996	1997	1998	1999	2000
Passat B 5 limousine	14 314	74 768	53 002	37 742	26 439
Passat Variant B 5	—	62 211	105 593	92 935	70 322
Total	14 314	136 979	158 595	130 677	96 761

- (11) The car industry and the motor vehicle trade ⁽⁸⁾ and market analysts start from the assumption that, from the final consumer's point of view, cars are not freely substitutable for one another. They therefore traditionally categorise cars into 'segments'. This is done on the basis of objective criteria such as car length, purchase price, body type, engine performance and brand image ⁽⁹⁾. A distinction is normally made between the following 'segments': A: very small cars; B: small cars; C: medium cars; D: upper-medium cars; E: executive cars; F: luxury cars; and G: multipurpose vehicles and sports cars. Segment G is occasionally subdivided still further, sometimes into the segments low-priced sports cars, high-priced sports cars, multipurpose vehicles and off-road vehicles ⁽¹⁰⁾, and sometimes into the segments multipurpose vehicles, coupés, cabriolets and off-road vehicles ⁽¹¹⁾.
- (12) The Commission's six-monthly reports on car prices in the European Union (see also recital 17) are also based on this classification and contain price data on car models grouped according to the abovementioned seven segments A to G so as to be able to represent together models which are comparable from the consumer's standpoint.
- (13) Reference may also be made to the 23rd reader survey of the best cars carried out by the German magazine *auto, motor und sport* ⁽¹²⁾. In this survey, 277 car models are divided into 10 categories ⁽¹³⁾. The six categories A: minicars, B: small cars, C: lower-medium cars, D: medium cars, E: upper-medium cars and F: luxury cars correspond in substance, as can be seen from a comparison of the cars in each category or segment, to the first six segments mentioned in recital 11. Coupés, cabriolets, off-road vehicles and vans form separate categories.
- (14) According to Volkswagen, the Passat is to be classified in the segment referred to here as segment D 'upper-medium cars' (car length approximately 4,45 to 4,75 m and a price range of between some DEM 32 000 for the basic model to approximately DEM 60 000 for the top-of-the-range model) ⁽¹⁴⁾. This segment also includes the vehicle models made by other manufacturers named by Volkswagen as being alternatives to the Passat such as the Audi A 4, Opel Vectra, BMW 3-series, Ford Mondeo and Mercedes C-class.
- (15) Other competing models in the upper-medium class are the Alfa Romeo 156, Citroën Xantia, Lancia Dedra, Fiat Marea, Honda Accord, Mazda 626, Mitsubishi Carisma, Nissan Primera, Peugeot 406, Renault Laguna, Rover 400/600, Subaru Legacy, Suzuki Baleno, Toyota Avensis and the Volvo S/V40.

⁽⁷⁾ Volkswagen AG's reply of 21 February 2001 to the Commission's request for information of 7 February 2001.

⁽⁸⁾ See VDIK press release of 13 August 1998 on 'Automobile trends on the German market', in which registration trends are given for the mini, small, lower medium, medium, upper medium, luxury, sport, off-road and MPV market segments.

⁽⁹⁾ See Commission Decision of 24 May 1996 in Case IV/M.741 — Ford/Mazda, (OJ C 179, 22.6.1996, p. 3); Commission Decision of 14 March 1994 in Case IV/M.416 — BMW/Rover, (OJ C 93, 30.4.1994); 'Intra-EC car price differential report', 1992, p. 29.

⁽¹⁰⁾ 'Intra-EC car price differential report', 1992, p. 29.

⁽¹¹⁾ *auto, motor und sport*, Volume 22, 21 October 1998, pp. 126 et seq.

⁽¹²⁾ *auto, motor und sport*, Volume 22, 21 October 1998, pp. 126 et seq.

⁽¹³⁾ Minicars, small cars, lower-medium cars, medium cars, upper-medium cars, luxury cars, sports cars, cabriolets, off-road vehicles and vans.

⁽¹⁴⁾ Information provided by Volkswagen AG in its reply of 9 November 1998 to the Commission's request for information of 8 October 1998, page 3 (file, page 42).

- (16) Share of the VW Passat in the upper-medium segment (segment D) in Germany:

	1996	1997	1998	1999	2000
Total number of vehicles newly registered in segment D in Germany (all manufacturers)	896 422	922 054	1 029 334	979 214	840 274
Number of VW Passats supplied to customers in Germany	104 274 (of which 14 314 new model)	136 979 (only new model)	158 595	130 677	96 761
Share (in %)	11,6	14,9	15,4	13,3	11,5

1.4. Price differentials of the VW Passat between Member States

- (17) Twice a year the Commission publishes a survey of car prices in the European Union ⁽¹⁵⁾. The data are supplied by manufacturers. One of the Commission's aims in publishing these surveys is to increase price transparency. The intention is to enable final consumers to buy cars in those Member States where prices and other conditions are most favourable. The Commission's aim here is not to bring about price uniformity in the European Union, but rather to ensure that, through increased price transparency, price differentials will diminish as a result of the market forces released.
- (18) On the basis of these price surveys, the price differentials between the various Member States in the case of the VW Passat can be exemplified as follows, using the data available for the basic 100 bhp VW Passat saloon:

Basic VW Passat saloon, 100 bhp, 5-speed gearbox, 4 doors (*):

Year	B	D	E	F	IRL	I	L	NL	AU	P	S	UK	DK	FI	GR
1.5.1996 Previous model 90 bhp	111,3	126,9	118,6	110,1	113,1	111,9	107,9	103,2	103,8	100,0	117,0	105,5	86,0	84,1	—
1.11.1996 Previous model 90 bhp	109,2	124,4	114,8	107,9	115,2	111,9	105,6	100,9	—	100,0	117,2	111,8	84,6	152,5	94,6
1.5.1997	108,0	125,3	104,3	108,6	108,3	111,1	109,1	100,0	109,7	107,5	110,4	126,9	85,4	141,6	92,3
1.11.1997	107,6	120,4	102,6	107,4	105,9	109,4	108,6	100,0	108,8	104,5	112,2	133,5	79,3	141,0	90,6
1.5.1998	107,4	116,9	100,7	105,3	105,0	108,6	108,6	100,0	106,0	103,7	113,4	136,4	79,8	79,3	91,7
1.11.1998	105,7	113,8	100,3	103,6	101,3	105,6	105,8	100,0	103,3	102,9	102,9	124,0	80,1	79,4	91,4
1.5.1999	121,6	124,2	109,4	114,4	101,4	117,7	117,7	110,8	115,4	113,9	117,1	139,9	88,8	100,0	103,5
1.11.1999	121,6	124,2	110,0	114,4	101,4	117,7	117,7	110,8	115,4	113,9	120,4	143,4	88,8	100,0	99,6

(*) The pre-tax price in the cheapest country is represented as 100, with only Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and the United Kingdom being taken into account. Car prices in these countries are published in the six-monthly surveys of car prices in the European Union. In the three countries whose names are italicised above (Denmark, Finland and Greece), the price was calculated in relation to the cheapest of the other 12 countries. Following the introduction of the common currency on 1 January 1999, the presentation was changed in that the cheapest country in the euro zone (Finland) is now taken as the reference market.

⁽¹⁵⁾ Car price differentials in the European Union, Commission of the European Communities, Directorate-General IV — Competition, various issues.

2. THE VOLKSWAGEN DISTRIBUTION SYSTEM AND THE RELATIVE POSITION OF VOLKSWAGEN ON THE MARKET FOR NEW VEHICLES

- (19) In Germany, as in the other Member States of the European Union, the cars produced by Volkswagen AG are distributed via an exclusive, selective distribution system through dealers, with whom Volkswagen AG has concluded a dealer agreement. Under section 4(1) of the standard dealer agreement in the September 1995 version, and also under the agreements in force as from 1 January 1998, Volkswagen AG confers on each dealer a contract territory for the range of vehicles and for customer service. The dealer commits himself to intensively promoting sales and customer service in the specific area of the market for which he is responsible and to exploiting the market's potential to the best of his ability⁽¹⁶⁾. Pursuant to section 4(2) of the dealer agreement, the dealer may neither employ agents nor maintain establishments or warehouses outside the specific territory for which he is responsible. He may engage in personalised advertising in that territory only. Pursuant to section 2(6) of the dealer agreement, German Volkswagen dealers may not supply new vehicles to independent resellers.
- (20) To a limited extent, new vehicles are also distributed through Volkswagen garages. These sell the vehicles as commission/sales agents on behalf of a Volkswagen dealer. The Volkswagen dealer is the direct contracting partner of the purchaser of the new vehicle and sets the selling price.
- (21) The interests of the German Volkswagen and Audi dealers vis-à-vis Volkswagen AG are represented by the Volkswagen and Audi dealer association, comprising managing board and management. Regular meetings take place between representatives of the association and Volkswagen AG. At irregular intervals, 'closed meetings' are held by the managing board of the association (see recitals 37 to 40), at which topics are coordinated which are to be discussed with the Volkswagen AG managing board member (Mr Büchelhofer) responsible for the Volkswagen brand. The association also holds committee meetings (for example, the committee 'sales/marketing VW cars'), at which items of common interest are discussed. Volkswagen AG was represented at the committee meetings by the head of the Marketing Germany department, Mr Giffhorn. The staff members of the Marketing Germany department responsible for 'dealer organisation' included Mr Nolte and Mr Peters. The Marketing Germany department is further subdivided into 'regions', each of which is under a regional head⁽¹⁷⁾.
- (22) On the question of discounting by dealers, Volkswagen AG informed the Commission that, on the basis of discussions with dealers in connection with short-term profit and loss accounts, it was known that a discount of up to 10 %, or in some cases even more, on the recommended retail price had in the past been granted by German dealers. Overall, dealer discounts had amounted to 9,1 % in 1994, 9,7 % in 1995, 10,1 % in 1996 and 9,9 % in 1997⁽¹⁸⁾.
- (23) On the basis of registrations of new cars, Volkswagen's share of the EU car market was⁽¹⁹⁾:

