COMMISSION DECISION

of 23 October 1978

relating to a proceeding under Article 85 of the EEC Treaty (IV/1.576 — Zanussi)

(Only the Italian text is authentic)

(78/922/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 2, 5 and 7 thereof,

Having regard to the notification to the Commission made on 28 January 1963 in accordance with Article 5 of Regulation No 17 concerning the exclusive dealing agreement for Belgium with Ets. Freddy Crion, Brussels, and, following termination of this agreement in 1971 when Industrie A. Zanussi SpA formed its own sales subsidiaries in the common market, the guarantee terms applied in the new distribution system,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 (2),

Having regard to the summary of the notification published pursuant to Article 19 (3) of Regulation No 17 in *Official Journal of the European Communities* No C 313 of 29 December 1977,

Having regard to the opinion delivered on 25 May 1977 and 14 February 1978 by the Advisory Committee on Restrictive Practices and Dominant Positions in accordance with Article 10 of Regulation No 17,

Whereas :

I. THE FACTS

1. The Zanussi Group (Zanussi), which is headed by Industrie A. Zanussi SpA, Pordenone, Italy, is in business chiefly in the domestic electrical appliances industry, manufacturing refrigerators, cookers, dishwashers, washing machines and television sets. In 1976 Zanussi recorded sales totalling around 525 million units of account and employed approximately 30 000 personnel on production in this field in Italy. The appliances are sold in Italy through wholesalers and are imported into the other common market countries by the following Zanussi Group companies :

— IAZ International France SA (IAZ France), Montreuil, France,

— IAZ International Belgium SA (IAZ Belgium), Lembeek, Belgium,

— IAZ International UK Limited (IAZ UK), Caversham, United Kingdom,

— IAZ Elektrovertrieb Deutschland GmbH (IAZ Deutschland), Frankfurt-am-Main, Federal Republic of Germany,

— IAZ International Denmark AS (IAZ Denmark), Tinglev, Denmark,

— IAZ International Nederland BV (IAZ Netherlands), Alphen a/d Rijn, which on 1 January 1977 took over from Verkoopmaatschappij Marijnen BV, Rijswijk, and afterwards from Verkoopmaatschappij Zanussi BV, Alphen, and from Zoppas Nederland BV, Woerden, which had previously been importing Zanussi appliances.

2. Zanussi's output of domestic electrical appliances is about 3·8 million units annually, half being exported ; about three quarters of all appliances exported go to common market countries. Zanussi holds sizeable market shares for the relevant appliances in the Community countries, with refrigerator market shares of approximately 25 % in Italy, 15 % in Belgium and 10 % in the Netherlands, a washing machine market share of some 20 % in Denmark and a dishwasher market share of about 25 % in Italy. With the exception of IAZ UK and IAZ Belgium, which also handle the Irish and Luxembourg markets respectively, the sales subsidiaries import Zanussi appliances only into their own Member State. At the next stage of distribution, Zanussi appliances throughout the Community are marketed by dealers (wholesalers, retailers and department stores), who are all allowed by Zanussi, without exception, to resell wherever they wish within the common market at prices which they themselves set.

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 127, 20. 8. 1963, p. 2268/63.

3. Zanussi appliances are distributed in the Community under different trademarks, including Zanussi, Rex, Castor and Zoppas. Their technical characteristics often differ according to the country in which they are to be sold. These differences, which concern matters such as wiring, amperage plugs, closing devices and others, flow chiefly from differences in the regulations applied in the Member States to ensure safety in the use of electrical equipment or compliance with other standards for their operation.

4. Zanussi gives Community users a guarantee according to which, during a limited period, it will carry out certain operations free of charge in the course of the after-sales service scheme which it has set up in the common market. Although they sometimes differ from country to country and from appliance to appliance, guarantee services mainly concern mechanical parts of Zanussi appliances and consist in repairing or replacing defective parts without charge and in supplying the required labour.

5. Until May 1977 guarantee service from Zanussi in the different Community countries was provided through the dealers, who, when they sold the appliance, were obliged to give the user the relevant guarantee certificate, having filled in their name and the date of sale. Among the conditions on the guarantee certificate were the following :

(a) the user of a Zanussi appliance was entitled to service under guarantee only from the Zanussi subsidiary which imported the appliance ;

(b) guarantee service was refused when the appliance had been used in a country other than that into which it was originally imported by the local subsidiary ;

(c) guarantee service was also refused when the appliance had been modified, or when alterations had been carried out by persons not approved by the local subsidiary.

6. When the Commission informed Zanussi that the restrictions contained in the terms of its guarantees in the Member States were incompatible with Article 85 of the Treaty, the company decided to change its guarantee scheme to make it consistent with the rules on competition yet still conform to local technical and safety standards for electrical appliances. In May 1977, therefore, it instructed its subsidiaries to provide guarantee services for all Zanussi appliances regardless of their origin, pending the introduction of a new and more comprehensive guarantee scheme which would no longer be incompatible with Article 85. On 11 October 1977 Zanussi notified to the Commission the new terms on which, from 15 February 1978, it would provide its guarantee service to purchasers in the Community.

