COMMISSION DECISION

of 20 December 1974

relating to proceedings under Article 85 of the EEC Treaty (IV 26.872 — SHV/ Chevron)

(Only the Dutch and French texts are authentic)

(75/95/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 85 and 86 thereof;

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

Having regard to the application for negative clearance and, failing that the notification made on 21 December 1970 by Steenkolen-Handelsvereeniging NV (SHV), Utrecht, and by Chevron Oil Europe Inc. (Chevron), incorporated under the laws of the State of Delaware, USA, with its head office in New York, USA, and an office in Brussels;

Having regard to the purpose of the application, which is to have the Commission declare that it has no grounds for taking action, under Article 85 (1) of the Treaty of Rome, in respect of the general cooperation agreement concluded between these two companies on 22 October 1969, as amended and supplemented on 24 December 1969 and further amended by letter of 21 May 1973, or in respect of the specific national agreements submitted to the Commission which derive from the general agreement;

Having regard to the notice published pursuant to Article 19 (3) of Council Regulation No 17 in *Official Journal of the European Communities*, No C 111 of 18 December 1973, page 11;

Having regard to the Opinion of 25 April 1974 obtained from the Advisory Committee on Restrictive Practices and Monopolies pursuant to Article 10 of Regulation No 17;

Whereas:

I

The main points of the agreement as they appear from the present text of the cooperation agreements deriving therefrom are as follows:

— under the cooperation agreement, Chevron and SHV have set up through a joint holding company incorporated under Dutch law called Calpam NV, jointly and equally owned subsidiaries also called Calpam, to sell the products covered by the agreement in Belgium, the Netherlands, Luxembourg, Germany and Denmark, where Chevron and SHV hitherto had independent distribution networks;

— they have vested in the Calpam subsidiaries for at least 50 years their distribution networks and all assets relating thereto (plant, equipment etc.).

The general cooperation agreement and the specific agreements forming a Calpam subsidiary for each country involve the following products (except in Germany): paraffin oil (kerosene), household fuel, industrial fuel, asphalt and marine fuels and lubricating oils.

In Germany the agreements for the time being only cover marine fuels and lubricating oils.

The Calpam joint subsidiaries are supplied by the various subsidiaries of Chevron under non-exclusive supply contracts.

For the petroleum products listed above which are distributed by the joint subsidiaries, the signatory companies each agree not to compete against the other without the prior consent of the other.

The price of asphalt sold by the Calpam subsidiaries is fixed by Chevron.

Following the publication pursuant to Article 19 (3) of Regulation No 17, the Commission has received no observations from third parties which might lead it to change its views.

II

The agreements described above involve a lasting change in the structures of the companies involved and above all in that of SHV.

SHV ceases to do business as an independent wholesale buyer of petroleum products.

SHV and Chevron cease to retail the relevant products separately.

(1) OJ No 13, 21. 2. 1962, p. 204/62.

Most of the other aspects of the agreement suggest that what is really happening is that the distribution side of Chevron's and SHV's business is being integrated into the new trading structure of the Calpam subsidiaries.

The Calpam subsidiaries are formed for a period lasting until 31 December 2019.

This suggests that the assets in question are to be transferred permanently to the Calpam subsidiaries.

For both Chevron and SHV this brings about a real concentration between each of them and their joint subsidiaries, confined to the distribution of the products specified by the agreement.

Chevron, with its subsidiaries other than the Calpam subsidiaries, remains a member of an integrated international petroleum group (Standard Oil of California — Socal) whose activities include crude oil production, oil refining and distribution, petrochemicals and manufacture of fertilizers.

SHV, although associated with other companies in exploration, possesses no refineries and does not constitute a petroleum group. SHV does have interests in coal distribution, chain stores and transport.

The cooperation agreement contains no clause restricting competition between Chevron and SHV in areas other than those covered by the Calpam joint subsidiaries.

As regards distribution of the products covered by the agreement, Chevron and SHV have each agreed not to compete with the other without the prior consent of the other. This clause provides SHV with the assurance that the assets transferred by it to the joint subsidiaries will not lose value as a result of competition by Chevron with those subsidiaries. In view of the fact that Chevron has no industrial or commercial interest which could imaginably lead it to compete with its own 50 % - owned subsidiaries, and given also that SHV will disappear as an independent wholesaler on the petroleum product market, with no likelihood of ever returning, the clause in question cannot be said to involve an appreciable restriction of competition.

The foregoing analysis is not affected by the fact that SHV, which jointly with other companies holds exploration licences for the North Sea, might come into possession of crude oil, since SHV's freedom to sell its crude oil to any buyer is unlimited.

The parent companies had included a clause whereby they agreed not to compete in respect of petroleum products not distributed by the Calpam subsidiaries, i.e. lubricating oil, diesel fuel and petrol in the Benelux area and Denmark, this clause was considered by the Commission to be caught by Article 85 (1); the parent companies informed the Commission by letter of 21 May 1973 that the clause had been deleted from their cooperation agreement.

The fact that Chevron fixes the prices of asphalt sold by the Calpam subsidiaries does not constitute a restriction of competition in violation of Article 85 (1) since in fact asphalt was previously sold only by Chevron.

Hence, the operation does not constitute an infringement of Article 85 (1), so that negative clearance may be granted pursuant to Article 2 of Regulation No 17.

Finally, Chevron's and SHV's shares of the relevant market in the products in question (a substantial part of the common market) do not give either of the undertakings a dominant position, so the agreement does not require investigation under Article 86,

HAS ADOPTED THIS DECISION :

Article 1

The Commission declares that, on the basis of the facts in its possession, it has no grounds for action under Article 85 (1) of the Treaty establishing the EEC in respect of the agreement concluded between Sttenkolen-Handelsvereeniging NV and Chevron Oil Europe Inc. on 22 October 1969, as amended and supplemented on 24 December 1969 and further amended by letter of 21 May 1973, or of the specific national agreements submitted to the Commission which derive from the general agreement.

Article 2

This Decision is addressed to Steenkolen-Handelsvereeniging NV, Rijnkade 1, Utrecht, and to Chevron Oil Europe Inc., Boulevard du Jardin Botanique 44, Brussels.

Done at Brussels, 20 December 1974.

For the Commission

The President

François-Xavier ORTOLI