II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 October 1973

relating to proceedings under Article 85 of the EEC Treaty (IV/26.825 — PRYM-BEKA)

(Only the French and German texts are authentic)

(73/323/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof;

Having regard to Council Regulation No 17 (1) of 6 February 1962, and in particular Articles 2, 4 and 6 thereof;

Having regard to the application for negative clearance submitted on 9 April 1970 pursuant to Article 2 of Regulation No 17 and to the notification submitted on 18 May 1972 in accordance with Article 4 of Regulation No 17 aiming at a decision on the grounds of Article 85 (3) in respect of the supply agreement concluded on 11 August 1969 between the German undertaking William Prym-Werke KG of Stolberg (Rhineland) and the Belgian undertaking SA Manufacture Belge d'Aiguilles Beka of Eupen, concerning needles for domestic sewing machines;

Having, in accordance with Article 19 (1) of Regulation No 17 and with the provisions of Regulation No 99/63/EEC (2), heard the undertakings concerned;

Having regard to the publication of a summary of the notification, pursuant to Article 19 (3) of Regulation No 17, in the *Official Journal of the European Communities*, No C 12, of 24 March 1973;

Having regard to the Opinion of the Advisory Committee on Restrictive Practices and Dominant Positions, obtained pursuant to Article 10 of Regulation No 17 on 18 May 1973;

I

Whereas, the notified agreement was concluded on 11 August 1969 by the following two undertakings:

(a) William Prym-Werke (hereinafter called 'Prym'), a limited partnership under German law, which manufactures in several factories in Germany, employing some 4 500 persons, in addition to semi-finished brass products, a wide range of small haberdashery articles, mainly for clothing, such as fasteners of all kinds, buckles and needles, and

(b) Manufacture Belge d'Aiguilles Beka (hereinafter called 'Beka'), a limited liability company under Belgian law, which is a subsidiary of the Belgian group Bekaert, one of the leading world producers of wire and wire products, and has a single factory employing some 350 persons which manufactures needles for both domestic and industrial sewing machines.

The two undertakings concluded the notified agreement for the following reasons:

(1) OJ No 13, 21. 2. 1962, p. 204/62 = OJ Special Edition 1959-1962, November 1972, p. 87.
(2) OJ No 127, 20. 8. 1963, p. 2268/63 = OJ Special Edition 1963-1964, November 1972, p. 47.

Having found that both were making and selling needles for domestic sewing machines, but that their respective capacities for producing these articles were too low to enable them to sell at sufficiently competitive prices, they decided in 1969 to concentrate their production in a single factory, that of Beka at Eupen, in order to be able to reduce manufacturing costs by means of production-line manufacture. As a result of that decision, the manufacture of needles at the Prym factory at Stolberg was to cease and the plant and equipment were to be transferred to Eupen. In return, Prym obtained a 25 % share in Beka's capital and a guarantee that it would be able to obtain all its long-term requirements of needles from Beka.

The notified agreement now provides as follows :

Prym undertakes :

(a) after the end of 1970, not to manufacture or cause to be manufactured on its behalf needles for domestic sewing machines ;

(b) not to buy or cause to be bought on its behalf any such needles from sources other than Beka ;

(c) to obtain all its requirements solely from Beka, at the prices and on the terms laid down in the agreement ;

(d) to send Beka at the end of each year a schedule of its requirements for the following year.

Beka undertakes to supply Prym, on the latter's instructions, with all the quantities of needles it requires, within normal delivery periods and on the special terms laid down in the agreement.

If Beka is unable to supply Prym's full requirements, even by purchases from third parties, Prym is entitled to obtain supplies elsewhere, on condition that it informs Beka of the name of the supplier and the quantities involved.

Beka is to sell the needles to Prym at provisional prices, which are fixed in the agreement and are to be altered proportionately if the factors on the basis of which they were calculated vary by more than 5 % on the whole as a result of wage increases, changes in prices of raw materials or savings resulting from rationalization. The final prices for Beka's deliveries to Prym, which are determined at the end of each year in accordance with a schedule annexed to the agreement, are calculated in relation to the final prices obtained from the customers by Prym ; however, they must never be less than Beka's production costs nor leave Prym a profit of more than a fixed percentage.

