II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 December 1977

relating to proceedings under Article 85 of the EEC Treaty (IV/26.437 — Jaz-Peter)

(Only the French and German texts are authentic)

(78/194/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 of 6 February 1962 [1] and in particular Articles 6 and 8 thereof,

Having regard to the notification made on 20 March 1967 pursuant to Article 4 (1) of Regulation No 17 by the French company Jaz SA (Jaz) of Paris, concerning a specialization and reciprocal supply agreement in timepieces made on 11 January 1967 between Jaz and the German company Peter-Uhren GmbH (Peter) of Rottweil,

Having regard to the Decision of 22 July 1969 [2] in which the Commission made, in favour of Jaz and Peter, a Decision applying Article 85 (3), valid until 10 January 1977,

Having regard to the requests for renewal of the Decision applying Article 85 (3) made respectively by Jaz on 22 December 1976 and Peter on 18 January 1977,

Having published pursuant to Article 19 (3) of Regulation No 17, in *Official Journal of the European Communities* No C 249 of 18 October 1977, the essential content of the agreement for which the request for a renewal of the Decision applying Article 85 (3) was made,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions, delivered pursuant to Article 10 of Regulation No 17, on 9 November 1977,

I. The facts

1. The contents of the agreement are as follows:

(a) In order to increase the productivity of their installations and to obtain a reduction in the cost price of their watches and clocks, the companies Jaz and Peter agreed, in an agreement of 11 January 1967 of unlimited duration, to concentrate their principal manufactured lines, so that Peter would specialize in the manufacture of large mechanical alarm clocks and Jaz would specialize in pendulum clocks and and electric alarm clocks while both would continue to manufacture other articles, namely so-called 'fancy' mechanical alarm clocks and stopwatches.

(b) By this agreement each of the parties also undertook:

— to supply in the country of its partner its special products, together with their spare parts, exclusively to its partner, Jaz, however,

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No L 195, 7. 8. 1969, p. 5.

being entitled to continue to supply direct three old German customers. Peter's obligation to supply Jaz on the French market also covers its stopwatches. A delivery programme to be drawn up every six months lays down *inter alia* the minimum quantities of the products allocated to these reciprocal deliveries; for these products the parties are required to grant each other prices no greater than the most favourable prices which they ask of third parties, in the same circumstances, for identical or analogous articles;

— to exchange their know-how, particularly in the technical field, and to consult each other on all common problems by means of a cooperation committee specially set up for the purpose;

— not to buy from third parties for resale in its territory articles of the same nature as those allocated to the reciprocal deliveries and which it can obtain from its partner;

— to grant to its partner a priority right for the exclusive sale on the latter's territory of new articles which it proposes to manufacture and market whether or not such articles are specialized;

(c) The contract concluded between the parties also contains detailed provisions relating to the time limit for payment, the burden of risk, the rights of guarantee, freight costs, arbitration procedure, and termination.

2. In order to appreciate the effects of the agreement, the following points should be borne in mind:

(a) Each party freely fixes the sales prices both of its own products and of those supplied by its partner. Neither of the parties prohibits its partner from re-exporting articles which it has supplied to it or imposes export prohibitions at the various stages of resale. Jaz and Peter retain their freedom as regards their exports outside France and Germany, and for these exports they are even entitled to buy electric movements and large mechanical alarms from other manufacturers.

(b) The types of clock covered by the agreement are marketed within the common market by a large number of undertakings. In particular, in Germany there are about 10 manufacturers of such articles, including at least three undertakings or groups of undertakings which are larger than Peter as to capital, turnover and workforce. Although Jaz is the most important French manufacturer of large clocks, with a market share exceeding 25 %, its sales of mechanical and electric alarm clocks nevertheless amount to less than 8 % of sales of these articles in the common market. Imports into France and Germany of clocks from non-member States, including certain Eastern European countries, Japan and Switzerland, which have recently come to play a considerable part, are very large.

(c) In order to facilitate such marketing, the articles manufactured by Peter at Rottweil and delivered to Jaz bear Jaz trade marks while those manufactured by Jaz at Colmar and delivered to Peter bear Peter trade marks, so that each of the parties is able to benefit from the reputation of its partner's trade marks on the latter's market while continuing to sell under its own marks on its national market the whole range of clocks and watches. The undertaking under whose trade mark the articles are sold takes on the normal guarantees to the purchaser; to that end, its partner makes available to it an adequate stock of parts.

As regards the size of supplies passing between the two companies, it should be mentioned that Jaz delivers to Peter an average 20 % of its annual production of electric movements and that Peter delivers to Jaz annually 30 to 40 % of its production of large mechanical alarm clocks and 5 to 10 % of its production of stopwatches.