	1995	1996	1997	1998	1999	2000
Total market (in millions of cars)	11,685	12,397	13,001	14,397	15,120	15,180
VW cars (millions)	1,241	1,369	1,342	1,579	1,735	1,670
Market share (in %)	10,6	11,0	10,3	11,0	11,5	11,0

⁽¹⁶⁾ The contract territory is the area of the distribution centre. A dealer's specific territory for which he is responsible is part of this contract territory. The dealer's contractual obligations and assessment of his performance relate to his specific territory. The relevant provisions are basically identical in all the dealer agreements. These are differences in the standards imposed for individual types of dealer (service centre, brand-specific dealer, universal dealer and small dealer).

⁽¹⁷⁾ See recitals 44, 46, 48 to 50 and 52 and the documents referred to in the relevant footnotes.

⁽¹⁸⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information of 8 October 1998.

⁽¹⁹⁾ Volkswagen AG's replies of 9 November 1998 and 21 February 2001 to Commission requests for information.

- (24) On the basis of registrations of new cars, Volkswagen's share of the German car market was ⁽²⁰⁾:

	1995	1996	1997	1998	1999	2000
Total market (in millions of cars)	3,314	3,498	3,528	3,736	3,802	3,379
VW cars (millions)	0,644	0,664	0,639	0,708	0,741	0,644
Market share (in %)	19,4	19,0	18,1	19,9	19,5	19,1

- (25) According to information supplied by Volkswagen AG, parallel imports from Belgium, France, the Netherlands, Spain, Italy, Sweden and Denmark (see footnote 25) to Germany with respect to all VW cars amounted to 17 355 in 1998, 25 656 in 1999 and 42 738 in 2000.
- (26) The total number of new VW Passats imported from other Member States and registered in Germany amounted to 8 728 in 1996, 2 066 in 1997, 3 345 in 1998, 6 831 in 1999 and 8 318 in 2000 ⁽²¹⁾.
- (27) The shares of these reimports in the total number of VW Passats sold in Germany (in 1996, mostly the old model) in the period 1996 to 2000 were as follows:

Year	1996	1997	1998	1999	2000
Market share	8,4 %	1,5 %	2,1 %	5,0 %	8,1 %

- (28) Volkswagen AG also states ⁽²²⁾ that in 1997 a total of 100, and in 1998 a total of 696, right-hand-drive Volkswagen vehicles were sold in Germany to customers from countries where the rule of the road is to drive on the left (United Kingdom and Ireland). In the period 1997 to 2000, sales of right-hand-drive versions of the VW Passat were as follows: four in 1997, 149 in 1998, 111 in 1999 and 96 in 2000 ⁽²³⁾.

3. THE MEASURES OBJECTED TO

3.1. First warning to a dealer

- (29) On 5 September 1996, Autohaus Binder, a VW dealer in Hofgeismar (managed by a Mr Glinicke), advertised the bottom-of-the-range 1,6 litre Passat in the *Hessisch-Niedersächsische Allgemeine* newspaper (*Land* edition) at a starting price including delivery and registration of DEM 32 469 ⁽²⁴⁾. A copy of the advertisement was sent on 24 September 1996 to Volkswagen AG by the VW dealer Autohaus Neuenhagen, Niestetal, asking whether something could not be done about it.

⁽²⁰⁾ Volkswagen AG's replies of 9 November 1998 and 21 February 2001 to Commission requests for information.

⁽²¹⁾ Volkswagen AG's reply of 21 February 2001 to the Commission's request for information of 7 February 2001.

⁽²²⁾ Volkswagen AG's letter to the Commission of 16 December 1998.

⁽²³⁾ Volkswagen AG's reply of 21 February 2001 to the Commission's request for information of 7 February 2001.

⁽²⁴⁾ Advertisement of 5 September 1996 (file, page 60).

- (30) That same day, 24 September 1996, Autohaus Binder received a warning from Volkswagen by registered letter and fax ⁽²⁵⁾. The letter was worded as follows:

'Dear Mr Glinicke,

Pursuant to section 2(6) of the abovementioned dealer agreement ⁽²⁶⁾ and section 2(1) of the follow-up agreements applicable from 1 January 1998, you are required to defend and promote in every way the interests of Volkswagen AG, the Volkswagen distribution organisation and the Volkswagen brand.

We would point out that the advertisement you placed in the *Hessisch-Niedersächsische Allgemeine* (Land edition) of 5 September 1996 concerning the new Passat blatantly infringes this contractual obligation. Your action is considered by us to be extremely damaging to the brand.

We therefore feel bound to issue a warning and we would ask you not to place any similar advertisements in future.

If you do it again, we reserve the right to terminate the abovementioned agreements.'

- (31) By letter dated 27 September 1996, the manager of Autohaus Binder replied to Volkswagen AG ⁽²⁷⁾ saying that he did not see how Volkswagen AG could have been harmed or how their existing agreements could have been infringed. As he read the law, the reproaches would not stand up to legal scrutiny. Nor could his employer detect anything in the advertisement placed by management that might damage the brand. Without prejudice to the legal position, he personally was in no way responsible for the newspaper advertisement and he had instructed a staff member in overall charge of sales at Autohaus Binder to refrain from such advertising in future.

3.2. Circulars to German Volkswagen dealers and garages

- (32) At around the same time, Volkswagen AG began systematically urging, by means of circulars, all members of the distribution network to maintain price discipline. The key passages of the relevant three circulars are reproduced below.

- (33) Circular from the Marketing Director for Germany dated 26 September 1996 ⁽²⁸⁾.

(...)

'It is with great regret, however, that I have to report that a small number of network members have already placed newspaper advertisements in which the Passat is offered for sale at well below the RRP ⁽²⁹⁾. I consider this to be extremely damaging to our brand image, as no sooner has the Passat been introduced than its newly established worth is being called into question.

I have already taken, in agreement with the dealer council, appropriate measures in the form of warnings. I appeal to you personally to set yourself the highest standards and bring to my notice any advertisements by VW network members who are not observing price discipline. I have taken steps to publicise this in an appropriate manner. It is, I believe, imperative that we act in this way with a view to your income situation. With the new Passat and the price/performance ratio referred to, we stand a good chance of substantially improving the profitability of your businesses.'

(...).

⁽²⁵⁾ Letter sent by Volkswagen AG (signed by Mr Giffhorn, Marketing Director for Germany, and Mr Nolte, Marketing Germany/Dealer Organisation) to Autohaus Binder on 24 September 1996 (file, page 59) (original in German).

⁽²⁶⁾ Remark by the Commission: the caption reads 'VW and Audi/dealer agreement/VW commercial vehicle agreement and follow-up agreements as from 1 January 1998'.

⁽²⁷⁾ Letter sent by Autohaus Binder to Volkswagen AG on 27 September 1996 (file, page 58).

⁽²⁸⁾ Circular from Volkswagen AG, Marketing Director for Germany, to all Volkswagen dealers and garages, dated 26 September 1996 (file, page 21) (original in German).

⁽²⁹⁾ Remark by the Commission: RRP = recommended retail price.

- (34) Circular from the Marketing Director for Germany dated 17 April 1997 ⁽³⁰⁾:

(...)

'In the case of the Passat, which price-wise is more than a match for the competition, it is beyond my comprehension why dealers should advertise prices that are well below the recommended retail price. This is especially true with a view to improving your income situation. I expect strict price discipline.'

(...).

- (35) Circular from the Marketing Director for Germany dated 26 June 1997 ⁽³¹⁾:

'... but the concern that the call which I addressed in my letter of 17 April to all Volkswagen dealers and workshops may not have been followed without exception. Remember: what is at stake is price discipline in the trade, which is absolutely essential if there is to be a turnaround in the fortunes of your businesses.