It has been agreed that standard quality needles are to bear the mark '555', whichever undertaking sells them, whereas superior quality needles are to be stamped 'Beka' or 'Prym' according to which party sells them.

The agreement is for an indefinite period. It cannot be terminated as long as Prym holds a share in Beka's capital and in any case not before 31 December 1984 (subject to five years' notice).

In its original version the agreement also provided that :

(a) Prym would supply exclusively the haberdashery and hosiery trade and the retailers specializing in bicycles ;

(b) Beka would supply exclusively the sewing machines sector (manufacturers of and specialized dealers in sewing machines and other needle manufacturers making deliveries to that sector), the thread manufacturers and the workshops where needles are made up into packets (in the case of needles in bulk or semi-packed) ;

(c) Beka would only supply undertakings competing with Prym in the haberdashery and hosiery sector subject to Prym's consent ;

(d) with certain specific exceptions, all exports to countries outside Europe would be reserved for Prym ;

(e) both parties could trade with eastern countries.

In a communication giving the objections raised against them which it addressed to Prym and to Beka on 18 July 1972 in accordance with Article 19 (1) of Regulation No 17 and pursuant to Regulation No 99/63/EEC the Commission informed them that the terms set out above in points (a) to (c) not only came under the prohibition in Article 85 (1) of the Treaty in so far as they had as their object the sharing of the two parties' customers in their export market within the common market, but also would prevent any eventual application of Article 85 (3) to the agreement, in particular because they did not allow consumers a fair share of the benefit resulting from the rationalization of production.

Following that communication, the undertakings in question annulled the provisions to which objection had been raised in so far as they concerned the EEC market, by a decision taken by Prym on 15 September 1972 and by Beka on 10 October 1972.

In order to assess the effects of the agreement on competition within the common market, account should also be taken of the following facts.

The world output of needles for domestic sewing machines, which represents an annual value of some 50 million units of account, is produced by 25 to 30 undertakings situated mainly in western Europe, North America and the Far East.

Before they concentrated their production in a single factory, Beka produced some six per cent of the world output and Prym some three per cent.

Their main European competitors are the German company Schmetz, the needle factories of the American groups Singer and Torrington, and the Dutch company Musolf; but the manufacturers in Japan and Hong Kong are those exerting the greatest pressure on the market at the present time.

No observations from third parties were submitted to the Commission following publication of a summary of the notification.

II

Under Article 2 of Regulation No 17 the Commission may grant negative clearance if it finds, on the basis of the facts in its possession, that there are no grounds under Article 85 (1) of the EEC Treaty for action on its part in respect of the agreement in question.

Even in its amended version of 10 October 1972 the agreement concluded between Prym and Beka has as its object and effect a considerable restriction of competition within the common market in as much as it provides, for an indefinite period, as follows:

1. Prym is forbidden to manufacture needles for domestic sewing machines or cause them to be manufactured on its behalf by third parties;
2. Prym is obliged to buy its total requirements of needles for domestic sewing machines exclusively from Beka;
3. Beka is obliged to deliver to Prym all the quantities of such needles it requires and at preferential (selling) prices.

The agreement may affect trade between Member States because it gives to a Belgian undertaking the exclusive right to supply Prym, which is liable to jeopardize freedom of trade between Member States in a manner prejudicial to the attainment of the objectives of a single market.

The circumstances therefore exist in which the prohibition contained in Article 85 (1) of the Treaty becomes applicable; and there are thus no grounds for the Commission to grant the negative clearance applied for, even in respect of the amended version of the agreement of 10 October 1972.

III

Article 85 (3) provides that the provisions of paragraph 1 may be declared inapplicable in the case of any agreement between undertakings which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

1. The agreement does not satisfy the provisions of Commission Regulation (EEC) No 2779/72 [1] of 21 December 1972 on the application of Article 85 (3) to categories of specialization agreements, since there is no reciprocal commitment by each of the parties to refrain, for the duration of the agreement, from the manufacture of certain products in order to entrust it to its partner, but only the unilateral commitment by Prym to cease its production of needles and transfer it to Beka.

