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BLOGS
Antitrust

Functional Availability Defense Bars Dealer's Price Discrimination Claims

Another federal court in Ohio dismissed price discrimination claims brought against a motor vehicle manufacturer after ruling that the “functional availability” defense barred the claims. *Brentlinger Enters. v. Volvo Cars of N. Am.*, 2016 WL 4480343 (S.D. Ohio, Aug. 25, 2016). Brentlinger, a Volvo dealer, sued Volvo over a tier-based incentive program that provided dealerships that only carried Volvo products and met Volvo’s design standards with higher bonuses per vehicle sold and a larger allocation of high demand vehicles than it did to stores that did not meet both criteria. Brentlinger did not meet both criteria and did not receive the maximum incentive payments under the program. Brentlinger sued alleging, among other claims, that the incentive program constituted price discrimination under two provisions of the Ohio Motor Vehicle Franchise Act and the RPA. On cross motions for summary judgment, the court addressed the question of whether the “functional availability” defense could be asserted by Volvo against all of Brentlinger’s price discrimination claims.

The “functional availability” defense allows a manufacturer to avoid price discrimination liability if the manufacturer can show that the lower price was, in fact, reasonably available to the aggrieved party. After examining the history and purpose of the functional availability defense, the court ruled that it could be asserted in response to all of Brentlinger’s price discrimination claims. The court reasoned that under Ohio law, a plaintiff must show that its damages are proximately caused by the violation of the specific statutory provision at issue, and regardless of the language of the statutory provision itself, the functional availability defense served as an attack on the element of proximate cause. The court then determined that the functional availability defense compelled the dismissal of Brentlinger’s price discrimination claims. Brentlinger argued that the incentive program was not reasonably available because the eligibility criteria for the maximum payments under the program were too expensive to achieve, and local zoning laws made it impossible for Brentlinger to comply with Volvo’s design standards. The court held that these arguments did not overcome the functional availability defense, noting that it was the dealer’s choice whether to undertake the renovation and receive the corresponding benefit, and there was no evidence that Brentlinger even asked for a zoning variance to meet the design criteria.

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