It would be fatal if the more-than-competitive prices of our new products, especially those of the Passat saloon and the Variant, were not used to improve results. Please bear in mind that over 80 % of total turnover is now achieved through selling new and used cars. Given this high proportion of turnover, you will succeed in substantially improving the income situation throughout your business only if you improve the quality of your vehicle operations, namely by lastingly reducing the hitherto high level of discounts.

Volkswagen has set the course for your success: with technically and economically superior models and, since 1998, a performance-related margin and bonus system, you have at your disposal a set of sales instruments both attuned to meeting market demands and superior to the competition with which to be able to operate on the market under the best possible conditions.

I am now asking you to enter the market in a state of price awareness. Deep discounting is not warranted either by the product or by the brand. As manufacturer we cannot stand by and let performance of the dealer agreement be jeopardised by beggar-my-neighbour pricing behaviour. Volkswagen AG needs must react energetically to this. There will, of course, continue to be performance-based competition between dealers. This should not, however, be over prices, but should above all take place in the field of customer satisfaction.

This does not hold true only for the Passat Variant. We have accordingly decided to introduce a quota system for all volume models until further notice so as to enable you to plan ahead better.'

3.3. Discussion of price discipline with the Volkswagen managing board and the Audi dealer association

- (36) According to the agendas submitted by Volkswagen AG in response to a second request for information ⁽³²⁾, the subject of price discipline was on several occasions the subject of discussions between Volkswagen AG and the Volkswagen managing board and Audi dealer association.
- (37) On the agenda of the managing board meeting of 25 March 1997 ⁽³³⁾, under point 2(a): 'Behaviour damaging to the product/profitability improvement', item 5 was 'Improvement of "price loyalty"'.
(38) From the agenda of the managing board meeting of 20 May 1997 ⁽³⁴⁾, it can be seen that, under item 2 'Production-damaging price behaviour/profitability improvement', the question 'When will the manufacturers finally put out clear signals to this effect?' was to be discussed.

⁽³⁰⁾ Circular from Volkswagen AG, Marketing Director for Germany, to all Volkswagen dealers and garages, dated 17 April 1997 (file, page 2) (original in German).

⁽³¹⁾ Circular from Volkswagen AG, Marketing Director for Germany, to all Volkswagen dealers and garages, dated 26 June 1997 (file, page 19) (original in German).

⁽³²⁾ Commission request for information sent to Volkswagen AG on 8 October 1998 (file, page 31).

⁽³³⁾ Volkswagen AG's answer of 9 November 1998 to the Commission's request for information of 8 October 1998, Annex 2 (file, page 48) (original in German).

⁽³⁴⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information 8 October 1998, Annex 2 (file, page 49) (original in German).

- (39) An agenda item for the managing board meeting of 26 September 1997⁽³⁵⁾ under the heading 'General distribution/network topics' was: 'Price discipline, discussion of further measures (Mr Giffhorn, Mr Nagel)'.
- (40) Lastly, the Volkswagen and Audi dealer association proposed by fax on 24 October 1997⁽³⁶⁾ to Volkswagen AG, with regard to the forthcoming managing board meeting, that agenda item 2: 'Presentation of the points to be discussed with Dr Büchelhofer on 30 October 1997' should include: 'd) Price discipline, discussion of further measures'.
- (41) Volkswagen AG stated in its reply that the managing board of Volkswagen AG did not deal with the topic 'price discipline'⁽³⁷⁾. However, it is evident from the fax of 24 October 1997 (see recital 40) from the dealer association to Volkswagen AG that the managing board member of Volkswagen AG responsible for marketing was to deal with this topic and with the discussion of further measures in this connection on 30 October 1997. Volkswagen AG stated in this connection, however, that no minutes were kept of these discussions.

3.4. Discussion of price discipline within the Volkswagen dealer council

- (42) In contrast with the meetings of the Volkswagen and Audi dealer association, there are minutes for the meetings of the Volkswagen dealer council. In the minutes of the meeting of the dealer council sales/marketing subgroup of 16 June 1997⁽³⁸⁾, in which, in addition to 10 representatives of the sales/marketing side, seven Volkswagen AG employees, including the Marketing Director for Germany, took part, the following is recorded under 'Top 11 discount dodges':

'All lawful steps will in future be considered by the manufacturer to bring about more price discipline in the trade, especially where damage to the product and brand image are concerned.'

- (43) In the minutes of the meeting held by the dealer council sales/marketing subgroup on 16 October 1997⁽³⁹⁾, in which, in addition to representatives of the sales/marketing side, 10 Volkswagen AG employees, including once again the Marketing Director for Germany, took part, the following is recorded under item '6.4 Discounting' in 'TOP 6 "miscellaneous"':

'Individual dealers have already advertised the Golf mark 4, prior to its launch, with inordinately large discounts. This behaviour, damaging as it is to product and brand image, is expressly disapproved of and condemned both by the dealer association and by the manufacturer.'

3.5. Further measures to enforce price discipline among dealers

- (44) Bernard Rütz, a VW dealer in Konz, placed an advertisement in the weekend edition of the *Trierischer Volksfreund* of 21/22 September 1996, offering the new VW Passat 'at the extra low price of DEM 32 649 including delivery and registration'⁽⁴⁰⁾.

On 2 October 1996, the dealer received a written warning from Volkswagen AG⁽⁴¹⁾. The letter corresponds almost word-for-word to that sent to Binder. Only the last paragraph is worded differently. It runs as follows:

'If you do it again, we shall take legal action.'

⁽³⁵⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information of 8 October 1998, Annex 2 (file, page 51) (original in German).

⁽³⁶⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information of 8 October 1998, Annex 2 (file, page 50) (original in German).

⁽³⁷⁾ Volkswagen AG's reply of 10 September 1999 to the statement of objections, point 6.

⁽³⁸⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information of 8 October 1998, Annex 1 (file, page 46) (original in German).

⁽³⁹⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information of 8 October 1998, Annex 1 (file, page 47) (original in German).

⁽⁴⁰⁾ Fax of 1 October 1996 to Volkswagen AG, Cologne region (file, page 72) (original in German).

⁽⁴¹⁾ Volkswagen AG's letter of 2 October 1996 to Bernhard Rütz GmbH (file, page 71) (original in German).

- (45) Rütz rejected this warning by letter dated 2 October 1996 ⁽⁴²⁾. He stated that he could not see in what way he had breached his dealer agreement.
- (46) Gramling, a dealer in Karlsruhe, advertised the new VW Passat in the weekend edition of the *Badische Neueste Nachrichten* (BNN) of 5 October 1996 at DEM 33 500 ⁽⁴³⁾. A copy of the advertisement was sent to Volkswagen AG firstly on 7 October 1996, with a call for action to be taken along the lines of the first circular of 26 September 1996.
- (47) In a letter dated 7 October 1996 to Volkswagen AG's Marketing Director for Germany, the dealer Morrkopf refers to the advertisement in the BNN. The letter continues ⁽⁴⁴⁾:

'Since you, Mr Giffhorn, have coordinated the position on this brand-damaging behaviour with the dealer council, I cannot understand why Mr Hengehold or the Gramling dealership employs such advertising. To me, it is one more sign that intra-brand competition lives on.

The abovementioned dealership advertised also using customer services "Dumping prices: in the 21 September 1996 edition of the BNN".'

- (48) From a memorandum sent by Volkswagen AG, regional management for the South-West/Franconia, to the Marketing Director for Germany dated 7 October 1996, it appears that Gramling's price corresponded to a discount of 7 % ⁽⁴⁵⁾. The memorandum goes on to say that:

'It is quite incomprehensible that, as a member of the dealer council, Mr Hengehold is one of those who, even before its launch, are advertising the new Passat at a big discount. Since Mr Hengehold will not be back until 14 October 1996, I telephoned the sales manager, Mr Seifried, and demanded that he immediately cease making such image-damaging price offers, announcing at the same time that we at Volkswagen AG reserve the right to take further steps.'

- (49) A letter from Volkswagen AG dated 16 October 1996 ⁽⁴⁶⁾ to Hirschauer, a dealer in Baierbrunn, captioned 'Passat B 5 discounting', states:

'Dear Mr Hirschauer,

By letter dated 26 September 1996 you were urged by our Marketing Director, Mr Peter Giffhorn, to maintain price discipline in respect of the new Passat.

On 10 October 1996 a discount of over 12 % was offered over the telephone by your salesman Mr Aurich. We consider this conduct to be damaging to our brand image as it calls into question the newly established value of the Passat at the time of its launch.

With the new Passat and the related price/performance ratio you have a good chance of improving the profitability of your business.

We are hereby issuing you with a warning and demand that you cease this behaviour forthwith.

...'

⁽⁴²⁾ Bernhard Rütz GmbH's letter of 2 October 1996 to Volkswagen AG, Marketing Germany (file, page 70).

