COMMISSION DECISION

of 23 October 1975

relating to a proceeding under Article 85 of the EEC Treaty (IV/223 — Transocean Marine Paint Association)

(Only the English text is authentic)

(75/649/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 Regulation No 17 (1) of 6 February 1962, and in particular Article 8 thereof;

Having regard to the Commission Decision of 21 December 1973 (2) granting exemption to the Transocean Marine Paint Association until 31 December 1978 in accordance with Article 85 (3);

Having regard to the Judgment of the European Court of Justice of 23 October 1974 (3) which annulled Article 3 (1) (d) of the Commission Decision mentioned above;

Having considered the representations of the Association in accordance with Article 19 (1) of Regulation No 17 and Regulation No 99/63/EEC (4);

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 15 July 1975;

WHEREAS:

By the Decision of 21 December 1973 the Commission granted exemption to the Transocean Marine Paint Association until 31 December 1978 in accordance with Article 85 (3). Article 3 of the Decision provided that the Decision should be subject to the following obligations:

1. That the Commission shall be informed without delay of the following matters:
   (a) any amendment or addition to the Agreement;
   (b) any decision taken by the Board of Directors or the result of any arbitration held pursuant to the restrictive provisions of the Agreement, in particular Articles 3 to 9 thereof;
   (c) any change in the composition of membership;
   (d) any links by way of common directors or managers between a member of the Association and any other company or firm in the paints sector or any financial participation by a member of the Association in such outside companies or firms or vice versa including all changes in such links or participations already in existence.

2. A report is to be submitted by the Association annually to the Commission on the activities of the Association and in particular on improvements achieved in the production and marketing of marine paint products.

The European Court of Justice on 23 October 1974 annulled Article 3 (1) (d) of the Commission's Decision in this case for breach of procedural requirements and referred the case back to the Commission (Case 17/74).

The Court nevertheless confirmed that the Commission must be in a position at any time to verify that the conditions justifying the exemption are still present.

In granting its exemption the Commission considered *inter alia* that the members of the Association are medium-sized undertakings faced with genuine competition from other larger marine paint producers, that the contractual commitments of the members relating to the Association are limited to indispensable restrictions and that the market share of the Association members does not present any opportunity to restrict competition significantly in the marine paint sector.

In accordance with the provisions of Article 8 (1) of Regulation No 17, the Commission must be regularly informed of any links between Association members and between an Association member and any other paint enterprise where such other paint enterprise does business within the common market in order to be able to verify whether, having regard to Article 8 (3) (a) of Regulation No 17, there has been a change in any of the facts which were basic to the making of the Decision.

In the view of the Commission the duty to provide information concerning links between Association

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No L 19, 23. 1. 1974, p. 18.
(3) Reports of Cases, 1974 to 1976, p. 1063.
(4) OJ No 127, 20. 8. 1963, p. 2268/63.

members and outside enterprises cannot be limited to the marine paint sector alone, but rather must extend to links with enterprises in the paint sector as a whole. All Association members manufacture not only special marine paint products but also other paints. At least 20 % of all the marine paints can be used in other paint fields. Moreover certain parts of a ship (e.g. the interior) can be treated with other paints. A paint manufacturer is capable of extending his production in a relatively short time to the marine paint sector. Links between an Association member and an undertaking in the general paint sector are therefore capable of having an influence on the competition situation in the marine paint sector.

On the other hand, the obligation is to be limited to links with such enterprises as carry on business within the Community in the paint sector, that is to say those which do business in one or several Member States, directly or through subsidiary undertakings or by means of a joint venture.

A link shall be regarded as existing between two enterprises where there is a 25 %, financial participation or where there are interlocking directorships or managements between one undertaking and another, irrespective of whether the Association member has an interest in the other undertaking or vice versa. Changes in such links must also be notified.

The duty of providing the information specified is imposed on each existing Association member, in whose favour the exemption was granted, and also on any future members who may subsequently benefit from it by joining the group. The Commission will continue to accept notifications made by the Central Office on behalf of individual members. However, such notifications must be complete and the Commission will not accept the failure of the Central Office to make such complete notification due to lack of information as exonerating the individual firms from the obligation hereinafter imposed,

HAS ADOPTED THIS DECISION :

Article 1

Article 3 (1) (d) of Commission Decision No 74/16/EEC of 21 December 1973 is replaced by the following :

'(d) Any link and any changes in such links, present or future, constituted by means of a financial participation amounting to 25 % or more of the share capital by way of common directors or managers

(aa) between members of the Association, or

(bb) a member of the Association and another enterprise in the paint sector, provided that such non-member carries on business directly or indirectly within the Community in the paint sector, that is to say undertakes business in one or more Member States directly or through a subsidiary undertaking or by means of a joint venture.'

Article 2

This Decision is addressed to the members of the Transocean Marine Paint Association through the intermediary of its Secretary-General, Mr F. Th. Regnault, Delftse Plein 37, Rotterdam, the Netherlands.

Done at Brussels, 23 October 1975.

For the Commission

A. BORSCHETTE

Member of the Commission