Nevertheless, the concentration of manufacturing agreed on by Prym and Beka has, from the point of view of the improvement of production, favourable effects analogous to those of specialization; it causes an increase of at least 50 per cent in the quantity of needles to be manufactured in the Eupen factory, which makes it possible to make more intensive use of the existing plant and to introduce production-line manufacture.

This rationalization of production has in particular made it possible to reduce the very large proportion of labour costs in the producer's cost price. The producer's cost price of 'Standard' quality needles, which fell by some 20 per cent in 1970 after the concentration of production at Eupen, was still lower at the end of 1972 than in 1969 in spite of the increases in wages and in the cost of raw materials which had occurred during those four years. The introduction of mechanized production-line manufacture with increased productive capacity also makes it possible to manufacture articles of a more even quality.

2. The agreement allows consumers a fair share of the benefit resulting from it, as it must be supposed that because of the pressure of competition existing on the needle market the advantages resulting from rationalization will be passed on to consumers.

3. The agreement does not contain restrictions which are not indispensable to the attainment of the said advantages. The favourable effects of the agreement are due essentially to the improvement in productivity resulting from a more intensive utilization of productive capacity, and that more intensive utilization is only possible if the quantities of needles

[1] OJ No L 292, 29. 12. 1972 OJ Special Edition 1972 (28-30 December), December 1972, p. 80.

to be manufactured are, and are to remain, considerably larger than before. That being so, it is essential that Prym should enter into a commitment for a long period, not only to cease manufacture, but also to purchase all its requirements of needles for domestic sewing machines from Beka, so as to provide a guarantee for an increased output by the latter.

The long-term commitment by Prym to obtain its supplies exclusively from Beka thus represents an indispensable restriction if the favourable effects of the agreement are to be achieved and, moreover, maintained. That commitment, moreover, does not go beyond what is strictly necessary, since it allows Prym the possibility, in the event of Beka being unable to meet its commitments, of buying from other sources and since, in any case, Prym gets the benefit of preferential prices.

4. The agreement does not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. In the amended version in force since 10 October 1972 the agreement no longer prevents Beka and Prym from competing with each other on any EEC market, whether geographic or sectoral. Both undertakings rest exposed to the keen competition from other, sometimes larger, producers who appear as sellers within the EEC.

5. All the conditions necessary for the application of Article 85 (3) of the Treaty are thus fulfilled.

IV

In the form in which it was in force when notified to the Commission on 18 May 1972, the agreement did not fulfil the conditions necessary for the application of Article 85 (3), because its Article 4 contained clauses which had as their object the sharing of customers between the two parties within the common market.

In so far as they related to the EEC market, those clauses were annulled by the parties concerned on 10 October 1972; it is thus only as from that date that the conditions necessary for the application of Article 85 (3) have been fulfilled and a decision pursuant to Article 6 (1) of Regulation No 17 can take effect.

In specifying, as provided in Article 8 (1) of Regulation 17, the period for which such a decision shall apply, account should be taken of the fact that the favourable effects of the agreement are dependent on long-term collaboration between the two parties,

HAS ADOPTED THIS DECISION:

Article 1

The application for negative clearance in respect of their supply agreement of 11 August 1969, which was submitted on 9 April 1970 by the undertakings William Prym-Werke KG of Stolberg and SA Manufacture Belge d'Aiguilles Beka of Eupen, is rejected.

Article 2

Pursuant to Article 85 (3), Article 85 (1) of the Treaty establishing the European Economic Community is declared inapplicable to the agreement referred to in Article 1 in its version modified on 10 October 1972.

Article 3

The declaration in Article 2 takes effect from 10 October 1972; it shall apply until 31 December 1984.

Article 4

This Decision is addressed to the undertakings William Prym-Werke KG, Zweifallerstraße 5/7, Stolberg/Rhineland (Germany), and SA Manufacture Belge d'Aiguilles Beka, Hütte 77, Eupen (Belgium).

Done at Brussels, 8 October 1973.

For the Commission

The President

François-Xavier ORTOLI