⁽⁴³⁾ Fax sent by Mr Offermann on 7 October 1996 to Volkswagen AG, Stuttgart region (file, page 53); Morrkopf's letter including annexes of 7 October 1996 to Volkswagen AG, Marketing Director for Germany (file, pages 54 to 57).

⁽⁴⁴⁾ Morrkopf's letter of 7 October 1996 to Volkswagen AG, Marketing Director for Germany (file, pages 54 et seq.) (original in German).

⁽⁴⁵⁾ Internal memo sent by Volkswagen AG, regional management for the South-West/Franconia, to the Marketing Director for Germany on 7 October 1996 (file, page 52) (original in German).

⁽⁴⁶⁾ Letter sent by Volkswagen AG, Marketing Germany, Munich region, on 16 October 1996 to Auto Hirschauer KG (file, page 69) (original in German).

- (50) On 10 April 1997, talks took place between two representatives of Volkswagen AG, southern region, and the Hirschauer dealership in Baierbrunn. In the minutes of the meeting of 10 April 1997 ⁽⁴⁷⁾, under the heading 'Troublesome discounting by the Hirschauer dealership in Baierbrunn', the substance of the talks was set out: the representative of Volkswagen AG, southern region, pointed out to the three representatives of Hirschauer that, during the first six months of the year, 54 vehicles had been sold inside, and 369 outside Hirschauer's territory. This was owing to the fact that Hirschauer attracted customers by advertising substantial discounts in the press. These customers were not, and could not be, looked after by Hirschauer's after-sales service department.
- (51) Hirschauer was also criticised for not paying sufficient attention to its own specific territory, as only 54 % ⁽⁴⁸⁾ of deliveries were effected there, which was below the average of 72 %. The record ends with a statement to the effect that it was agreed between the Volkswagen AG representatives and the dealer that:

'Deliveries (were) to be stabilised, by setting appropriate parameters for Mr Aurich (as regards discounting, part-exchanging, etc.), at a level in keeping with the size of the dealership ⁽⁴⁹⁾.'

- (52) Linked to these talks with Hirschauer is the letter from Volkswagen AG, Marketing Department Germany, southern region, of 18 April 1997 ⁽⁵⁰⁾. This letter states, under the caption 'Discounting':

'Dear Mr Hirschauer,

We confirm the talks we held on 10 April 1997 in Volkswagen southern region.

The reason for the meeting was your continuing disruptive behaviour in the supply of new cars to the public. You have already been warned about this in our letter of 16 October 1996.

The general situation was discussed with you at length, and it was pointed out that your own contract territory was being exploited only to the tune of 54 % in the new car sector, that used cars taken in part-exchange were not being sold to final consumers by your dealership, and that new-car customers were being attracted by newspaper advertisements promising large discounts.

This flies in the face of trade usage, a view which is borne out by your poor operating results for the years 1994 to 1996 (low earnings, partial losses), as since submitted to us.

We cannot help feeling that your salesman, Mr Aurich, has been given too free a hand and that you no longer watch over his activities.

It was agreed that Mr Aurich would be set specific parameters, such as number of units, discounts, number of part-exchanges, etc., in writing and that they would be geared to the size of your business and market.

We take this opportunity to urge you once more in our common interest (image) to change your behaviour along the lines indicated above, as otherwise contractual consequences are inevitable.

...'

⁽⁴⁷⁾ Minutes of the meeting of 10 April 1997 by Volkswagen AG, southern region (file, page 68) (original in German).

⁽⁴⁸⁾ This percentage is given in the minutes, but does not tally with the absolute sales figures mentioned above.

⁽⁴⁹⁾ Original in German.

⁽⁵⁰⁾ Letter sent by Volkswagen AG, Marketing Germany, southern region, on 18 April 1997 to Auto Hirschauer KG (file, page 66) (original in German).

- (53) In September 1998, the Tiemeyer dealership in Bochum sent promotional material to its customers inviting them to a show at the garage on Saturday 12 September 1998 ⁽⁵¹⁾. The invitation stated the following:

'We are giving you the opportunity to look at the latest Volkswagen and Audi models at your ease. Numerous special offers await you.

The following discounts will be available at the show:

- on all workshop rates: 20 %,
- on all spare parts bought from our store: 15 %,
- on all used vehicles bought from our secondhand-car department: 10 %,
- on all new vehicles ordered from our new-car department: 10 %.'

- (54) On 13 October 1998, Volkswagen AG wrote the following letter to Tiemeyer ⁽⁵²⁾:

'In connection with the "show" you are putting on, you have sent promotional material to your customers offering them inordinately high discounts on new vehicles, spare parts and workshop services.

Quite apart from the fact that we consider this advertising to be extremely damaging to our brand image, we would point out that it infringes the Rebates Act.

We would therefore ask you to refrain from making such promotional offers in future.'

- (55) On 19 October 1998, Tiemeyer sent the following confirmatory message to Volkswagen AG:

'... Returning to the conversation we had today about our show, we wish to inform you that we do not intend to organise such an event again as we ourselves realise that we have missed the mark ...' ⁽⁵³⁾.

4. ARTICLE 81(1) (FORMERLY ARTICLE 85(1) ⁽⁵⁴⁾)

4.1. Agreement between undertakings

- (56) Volkswagen AG and its German authorised dealers are undertakings within the meaning of Article 81(1).
- (57) The three circulars (see recitals 33 to 35) are to be seen against the background of the contractual relations between Volkswagen AG and its dealers. They give practical effect to those relations with respect to pricing in such a way that the dealers regard the recommended prices for the new VW Passat, not as non-binding, but essentially as binding prices and consider that they may grant at most small discounts. The first circular of 26 September 1996 backs this up with a call for dealers to 'report all advertisements by Volkswagen network members displaying a lack of price discipline'. The circulars thus spell out the distribution policy of Volkswagen AG with regard to a specific car model. According to the established case-law of the European Court of Justice ⁽⁵⁵⁾, admission to a distribution network implies that the Contracting Parties explicitly or implicitly accept the distribution policy of the manufacturer. The circulars therefore became part and parcel of the agreements between Volkswagen AG and its authorised dealers, since they are to be regarded as part of a set of continuous business relations based on an existing general agreement (the dealer agreement).

⁽⁵¹⁾ Letter sent by H. Tiemeyer KG to customers on 9 September 1998 (file, pages 64 et seq.) (original in German).

⁽⁵²⁾ Letter sent by Volkswagen AG, Marketing Germany, Dealer Organisation, on 13 October 1998 (file, page 62) (original in German).

⁽⁵³⁾ Letter sent by H. Tiemeyer KG on 19 October 1998 to Volkswagen AG (file, page 61).

⁽⁵⁴⁾ The infringement was partly committed before the Amsterdam Treaty came into force on 1 May 1999, when the current Article 81 of the EC Treaty was still Article 85 of the EC Treaty. Reference will be made hereinafter only to Article 81 inasmuch as the provision's substance has not been affected by the renumbering brought about by the Amsterdam Treaty.

⁽⁵⁵⁾ Case 107/82 *AEG v Commission* [1983] ECR 3151, at 3195, and Joined Cases 25 and 26/84 *Ford v Commission* [1985] ECR 2725, at 2743.

- (58) The warnings addressed to five Volkswagen dealers (see recital 29 et seq. and recital 44 et seq.), of which the letter to Binder dated 24 September 1996 (see paragraph 30) was dispatched shortly before the first of the three circulars was sent to all German distributors, are likewise to be seen against the background of the contractual relations between Volkswagen AG and its dealers. They give practical effect to those relations with respect to the price behaviour of the dealers in that they are intended to ensure that the dealers change their pricing policies and essentially quote in their advertisements the non-binding prices recommended for the VW Passat by Volkswagen AG and charge those prices when selling the vehicles. The warnings have therefore likewise become part and parcel of the agreements between Volkswagen AG and the dealers to whom they were addressed.
- (59) There was thus a system of agreements between Volkswagen AG and its German dealers consisting of the three circulars and the warnings addressed to individual dealers which was intended to impose price discipline in respect of the new VW Passat. This objective was, moreover, confirmed at meetings between Volkswagen AG and the dealer council (see recital 42 et seq.).
- (60) Volkswagen AG disputes that the measures constitute agreements within the meaning of Article 81(1). It takes the view that the measures objected to are unilateral actions which do not fall within the scope of application of that Article ⁽⁵⁶⁾. Whereas in the AEG ⁽⁵⁷⁾ and Ford ⁽⁵⁸⁾ cases cited by the Commission and also in the BMW case ⁽⁵⁹⁾, the point at issue was the interpretation of a provision in an agreement or the question of the material scope of a provision, the pricing policy in question did not relate to a provision in the agreement. On the contrary, the policy contradicts section 8(1) of the dealer agreement, which allows only non-binding price recommendations to be made by the manufacturer. Volkswagen's distribution policy had not therefore, as asserted by the Commission, been implicitly accepted by the dealers in concluding the agreement.
- (61) Volkswagen AG's argument here cannot be accepted for several reasons.
- (62) In the first place, in its judgment in the Volkswagen case, the Court of First Instance, making explicit reference to the judgments in the Ford and BMW cases, made it clear that calls by a manufacturer to its authorised dealers constituted an agreement if they were 'intended to influence the ... dealers in the performance of their contract with (the manufacturer or importer)' ⁽⁶⁰⁾. This condition was clearly met here. Whether the agreement contained a specific clause to which the disputed exhortation by Volkswagen AG related or whether this exhortation contradicted another clause in the agreement is therefore irrelevant.
- (63) Secondly, the assertions that there was no point of reference in the agreement and that the exhortation actually contradicted section 8(1) of the agreement cannot in any case be accepted.
- (64) As is evident from the documents, Volkswagen AG's point of reference for its exhortations was section 2(6) of the VW/Audi dealer agreement ⁽⁶¹⁾ or section 2(1) of the Volkswagen dealer agreement ⁽⁶²⁾. This required VW dealers 'to defend and promote in every way the interests of VW AG, of the Volkswagen distribution organisation and of the Volkswagen brand. In so doing, the dealer will comply with all instructions issued for the purposes of the agreement regarding the distribution of new Volkswagen cars, the stocking of replacement parts, customer service, sales promotion, advertising, training and the ensuring of quality in each area of Volkswagen's business'. Explicit reference is made to this provision in the warning letters sent to the Binder dealership on 24 September 1996