(d) As part of the cooperation set up between them and with the assistance of the cooperation committee created for that purpose, the parties regularly exchange information and hold on-site inspections with a view to improving the manufacturing and packaging methods and make sure that the specialized articles to be supplied by the partner meet the quality requirements of the market for which they are intended. Also, they examine jointly the possibilities of new investments, particularly regarding the automation of production, and they arrange exchanges of staff in the form of training courses with the aim of forming an increasingly specialized labour force.

(e) In the period of 10 years during which the agreement has been in force both parties have manufactured their specialized products in much larger quantities. Production by Jaz of pendulum clocks and electric alarm clocks has more than quadrupled and for Peter production of large mechanical alarm clocks has increased by two and a half times. New investments have been made which have allowed considerable improvements in the quality of the products and for certain articles a reduction in retail prices both on their respective domestic markets and for exports to other countries in the common market.

3. Following the publication of the essential part of the contents of the agreement in the *Official Journal of the European Communities*, no observations have been received by the Commission from other parties.

II. Applicability of Article 85 (1)

4. For the reasons already set out in the Decision of 22 July 1969, the agreement in question may affect trade between Member States and has as its object or effect the restriction of competition within the common market, in so far as each of the parties has undertaken :

(a) to give up manufacturing, for the duration of the agreement, timepieces in the manufacture of which its partner specializes ;

(b) to supply its specialized articles for sale on the territory of its partner exclusively to the latter, at its most favourable prices and bearing the trade mark of its partner, in consideration for the latter's obligation to take delivery of minimum quantities in accordance with a half-yearly programme ;

(c) not to buy from third parties for resale on its territory articles of the same nature as those reserved for the reciprocal delivery and which it can obtain from its partner ;

(d) to grant to its partner a right of priority for the exclusive marketing of new articles which it proposes to manufacture and distribute.

III. Applicability of Article 85 (3)

5. The provisions of Commission Regulation (EEC) No 2779/72 of 21 December 1972 concerning the application of Article 85 (3) of the Treaty to categories of specialization agreements [1], which was made after the Decision of 22 July 1969, are not applicable to the present agreement because the market shares of one of the parties in one Member State exceeds that fixed by Article 3 of the Regulation. It must therefore be examined whether or not a decision to renew the exemption can be taken.

6. The agreement continues to fulfil the conditions required for the application of Article 85 (3) for the following reasons :

(a) The agreement allows each of the parties to concentrate entirely on manufacturing those products for which it has bigger and better manufacturing facilities than its partner, taking into account its technical equipment and its experience. Each can thus manufacture in much greater quantities the articles in which it specializes. Jaz is now producing four times as many alarm clocks and electric pendulum clocks as it did 10 years ago before the agreement. Peter's production of large mechanical alarm clocks has increased by 250 % over the same period. This concentration and development of production means not only a better use of the industrial plant available to each, and hence a reduction in the unit cost of manufacture of the specialized products, but also the elimination of the burdens which result from maintaining previous non-profitable or less-profitable manufactures. Furthermore, the obligation agreed upon to make reciprocal exclusive supplies gives each party the certainty of being able to depend upon minimum orders from its partner, thereby facilitating the preparation of its manufacturing programme. It also enables them, in spite of their specialized manufactures, to continue to offer for sale a complete range of mechanical and electrical timepieces in all price ranges.

All these advantages both for production and distribution have led to an appreciable increase in the competitiveness of both Jaz and Peter, which in turn has led to a considerable expansion in the two undertakings' sales in Community and third country markets. In 10 years Jaz's turnover has more than quadrupled. Over 20 % of its turnover is now found in non-domestic markets whereas in 1967 this company exported only 10 % of value of production. The expansion has been less rapid for Peter but the German company has been able, during the same period, to increase its turnover by 170 %.

The combined effects of the technical cooperation and of the investments, which have, through economies of cost, been able to be developed in the field of research, have also enabled the two undertakings to achieve substantial improvements in the quality of their products. The degree of precision in mechanical and particularly electrical movements attained by Jaz and Peter has increased considerably over 10 years and includes the use of electronic components and quartz synchronization devices. In addition numerous technical refinements (repeating alarms, digital numerical displays, movements governed by tuning fork vibrations) have been added to the various products manufactured. It is clear, therefore, that the overall effect of the agreement has not only been an improvement in production and distribution but also the promotion of technical progress.

[1] OJ No L 292, 29. 12. 1972, p. 23.