These are as follows :

1. in the Community, Industrie A. Zanussi will guarantee all appliances which it has manufactured and which are distributed under any of its trademarks for sale in a Community country ;

2. after-sales service under guarantee will be provided by the Zanussi subsidiary in the Community country where the appliance is used on the terms applied locally by that subsidiary ;

3. after-sales service under guarantee may be refused :

   (a) if the appliance is defective by reason of its having been installed and/or used in a manner inconsistent with technical and safety standards in the country where the guarantee is claimed,

   (b) if the appliance has not been used for normal purposes or has not been used in accordance with the manufacturer's requirements and instructions ;

4. after-sales service under guarantee may also be refused if any adjustment or adaptation has been made to the appliance other than properly executed adjustments required to make it conform to the technical and safety standards in force in the country where the claim under the guarantee is made ;

5. any adjustments to meet technical and safety standards which may be required to ensure that the appliance works properly may be made by the local Zanussi subsidiary or by a qualified person capable of carrying them out properly. The full costs of adjusting the appliance will be charged to the user ; if the Zanussi subsidiary carries out the work, such work will be invoiced on the terms applying in the place where the adjustment is requested and made.

These terms, translated into the several Community languages, are printed on the guarantee certificates provided by Zanussi through its dealers, who are required, on delivery of the gooods, to hand over either the completed and signed certificate (as in the

case of Denmark, Italy and the United Kingdom) or (in the other Member States) a form attesting to the purchase and entitling the customer to apply for a guarantee certificate from Zanussi.

7. No comments from other interested parties have been received following publication of the notice summarizing the notified agreement and stating the Commission's intention to give negative clearance in respect of that agreement.

II. THE LEGAL POSITION

A. Article 85 of the EEC Treaty

8. Article 85 (1) of the Treaty establishing the EEC prohibits as incompatible with the common market all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

9. The guarantee which the Zanussi Group gives the user is incorporated in the supply contracts which Zanussi has entered into or will in future enter into with the dealers who resell its domestic electrical appliances in the common market. The main object of these contracts, from the manufacturer's point of view, is the sale of Zanussi appliances to each dealer; the dealers are, however, also obliged, when retailing the appliance to the customer, to include the manufacturer's guarantee. Consequently, the contracts in question are agreements between undertakings which, in so far as the conditions of guarantee contain restrictions on competition, fall within the prohibition contained in Article 85 of the EEC Treaty.

(a) *Restrictive nature of the guarantee scheme in force until May 1977*

10. The effect of the pre-May 1977 guarantee scheme was to restrict or distort competition within the common market, since the user could only seek service under the Zanussi guarantee from the subsidiary which imported the applicance into its own Member State; Zanussi was released from its obligation to provide guarantee service if the appliance was used in a Member State other than that in which the importing subsidiary was established. The result was that Zanussi dealers were placed in an artificially disadvantageous competitive situation *vis-à-vis* other firms which also distributed Zanussi appliances, or similar appliances of other brands, when in their own country they resold Zanussi appliances bought elsewhere in the Community or when in another Member State they resold a Zanussi appliance bought in their own country, since in these users could not benefit from the Zanussi guarantee.

The clause laying down that the user's right to claim the guarantee and the manufacturer's obligation to provide it ceased to exist if the appliance had been adjusted in any way or had been altered by somebody who had not been authorized to do so by the importing subsidiary also restricted competition within the common market, since it prevented dealers who planned to import or export from making the appliance conform to safety and technical standards in other Member States, when it was essential to comply with these in order to sell the appliances.

These restrictions on free competition were all the more appreciable as they directly affected the interests of the consumer by substantially confining the scope of the the free after-sales service, to which the user attaches particular importance in relation to these appliances.

11. The guarantee scheme was likely to affect trade between Member States since it could reduce or at any rate appreciably distort Community inter-State trade in Zanussi appliances. Free after-sales service for Zanussi appliances is of great importance to the user on account of the position of these appliances in relation to supply and demand within the common market.

12. Article 85 (3) could not be applied to the agreements in the original guarantee scheme. Admittedly, the Zanussi guarantee meant that service could be provided free of charge, so that the appliances could be used in optimum technical conditions to the benefit both of users and of dealers. But the offending clauses caused each dealer to confine his business to his own Member State. By discouraging dealers from expanding their business beyond the confines of the national competitive arena, the agreements prevented the latest design and technical improvements available in certain Member States from becoming available throughout the common market. Even admitting that the agreement did have certain beneficial effects, there was no evidence of the consumer being allowed a fair share of the resulting benefits. The freedom of users to acquire Zanussi appliances where they wished in the light of varying terms of sale, and particularly as regards guarantees, was directly attacked. At any rate it

could not be accepted that the restrictions imposed by Zanussi were indispensable to the smooth operation of the guarantee scheme, since their effect was to prevent or hinder the performance of guarantee service where inter-State trade was handled by firms that were not Zanussi subsidiaries.