⁽⁵⁶⁾ See points 2, 14 and in particular 15 to 19 of Volkswagen AG's reply of 10 September 1999 to the statement of objections.

⁽⁵⁷⁾ Loc. cit., see footnote 55.

⁽⁵⁸⁾ Loc. cit., see footnote 55.

⁽⁵⁹⁾ Case C-70/93, *BMW v ALD Autoleasing* [1995] ECR I-3439, at 3467.

⁽⁶⁰⁾ Case T-62/98, *Volkswagen v Commission*, [2000] ECR II-2707, paragraph 236.

⁽⁶¹⁾ In the version of January 1989; the provision contained therein was taken over almost word-for-word in section 2(1) of the Volkswagen dealer agreement of September 1995.

⁽⁶²⁾ In the version of September 1995; as from 1 January 1998, a new version was in force, in which, however, this provision (still section 2(1)) remained unchanged.

(see recital 29) and the Rütz dealership on 2 October 1996 (see recital 44). The pricing behaviour of these dealers was described as 'damaging to the brand' and the dealers were asked 'not to place any similar advertisements in future'. Although the other similar documents do not make reference to a specific provision in the dealer agreement, it is clear that Volkswagen AG's concern was to issue appropriate instructions so as to give specific substance to the general obligation on dealers to defend and promote the manufacturer's interest. In the first and third circulars, in the discussions with the dealer association (VW and Audi) and the dealer council (VW) and in the letters to the Gramling, Hirschauer and Tiemeyer dealerships, it is made clear that in Volkswagen AG's view the granting of large discounts significantly impaired those interests. Such discounts are once again described as 'damaging to the brand' or 'damaging to the product'.

- (65) Nor can it be said that there is a 'contradiction' between the exhortations and section 8(1) of the dealer agreements. Under that provision 'VW AG will issue non-binding price recommendations concerning retail prices and discounts'. Under the following paragraphs in this provision, such recommendations include the calculation of prices and adjustment arrangements applying between the dealer and the manufacturer. The fact that this mechanism includes the right of the manufacturer to issue non-binding price recommendations does not mean that the dealer has any specific guarantee that the manufacturer will in future abstain from making binding specifications, for example under section 2(1) of the dealer agreement.
- (66) This interpretation is also supported by numerous aspects of the conduct of the parties concerned. If the exhortations had not been covered by the dealer agreement or had actually contradicted it, as Volkswagen AG now (after the event) asserts, the manufacturer would hardly have been able to threaten the dealers with action under the dealer agreement. In this context, Volkswagen AG's assertion⁽⁶³⁾ that it 'had not made provision for any measures to cover the eventuality of a dealer not complying with the price recommendations' is clearly contradicted by the relevant documents. In the abovementioned letters, the Binder and Rütz dealerships were threatened with 'termination' of the dealer agreement or with 'legal action ... if you do it again'. Similarly, in the letter sent to Hirschauer on 18 April 1997 (see recital 52), Volkswagen AG threatened that 'contractual consequences are inevitable' unless the dealer changed his behaviour. The replies sent by Binder on 27 September 1995 (see recital 31) and Rütz on 2 October 1996 (see recital 45) similarly show that the dealers who had been criticised saw the warnings as being related to the contracts. Although they informed Volkswagen AG that they had not infringed the letter of the agreement in its original version, as formally signed by the manufacturer and dealers, they clearly understood the warnings as being intended to spell out Volkswagen AG's wishes further to the agreement. Thus, the Binder dealership replied to Volkswagen AG that it had instructed its staff to refrain in future from placing advertisements of the kind objected to by the manufacturer. None of the dealers asserted that Volkswagen AG's instructions fell outside the scope of the dealer agreement.
- (67) The statements made by those representing the dealers' interests and also by an individual dealer point in the same direction. The agendas of various managing board meetings of the dealer association, held following the introduction of the disputed pricing policy by Volkswagen, throw light on the association's attitude to measures taken by the manufacturer to ensure greater price discipline. The measures are in no way regarded as being outside the scope of the agreement, but are in fact welcomed (see recital 36 et seq.). The dealers' representatives in the Volkswagen dealer council took the same view, as may be seen from the minutes of the meetings held on 16 June 1997 and 16 October 1997 (see recitals 42 and 43). According to the minutes of the latter meeting, the dealer council viewed large discounts on another, newly-introduced model as 'behaviour, damaging ... to product- and brand-image' which 'is expressly disapproved of and condemned'. Lastly, the dealer Morrkopf also described large discounts by another dealer as 'brand-damaging' and therefore did not hesitate to report this conduct in line with the call made in Volkswagen AG's first circular.
- (68) The question of whether and to what extent the German Volkswagen dealers actually changed their pricing on the basis of the circulars and warnings can be left open.

⁽⁶³⁾ Volkswagen AG's reply of 10 September 1999 to the statement of objections, point 17.

- (69) Consequently, the objection put forward *ex post* by Volkswagen AG during the proceedings that the circulars and warnings fell outside the scope of the dealer agreements and had indeed infringed them, with the result that they were unilateral measures, cannot be accepted.

4.2. Restriction of competition

- (70) It is evident from the points set out below that the measures appreciably restricted competition. This was not disputed by Volkswagen AG in its reply to the statement of objections.

4.2.1. Purpose of the measures: restriction of competition

- (71) The declared aim of Volkswagen AG's three circulars and of the warnings sent to dealers was to prevail on all German Volkswagen dealers⁽⁶⁴⁾ not to depart, or at least not to depart substantially, from the 'non-binding' recommended retail prices. The measures were thus aimed at maintaining resale prices, i.e. a restriction of intra-brand competition in terms of prices. What is involved therefore is price fixing within the meaning of Article 81(1)(a).
- (72) Volkswagen AG argues, as regards the dealer Tiemeyer, that that dealer infringed the German Rebates Act and that consequently there was no restriction of competition. It should be pointed out on this that the German Rebates Act prohibits only the announcement of specific prices which are the result of 'rebates' (amounting to more than 3 %) vis-a-vis 'normal' prices. However, the dealer is not prohibited from announcing the same prices if they are not represented as being the result of rebates. Volkswagen's concern was not, or at any rate not only, the form of the announcement, which in its view was not authorised under the Rebates Act, but the price level itself.

4.2.2. The effect of the measures

- (73) Volkswagen AG also argues that the various circulars did not produce any change in dealers' conduct and that the dealers continued to grant discounts of the order of some 10 % on the recommended retail price⁽⁶⁵⁾.
- (74) It is hardly possible, in the circumstances of the present case, to determine the precise conduct of dealers. Nor, however, is this point material. It is established case-law that, for the purposes of Article 81(1), it is sufficient that the relevant measure, as in the present case (see recital 71 et seq.), has the object of restricting competition. It is not necessary to show that it actually produces any such restriction⁽⁶⁶⁾.

4.2.3. Appreciability of the restriction of competition

- (75) The appreciability of the restriction of price competition caused by the circulars and the warnings given to dealers, the purpose of which was confirmed at the dealer council meetings, can be seen in the present case from the following.

⁽⁶⁴⁾ The fact that the dealer Rütz left the dealer network towards the end of 1997 is not material, since the infringement subsequently continued to apply to all (remaining) dealers in the network.

⁽⁶⁵⁾ Paragraph 21 of Volkswagen AG's reply to the statement of objections, including a reference to its reply of 9 November 1998 to the Commission's request for information (see recital 22 of this Decision).