Peter's obligation to deliver its stopwatches exclusively to Jaz for sale on the French market has also involved an improvement in distribution. It should be emphasized that Peter's stopwatches cannot, by reason of their style of manufacture as well as their price level, be considered as competing with those which Jaz continues to manufacture in much more restricted amounts. The stopwatches manufactured by Jaz, which have a logarithmic movement, are in a price range which is clearly higher than Peter's models, which have a running-type movement. The fact that Jaz has taken over the sale of Peter's stopwatches under its own trade marks has allowed it to offer to French purchasers, through its numerous sales outlets in France, a complete range of timepieces of this type. A substantial increase can be discerned in the sale of Peter's stopwatches on the French market as compared with the period preceding the agreement.

(b) The competition on the Community market in timepieces, due to the large number of undertakings operating in the Member States and to the pressure from imports from non-member States, has ensured that Jaz and Peter could not solely appropriate for their own profits the cost economies which result from the agreement. By offering increasingly large quantities of improved articles of high quality at competitive prices, the two undertakings have been able to afford consumers a fair share of the resulting benefit. Jaz and Peter's price evolution demonstrates that not only have the prices of some current quality articles been reduced and for the most part have remained unchanged for periods of several years but also that the increases in respect of improved articles have generally been lower than the general rate of price increases. For these reasons it may be concluded that the agreement will continue to afford consumers a fair share of the resulting benefit in the future.

(c) The agreement does not contain any restriction which is not indispensable to the attainment of the objectives sought :

— unless each party had given up manufacturing the articles in which its partner specializes, the desired increase in productivity would not have been possible, since it stems from the specialization itself ;

— the obligation to supply under the partner's trademarks and to take delivery of minimum quantities gives to each of the parties a guarantee that not only will it put on to the market, in its partner's country, given quantities of the articles which it will then be alone in manufacturing because of the specialization, but also that it will itself be able to take the whole benefit from the sale in its own country of the specialized articles of its partner. Jaz and Peter could not reasonably be expected, without such guarantee, to take the risk of concentrating each on certain manufactures and making new investments to increase their production of specialized articles and to improve the quality thereof ;

— the increase in productivity by increasing the quantities produced as specialized articles, which is the main object of the agreement, is achieved in the present case by the withdrawal by each of the parties in favour of its partner, in the sector in which the latter has specialized, from those areas of production and of the market in which it was previously engaged. This objective can only be attained if each of the parties abstains from purchasing from third parties the articles which it needs to complete its range and which it can obtain from its partner ;

— the reciprocal concession of a priority right to market new articles which the parties propose to manufacture and distribute has never been applied since the agreement came into force. However, this must be considered as indispensable to achieve the improvement in production and the promotion of technical progress to which the agreement contributes. The development of an ever-closer collaboration between the parties, particularly in the field of joint research and exchange of information, would be imperilled if they had not agreed from the outset to be able by these means to participate within certain limits, in their respective territories, in the benefits which the partner could derive, by reason of the specialization, from the perfecting and sale of any new products.

(d) There are in the countries of the common market numerous manufacturers of timepieces capable of competing effectively with Jaz and Peter in their respective markets. Considerable imports, particularly from Japan, Switzerland and the Eastern European countries, are regularly made into France and Germany. The middle-man trade is always in a

position to make parallel imports. Jaz and Peter remain free to export under their own trade marks out of Germany and France and they are at liberty to buy from other manufacturers for resale outside Germany and France. Consequently, although the agreement puts the parties in a position to increase their market share within the EEC, a rather large share in the case of Jaz, it does not however afford them on the whole the possibility of eliminating competition in a substantial part of the products in question.

7. Consequently, the Commission Decision of 22 July 1969 can, under Article 8 (2) of Regulation No 17, be renewed since all the requirements for the application of Article 85 (3) of the Treaty continue to be met.

IV.

8. The duration of validity of the Decision to be renewed under Article 8 (2) of Regulation No 17 should be sufficiently long to permit the parties to continue to develop the cooperation created between them, before there is a new assessment of the agreement in the light of Article 85,

HAS ADOPTED THIS DECISION :

Article 1

The Decision applying Article 85 (3) of the Treaty establishing the European Economic Community adopted by the Commission on 22 July 1969 for the period to 10 January 1977 and concerning the agreement of 11 January 1967 between the undertakings Jaz SA of Paris and Peter Uhren GmbH of Rottweil is hereby renewed until 10 January 1987.

Article 2

This Decision is addressed to the undertakings Jaz SA of Paris, France and Peter-Uhren of Rottweil, Baden, Germany.

Done at Brussels, 23 December 1977.

For the Commission

Raymond VOUEL

Member of the Commission