13. The argument which was put forward as justification of the scheme, and which could not be accepted, was that the differences between technical and safety standards in the various Member States were so great that domestic electrical appliances, including those made by Zanussi, had to be manufactured to such dissimilar specifications that they could not be distributed anyway in a country other than where they conformed to the technical and safety standards and hence there could be no movement in these goods between Member States.

However, even admitting that these differences did constitute an obstacle to free movement, this could not justify the incorporation of the standards in question into the dealers' contracts in such a way (here by the provision for the termination of the guarantee) as to aggravate this obstacle; moreover, for the appliances in question the differences between the effectively binding technical and safety standards in force in the Member States were not so great as to prevent the movement of the goods across national frontiers or, more generally, to eliminate the economic advantages which third parties might gain from exporting or importing once the necessary adjustments had been made.

(b) *Non-restrictive nature of the guarantee scheme introduced in May 1977 and consequent inapplicability of Article 85*

14. The guarantee scheme introduced by Zanussi on a temporary basis in May 1977, subsequently confirmed in the certificates issued after 15 February 1978, no longer has the effect of restricting competition within the common market; the agreements between Zanussi and its dealers are therefore no longer caught by the prohibition in Article 85 (1) of the Treaty.

The new general terms of guarantee printed on the certificates, which are now the same for the different Member States, entitle users to service under guarantee from Zanussi anywhere inside the Community, regardless of where they first bought their appliance or where it is being used.

The fact that guarantee service will be provided on the terms locally applied by the Zanussi subsidiary in the State where the appliance is used, and not on the terms pertaining in the country where the appliance is bought, does not constitute a discrimination between Zanussi appliances sold by that subsidiary and appliances retailed by other subsidiaries.

The new terms of guarantee will henceforth allow dealers and users to adapt their appliances, or have them adapted, so that they will conform to the technical and safety standards of the country where they are used, without the Zanussi guarantee thereby being invalidated. These adjustments, moreover, can be done either by Zanussi or by any qualified person who is capable of carrying them out correctly. Thus a Zanussi appliance which has been imported into a Member State and then adapted by the importer himself to conform to the local technical and safety standards will continue to be covered by guarantee.

The current guarantee scheme is no longer such, therefore, as to discourage dealers from importing Zanussi appliances from, or exporting them to, other Member States. Neither does it tend to dissuade the user from buying a Zanussi appliance in some other Community country from that in which the appliance will be in use.

The Commission is therefore able to issue a negative clearance within the meaning of Article 2 of Regulation No 17 for the new guarantee scheme introduced by Zanussi, as this no longer contains anti-competitive clauses which may affect trade between Member States.

B. Article 7 (1) of Regulation No 17

15. As a result of the amendment of the conditions of guarantee, the agreements entered into by Zanussi and its dealers in the Community satisfy the tests of Article 7 (1) of Regulation No 17. These conditions, which existed at the date of entry into force of the Regulation (13 March 1962) and had been notified in respect of a standard form of contract between Zanussi and Ets. F. Drion. Brussels, did not satisfy the tests of Article 85 (3); they have however, now been changed in such a way that the relevant agreements are no longer caught by the prohibition in Article 85 (1). This prohibition can only apply, therefore, for a period to be determined by the Commission.

16. For the reasons set out below the prohibition in Article 85 (1) may be declared inapplicable to the agreements at issue for the whole period before this Decision comes into force :

(a) during the proceedings Zanussi actively cooperated with the Commission in seeking the best way of altering its guarantee scheme to make it compatible with the Community rules on competition and at the same time with the manufacturing, marketing and service requirements imposed by technical and safety standards which vary from one Community country to another ;

(b) before new terms of guarantee, which were completely satisfactory, had been finalized, Zanussi on its own initiative introduced temporary measures designed to remove the main restrictions in its previous scheme,

HAS ADOPTED THIS DECISION :

Article 1

On the information at its disposal, the Commission considers that it has no cause to intervene pursuant to Article 85 (1) of the Treaty establishing the European Economic Community with regard to the supply contracts between Industrie Zanussi SpA and its dealers in household electrical appliances, which contracts include the new conditions of guarantee which Zanussi has decided to apply within the Community from 15 February 1978.

Article 2

Pursuant to Article 7 (1) of Regulation No 17, the prohibition contained in Article 85 (1) of the EEC Treaty is declared inapplicable to the supply contracts containing the terms of guarantee formerly operated by the Zanussi Group within the European Economic Community for the period 13 March 1962 to 14 February 1978.

Article 3

This Decision is addressed to Industrie A. Zanussi SpA, Pordenone, Italy.

Done at Brussels, 23 October 1978.

For the Commission

Raymond VOUEL

Member of the Commission