⁽⁶⁶⁾ See, for example, Case T-143/89 *Ferriere Nord v Commission* [1995] ECR II-917; Case T-62/98 *Volkswagen v Commission* [2000] ECR 11-2707, paragraph 178; Case T-176/95 *Accinauto v Commission* [1999] ECR 11-1635, paragraph 106; Commission notice 'Guidelines on vertical restraints', (O) C 291, 13.10.2000, p. 1, paragraph 7).

- (76) Firstly, the measures objected to were aimed at setting resale prices and hence at eliminating an essential factor of competition, namely the scope for granting price discounts. The importance of this factor of competition in the motor vehicle trade is confirmed⁽⁶⁷⁾ by Article 6(1)(6) of Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor-vehicle distribution and servicing agreements⁽⁶⁸⁾. Under that provision, the exemption does not apply where the manufacturer restricts the dealer's freedom to determine prices and discounts himself in reselling contract goods⁽⁶⁹⁾.
- (77) Secondly, they were intended to ensure that dealers' pricing behaviour deviated substantially from normal competitive behaviour. According to information supplied by Volkswagen AG, German Volkswagen dealers granted on average discounts of 9,7 % in 1995, 10,1 % in 1996 and 9,9 % in 1997 on the recommended list price in respect of their entire range of goods and services (see recital 22). According to the same information⁽⁷⁰⁾, smaller discounts were generally granted on new car models than on older models. In the case of the VW Passat, however, the position was clearly different. The new Passat was offered for sale by one of the dealers who received a warning (see recital 48) at a 7 % discount, and by another at a 12 % discount (see recital 49). The size of these discounts, which the measures at issue were supposed, if possible, to reduce to zero, is an indication of the competitive behaviour that could have been expected without the measures. Volkswagen AG itself concedes that there will be hardly any dealer who does not grant a discount⁽⁷¹⁾.
- (78) Thirdly, the restriction of price competition described above affected all German dealers in Volkswagen AG's selective and exclusive distribution network, and it was intended in particular to restrict intra-brand competition among German Volkswagen dealers, and also intra-brand competition between German and foreign Volkswagen dealers. The latter aspect is examined in section 4.3.
- (79) Fourthly, the VW Passat is a much sought-after car model in Germany, both in terms of its absolute sales figures and as regards the segment to which it belongs. In segment D, the VW Passat was in 1997, i.e. shortly after its market launch, with a share of about 15 %, Germany's best-selling car after the Opel Vectra. In the first half of 1998, its share in this segment in Germany was as high as 16 %. The restriction of competition affected all supplies of new VW Passats in Germany. Even if not only segment D, in which the Passat is to be classified, but also, in view of the possible overlap with neighbouring segments, segments C and E were included in the relevant market, the Passat's share in 1997 in Germany would have been more than 6 % and hence of a sufficient order of magnitude. It should also be pointed out in this connection that, under the notice on agreements of minor importance which do not fall within the scope of Article 81(1), the applicability of Article 81(1) to (vertical) resale price maintenance arrangements cannot be ruled out even where the market share of the undertakings concerned is less than 10 %⁽⁷²⁾.
- (80) The measure was confined to Germany and its effects were also felt there. Volkswagen AG, a market participant with considerable experience, evidently based its approach on the belief that a measure confined to Germany can have effects there which are not unduly affected by parallel imports. It must be borne in mind that, during the period at issue, parallel imports of new VW Passats, though considerable, amounted to only a fraction of the sales made through the German Volkswagen

⁽⁶⁷⁾ OJ L 145, 29.6.1995, p. 25.

⁽⁶⁸⁾ It is true that agreements concluded between a manufacturer and dealers on the setting of prices (as in the present case) are already covered by Article 6(1)(3) of the Regulation. However, this does not take away from the fact that Article 6(1)(6) of the Regulation provides a useful indication of the particular importance attaching to the freedom of dealers in the area of prices and intra-brand competition.

⁽⁶⁹⁾ See also recital 10 and Article 4(a) of Commission Regulation (EC) No 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ L 336, 29.12.1999, p. 21) and paragraph 46 of the Commission notice 'Guidelines on vertical restraints' (OJ C 291, 31.10.2000, p. 1). These make it clear that the fixing of resale prices, in whatever form, is a particularly serious interference in the functioning of competition. See also paragraph 276 of the Green Paper on EC competition policy on vertical restraints of competition, which states: 'The policy of treating resale price maintenance as (a) serious violation(s) of the competition rules would continue'.

⁽⁷⁰⁾ Volkswagen AG's reply of 9 November 1998 to the Commission's request for information of 8 October 1998, Annex (file, page 41).

⁽⁷¹⁾ Reply of 9 November 1998 to the Commission's request for information of 8 October 1998, p. 3.

⁽⁷²⁾ OJ C 372, 9.12.1997, p. 13, Section II, paragraph 11, subparagraph (b), first indent.

distribution network (see recital 25 et seq.). This was the case even though, during the relevant period, there were substantial differences in retail prices for the VW Passat between Germany and a number of other Member States (see paragraph 18) and that, since the introduction of the European certificate of conformity ⁽⁷³⁾, every passenger car purchased in the European Union can now be allowed on the roads in all Member States without the need for renewed technical checks. However, other obstacles to parallel trade continue to exist; purchasing a new car in another Member State remains in practice a difficult operation for final consumers. It always involves greater effort than purchasing from a dealer in the network in one's home country. Particularly where they believe they can successfully make sales to purchasers in their contract territory, and especially in the case of popular models, many dealers prefer to serve their local clientele. Frequently, they require large deposits to be paid by foreign customers. All of these factors mean that the parallel trade has only a limited effect in shifting sales from a dealer in the domestic network, with the result that it cannot lead to any alignment of the (relatively high) German prices on the (lower) prices in other Member States.

4.3. Likelihood of the measures having an appreciable effect on trade between Member States

- (81) A further prerequisite for the applicability of Article 81(1) is the requirement that the measures taken by Volkswagen AG which have been objected to must be capable of having an appreciable effect on trade between Member States.
- (82) An agreement is capable of affecting trade between Member States if, on the basis of a set of objective elements of law or fact, it is possible to foresee with a sufficient degree of probability that the agreement may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States capable of hindering the attainment of the objectives of a single market between Member States ⁽⁷⁴⁾. The Court of Justice has also ruled that trade between Member States is affected not only where the measure restricts inter-State trade or indeed compartmentalises markets, but also where the agreement leads to an increase, even a large one, in the volume of trade between Member States ⁽⁷⁵⁾. Accordingly, it only needs to be shown that an agreement is capable of affecting trade between Member States ⁽⁷⁶⁾.
- (83) The measure at issue in this case was intended to keep prices for the VW Passat in Germany at an artificially high level. It resulted in the maintenance or reinforcement of a high-price area covering the whole of Germany. Furthermore, it was applicable regardless of whether the relevant customer came from Germany or from another Member State.
- (84) The level of price differences between Member States is recognised as being a factor which significantly affects trade between Member States. This is corroborated in particular by the scale of the imports into Germany from Belgium, France, the Netherlands, Spain, Italy, Sweden and Denmark (see recital 25). Volkswagen AG too confirms the general significance of price differentials when it states that vehicle sales from Germany to other EU countries took place on only a relatively limited scale, since the selling prices for VW cars in Germany were higher than those in most of the other EU countries ⁽⁷⁷⁾.

⁽⁷³⁾ See Commission Directive 98/14/EC of 6 February 1998 adapting to technical progress Council Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, (OJ L 91, 25.3.1998, p. 1.)

⁽⁷⁴⁾ Established case law, see in particular Joined Cases C-215/96 and C-216/96 *Bagnasco* [1999] ECR I-135, paragraph 47; Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 179.

⁽⁷⁵⁾ Joined Cases 56 and 58/64 *Consten and Grundig v Commission* [1966] ECP 299; Commission Decision 88/518/EEC of 18 July 1988 (*Napier Brown-British Sugar*), (OJ L 284, 19.10.1988, p. 41 recital 80).

⁽⁷⁶⁾ Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 179 and the case-law referred to there.

⁽⁷⁷⁾ Volkswagen AG's reply of 10 September 1999 to the statement of objections, point 30.

- (85) Consequently, the measures at issue were particularly liable to have an appreciable effect on trade between Member States by altering the flow of imports into Germany. If German Volkswagen customers are unable to obtain a large enough discount from German dealers, they have a strong financial incentive to purchase a new car abroad.
- (86) As far as exports from Germany are concerned, it should be borne in mind that, while Germany is traditionally a high-price country, with the result that exports to most of the other Member States seem to be on a rather small scale, the situation with regard to the United Kingdom is different. As far as the price level of the VW Passat, for example, is concerned, Germany traditionally ranks after the United Kingdom, i.e. only in second place (see the table showing the price level in the Member States at recital 18). In the relevant period, therefore, many British final consumers sought out the new VW Passat in Germany. According to the information provided by Volkswagen AG ⁽⁷⁸⁾, the number of right-hand-drive Volkswagen vehicles sold in Germany to customers from the United Kingdom and/or Ireland in particular was 100 in 1977 and 696 in 1998 (see recital 25). In the case of the VW Passat, exports from Germany were as follows: four in 1997, 149 in 1998 and 111 in 1999. The measures objected to were liable to prompt customers interested in right-hand-drive vehicles to switch to parallel imports from Member States other than Germany, i.e. those with lower prices (e.g. Belgium or the Netherlands) or to forgo parallel imports altogether. They therefore resulted in an appreciable decrease in exports from Germany to another Member State, either by limiting or by diverting trade flows to be expected in conditions of normal competition.
- (87) Volkswagen AG disputes that there was a significant effect on trade between Member States ⁽⁷⁹⁾. Referring to the case-law of the Court of Justice ⁽⁸⁰⁾, it argues in particular that market compartmentalisation assumed by the Commission in cases of vertical agreements exists only if cross-border supplies are impeded, foreign competitors denied market access or competition bans agreed. In the present case, however, which concerned only attempted influencing of prices in the territory of a single Member State, no compartmentalisation of markets was evident. The Commission's other arguments, that the measures had reduced exports to other Member States and increased the incentive for German consumers to purchase new vehicles abroad, were not correct. Volkswagen points to the limited extent of trade between Member States 'at dealer level', resulting in particular from supply bottlenecks (as in the case of the new VW Passat) or the high German prices. Furthermore, given their established customer base, dealers had only a limited interest in sales to foreign customers.
- (88) This line of argument cannot be accepted. An effect on trade between Member States is not confined to cases where a measure results in compartmentalisation of markets. As explained above (recital 81), it is sufficient that the measure is capable of having a positive or negative effect, i.e. of influencing, the pattern of trade between Member States. It has been demonstrated that this condition is met.
- (89) Volkswagen AG's argument that supply bottlenecks had arisen when the VW Passat was launched and that dealers preferred to supply their vehicles to their established customers ⁽⁸¹⁾ does nothing to change this. Such effects cannot have played the role which Volkswagen AG is *ex post* ascribing to them. In the first place, the German Volkswagen dealers would not have had any incentive, even when the vehicle was launched, to grant sizeable price discounts which the manufacturer wished to prohibit if demand had not significantly succeeded supply. Secondly, German Volkswagen dealers exported the new model of the VW Passat in not inconsiderable numbers to the United Kingdom from the very outset (see recital 25). Thirdly, supply bottlenecks in Germany would merely prompt more German customers to opt for purchasing in another Member State, a trend which Volkswagen AG's high-price policy was liable to reinforce. Fourthly, the resale price maintenance was maintained for almost three years, i.e. well beyond the launch period.

⁽⁷⁸⁾ Volkswagen AG's letter to the Commission of 16 December 1998.

⁽⁷⁹⁾ Paragraphs 26 to 31 of Volkswagen AG's reply of 10 September 1999 to the statement of objections.

⁽⁸⁰⁾ Case 8/72 *Vereniging van Cementhandelaren v Commission* [1972] ECR 977, paragraphs 28 to 30; Case C-70/93 *BMW* [1995] ECR I-3439, at 3469; Case 42/84 *Remia* [1985] ECR 2545, paragraph 22; Case 126/80 *Salonia v Poidamani e Giglio* [1981] ECR 1563.

⁽⁸¹⁾ Volkswagen AG's reply of 10 September 1999 to the statement of objections, point 30.

- (90) Volkswagen AG's argument that Germany, as a high-price country, is not an attractive market for re-exports does not of course alter the fact that the measures are liable to boost imports into Germany. Furthermore, this argument does not apply in the case of the United Kingdom. At least as regards customers from that Member State, as also in the case of German customers, the granting of discounts was for the dealers an appropriate instrument allowing them to make competitive offers in order to attract the demand emanating from such customers⁽⁸²⁾.
- (91) The resale price maintenance was accordingly such as to appreciably influence cross-border trade in the VW Passat, primarily as regards imports, but also as regards exports. Its aim was to make it at least considerably more difficult for the German Volkswagen dealers to engage in intra-brand competition with Volkswagen dealers in other Member States. As a result of the resale price maintenance, an artificial high-price area for the relevant model was established or consolidated in Germany, this being incompatible with the objective of establishing a single market.

4.4. Conclusion

- (92) Overall, it must therefore be concluded that the measures taken by Volkswagen AG to restrict price competition in respect of the new VW Passat are caught by Article 81(1).

5. ARTICLE 81(3) OF THE EC TREATY

5.1. Block exemption of the VW distribution system under Regulation (EC) No 1475/95

- (93) The measures objected to are not exempted by Regulation (EC) No 1475/95.

5.2. Individual exemption

- (94) Individual exemption has not been granted, nor could it be granted.
- (95) Resale price maintenance does not contribute to improving the production or (in this case) the distribution of goods. Although, according to Volkswagen AG, it is intended to improve the profitability of German Volkswagen dealers and help them attain or maintain the standards of service prescribed by Volkswagen AG, and hence could, according to this argument, contribute to safeguarding as many dealerships as possible, there is no evidence to suggest that safeguarding individual dealerships which under normal competitive conditions would not be viable would appreciably improve the distribution of goods or that this alleged improvement might offset the disadvantages of the restriction of competition. Furthermore, there is not the slightest guarantee that the larger profits earned by Volkswagen dealers as a result of their refusing to grant discounts on the purchase of new VW Passat cars will be used to safeguard dealerships.
- (96) Nor are consumers allowed a share of the resulting benefit. On the contrary, they have to pay more for the vehicles and receive nothing tangible in return.

⁽⁸²⁾ See section I(1) of the Commission notice concerning Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (O) C 17, 18.1.1985, p. 4).

6. DURATION OF THE INFRINGEMENT

- (97) An infringement of Article 81(1) was taking place by 26 September 1996, the day on which the first circular was distributed (see recital 33). The infringement was confirmed and renewed by the other two circulars (see recital 34 et seq.).
- (98) By letter dated 22 July 1999, Volkswagen AG informed the Commission that it intended to take all the measures specified in the statement of objections in order to bring the infringement to an end. To its written reply of 10 September 1999 to the statement of objections, the company attached a copy of a circular dated 6 September 1999 sent to all German Volkswagen dealers and garages. In that circular, reference was made to the circulars of 26 September 1996, 17 April 1997 and 26 June 1997, and the dealers were informed that the restrictions of price competition embodied in those circulars were annulled and that the dealers did not have to fear any legal or other adverse measures on the part of Volkswagen AG in respect of their pricing. The Volkswagen and Audi dealer association was informed of the content of the circular in a letter sent on the same date, which stated that it would also receive oral information on the content of the letter.
- (99) The dealers Tiemeyer, Binder and Hirschauer were also informed in individual letters sent on 6 September 1999 that the written warnings (see recitals 30, 49, 52 and 54), were not valid. The dealer Rütz, who had been warned by a letter of 2 October 1996 (see recital 44), had left the Volkswagen distribution organisation at the end of 1997.
- (100) The infringement thus lasted from 26 September 1996 to 6 September 1999, i.e. for almost three years.

7. PARTY TO WHICH THIS DECISION IS ADDRESSED

- (101) Volkswagen AG committed the relevant infringement of Article 81(1), in that it agreed strict price discipline and hence resale price maintenance for the VW Passat with the German dealers in its distribution network. This Decision is therefore addressed to Volkswagen AG.

8. ARTICLE 15(2) OF REGULATION No 17

- (102) Article 15(2) of Regulation No 17 empowers the Commission to impose fines, within the stated limits, on undertakings which have infringed Article 81(1) either intentionally or negligently.

8.1. Imposition of a fine

- (103) The Commission considers it necessary in the present case to impose a fine on Volkswagen AG. The Commission takes the view that Volkswagen AG acted intentionally. Volkswagen AG was aware that the measures had the object of restricting competition⁽⁸³⁾.

⁽⁸³⁾ Case 246/86 *Belasco and Others v Commission* [1989] ECR 2117, paragraph 41.

- (104) Although the members of the distribution network (i.e. the German Volkswagen dealers), as the parties to which the general and individual exhortations were made, were also involved in the anti-competitive agreements, it does not appear appropriate to impose fines on them as well. The initiative in committing the infringement was taken by Volkswagen AG, which also, where necessary, exerted considerable pressure on the dealers. After it had been informed of the first case of large discounts, it wrote immediately to the relevant dealer threatening to terminate his dealer agreement so as to get him to maintain price discipline. A circular was issued to all dealers two days later. In this circular, all the dealers were given to understand that, in the event of breaches of price discipline, Volkswagen AG would initiate contractual measures ('I have already taken, in agreement with the dealer council, appropriate measures in the form of warnings'; see recital 33⁽⁸⁴⁾). Where individual dealers openly breached price discipline, they were warned by means of individual letters in which they were threatened with contractual measures. It may be seen from this that, if Volkswagen AG had not taken the initiative and had not, where necessary, exerted pressure on the dealers, who were in an economically weaker position, the infringement would not have taken place. This conclusion is not impaired by the fact that the representatives of the dealers' interests (the Volkswagen and Audi dealer association and the VW dealer council) generally welcomed Volkswagen AG's initiatives to enforce better price discipline.

8.2. Amount of the fine

- (105) In fixing the amount of the fine under Article 15(2) of Regulation No 17, the Commission has to take account of all relevant circumstances, and in particular the gravity and the duration of the infringement.

8.2.1. Gravity of the infringement

- (106) In determining the gravity of the infringement, the Commission takes account of the nature of the infringement, its actual effects on the market, in so far as these can be measured, and the size of the relevant market.
- (107) The measures taken by Volkswagen AG were designed to eliminate or at least restrict price competition, which is one of the most important factors of competition (see recitals 32 to 35 and 71 to 80). Such measures therefore represent a particularly drastic interference in competition, with the results that, by their nature, they constitute a very serious infringement of the competition rules.
- (108) In the case of a product which can be ordered with the same level of equipment from all Volkswagen dealers in the EU, price discounts on the recommended retail prices are, in addition to service, the main parameters of competition available to a car dealer in engaging in intra-brand and inter-brand competition with domestic and foreign dealers. This is also acknowledged by Volkswagen⁽⁸⁵⁾. Volkswagen AG itself states that its concern was to improve the profitability of dealers, which had suffered as a result of sharp competition (see recitals 33, 35, 37, 38 and 95)⁽⁸⁶⁾.
- (109) A study recently carried out confirms these points⁽⁸⁷⁾. On the question of the importance of price competition, 68 % of the vehicle purchasers surveyed in Germany said that they had been to several dealers to compare prices and discounts. When asked to state the reason why they had been to several dealers, 19 % of those surveyed said they wanted to check the availability of the particular model they wished to have, 9 % said they wanted to compare the trade-in terms for their old car, 6 % said they were interested in quality of service and 3 % cited the availability and delivery time for a new car. Furthermore, 77 % of all German customers think that negotiations on price are a normal part of the process of purchasing a new car.

⁽⁸⁴⁾ The more specific threat issued to the Binder dealership, i.e. the possible termination of the agreement, continued of course to apply.

⁽⁸⁵⁾ Volkswagen AG's reply of 10 September 1999 to the statement of objections (points 32 et seq.) and recital 22 above.

⁽⁸⁶⁾ However, this argument masks the fact that Volkswagen AG's main concern was the safeguarding of its own interests (see recital 123).

⁽⁸⁷⁾ Study by Taylor Nelson Sofres Consulting, carried out on behalf of Renault and PSA: Perception de la distribution automobile en Europe, Rapport Europe, Phase Quantitative, Section: 2. concurrence et prix dans le secteur automobile: b. Les pratiques de mise en concurrence, December 2000.

- (110) It must also be borne in mind that, under normal conditions of competition, at least some dealers could have been expected to grant substantial discounts (see recital 77), which would also have had an impact on the pricing behaviour of other dealers, who would otherwise perhaps have been less willing to grant discounts.
- (111) In this context, it should also be noted that discounts on cars are a factor of major significance for the average consumer, since even relatively small percentage rates result, from the consumer's point of view, in large savings.
- (112) The infringement related to one model (available in two versions) in Volkswagen AG's range of cars, a model which belongs to a very popular market segment in Germany. The VW Passat holds an important market position within the relevant segment in Germany (see recitals 16 and 17).
- (113) With regard to the geographical scope of the infringement, it should be noted that the circulars were addressed to all the German Volkswagen dealers and garages and thus affected all sales of the two versions of the VW Passat in Germany. Although only one Member State is involved in this respect, Germany accounts for a large proportion of car sales in the European Union. The fact that Volkswagen AG wished the measures to apply as widely as possible throughout Germany can also be seen from its statements to the dealer council (see recital 42). The infringement also affected consumers in the United Kingdom, albeit to a much smaller extent than the German consumers. It was such as to deprive those consumers, in so far as they were interested in parallel imports from Germany, of the benefits of discounts which they could have expected under normal conditions of competition.
- (114) In the light of all these considerations, the Commission regards the infringement as serious.
- (115) In assessing the deterrent effect of the fine, it must be borne in mind that the Volkswagen group, which is headed by Volkswagen AG, is the largest European manufacturer of motor vehicles and that, in VW, it has the most popular brand not only in Germany, on which the infringement was focused, but also in the EU as a whole. Even though the measures dealt with in this Decision affected only two models in its range, various documents demonstrate that the manufacturer was at least prepared, where it considered this appropriate, to apply similar measures to other vehicle models as well (see recitals 35 and 43).
- (116) In the Commission's view, therefore, in the light of the seriousness of the infringement, EUR 20 million is an appropriate amount to take as a basis for calculating the fine.

8.2.2. *Duration of the infringement*

- (117) Under Article 15(2) of Regulation No 17, another factor determining the amount of the fine is the duration of the infringement. As is evident from recitals 97 to 100, the infringement lasted from 26 September 1996 to 6 September 1999, i.e. almost three years.
- (118) The infringement was thus of medium duration.
- (119) The Commission takes the view that it is therefore justified in increasing the specified amount by 29 % (EUR 5,8 million) to an amount of EUR 25,8 million.

8.2.3. *Aggravating and mitigating circumstances*

- (120) Aggravating and mitigating circumstances must also be taken into account in calculating the fine.

- (121) An aggravating factor to be taken into account is the fact that two of the three circulars (see recitals 33 and 35) and some of the individual letters to dealers (see recitals 30, 44, 48 and 52) were not just intended to restrict the freedom of dealers to set their prices, but warnings were given and legal steps, energetic reactions or indeed terminations of contract were threatened unless dealers showed greater price discipline. Account must also be taken of the fact that the Marketing Director for Germany 'personally' called on the German Volkswagen dealers and garages in the first circular of 26 September 1996 to bring to '(his) notice any advertisements by Volkswagen network members who are not observing price discipline' (see recital 33). Volkswagen AG was thus not content to enforce and monitor 'price discipline' amongst its dealers itself. Instead, it used all the German dealers to some extent as informers and called on them to identify colleagues and competitors who were breaching price discipline. As a result of this exhortation, every German Volkswagen dealer had to expect that his advertising would be monitored by his direct competitors. This exhortation increased the pressure on German Volkswagen dealers to comply with the desired price discipline.
- (122) For these reasons, the Commission considers it appropriate to increase the basic amount by 20 %.
- (123) Volkswagen AG's argument that the measures were intended solely to improve the profitability of the dealerships⁽⁸⁸⁾ cannot be accepted as a mitigating factor. In the first place, Volkswagen AG's main concern was the pursuit of other interests, namely its own, as is evident from the circulars and individual letters (see the references to Section 2(6) or (1) of the dealer agreement and to the alleged 'brand-damaging' nature etc. of the dealers' conduct). It was then up to the dealers to assess which pricing policy was best suited to their economic interests. Article 81 prohibits agreements of this type, precisely because they interfere with the dealers' freedom of decision in this respect.
- (124) The Commission considers that in this case, there are no mitigating circumstances.

8.3. Conclusion

- (125) In view of all these circumstances, the amount of the fine should be set at EUR 30,96 million,

HAS ADOPTED THIS DECISION:

Article 1

Volkswagen AG has infringed Article 81(1) of the EC Treaty by setting the selling price of the VW Passat on the basis of exhortations to its German authorised dealers to grant limited discounts or no discounts at all to customers in selling the VW Passat.

Article 2

A fine of EUR 30,96 million is imposed on Volkswagen AG in respect of the infringement referred to in Article 1.

⁽⁸⁸⁾ Volkswagen AG's reply of 10 September 1999 to the statement of objections, points 33 et seq.

Article 3

The fine determined in Article 2 shall be paid in euro within three months of the date of notification of this Decision into the following bank account of the Commission of the European Communities:

642-0029000-95 (Code IBAN: BE76 6420 0290 0095; Code SWIFT: BBVABEBB)
Banco Bilbao Vizcaya Argentaria (BBVA)
Avenue des Arts/Kunstlaan 43
B-1040 Brussels.

After expiry of that period, interest shall become payable. The rate applicable shall be that which the European Central Bank applies to its main refinancing operations. The interest shall be payable from the first working day of the month in which this Decision was adopted. A supplement of 3,5 percentage points shall be charged. In total, the interest rate shall be 8,05 %.

Article 4

This Decision is addressed to Volkswagen AG, D-38436 Wolfsburg.

This Decision shall be enforceable pursuant to Article 256 of the EC Treaty.

Done at Brussels, 29 June 2001.

For the Commission
Mario MONTI
Member of the Commission
