II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 January 1979

relating to an investigation on the basis of Article 14 (3) of Council Regulation No 17 at the undertaking Fides, Milan (Case AF/IV/372)

(Only the Italian text is authentic)

(79/253/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 Article 14 (3) thereof,

Having consulted the Ministry for Industry, Trade and Craft Trades, Rome, the competent authority within the meaning of Article 14 (4) of Regulation No 17,

Whereas :

There are adequate grounds for presuming the existence of agreements between ... [2], manufacturers in different Member States, the purpose of which is to fix prices and uniform terms of sale on the Italian market and to share out among Italian manufacturers the types and volume of ... manufactured ;

On 13 June 1977 Mr Vouel, Member of the Commission with special responsibility for competition policy, ordered investigation to be made at various firms, pursuant to Article 14 of Regulation No 17 ;

The Commission has precise, corroborative information in its possession that Fides, Unione Fiduciaria, with headquarters at via Vittor Pisani 22, Milan, has been appointed to perform, on behalf of the various... manufacturers, the activities required to organize and operate the agreements in question ;

Fides refused to submit to the investigation planned for 9 June 1978, and objected to the investigating officials that the procedure initiated by the Commission did not concern Fides, since it was not involved in the manufacturing or marketing of... and that, even if it performed services on behalf of firms in the sector in question, in accordance with its function as a società fiduciaria, it could not supply information or documents on these activities to the Commission without special authorization from its principals ;

However, the arguments put forward by Fides in refusing to submit to the investigation are unfounded, since the Commission has serious reason to believe that the company performs, or has performed, for ... manufacturing firms services which are directly connected with the circumstances forming the object of the Commission's enquiries, and since, moreover, business secrecy cannot be invoked against Commission officials acting pursuant to Article 14 of Regulation No 17, since Article 20 of the same Regulation requires that they shall not disclose information acquired in the course of investigations carried out in application of the Regulation ;

---

[1] OJ No 13, 21. 2. 1962, p. 204/62.

[2] In the published version of this Decision, some data have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17, concerning non-disclosure of business secrets.

Fides must therefore be required, by means of a decision, to submit to investigation and in particular to allow books and papers connected with the object of the enquiry to be examined;

Articles 15 (1) (c) and 16 (1) (d) of Regulation No 17, the full texts of which are annexed hereto, empower the Commission, by decision adopted in regard to undertakings or associations of undertakings, to:

(a) impose fines where, intentionally or negligently, the required books or other business records are produced in incomplete form during investigations pursuant to Article 14, or where the undertakings or associations of undertakings concerned refuse to submit to the investigations ordered by decision pursuant to Article 14 (3);

(b) impose penalty payments for each day's delay, with effect from the date laid down in the decision, in order to compel them to submit to an investigation ordered by decision pursuant to Article 14 (3),

HAS ADOPTED THIS DECISION:

Article 1

Fides, Unione Fiduciaria, Spa, headquarters in Milan, is hereby required to submit to investigations at its premises. It shall also be required, in particular, to allow the Commission officials responsible for the investigation to enter its premises during normal office hours and produce for examination the books and papers required by those officials and pertaining to the object of the enquiry.

Article 2

The investigations shall be made at the premises of Fides, Milan, from 5 February 1979.

Article 3

This Decision is addressed to Fides, Unione Fiduciaria, Spa, Milan. It shall be notified immediately before the investigations are to begin by direct delivery by the Commission officials responsible for the investigation.

An action may be brought before the Court of Justice of the European Communities, Luxembourg, to have this Decision reviewed pursuant to Article 173 of the EEC Treaty. Pursuant to Article 185 of that Treaty, such action does not have suspensory effect.

Done at Brussels, 31 January 1979.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX

Articles 15 and 16 of Council Regulation No 17

(published in *Official Journal of the European Communities* No 13 of 21 February 1962, page 204)

Article 15

1. The Commission may by decision impose on undertakings or associations of undertakings fines of from 100 to 5 000 units of account where, intentionally or negligently :

(a) ...;

(b) ...;

(c) they produce the required books or other business records in incomplete form during investigations under Article 13 or 14, or refuse to submit to an investigation ordered by decision issued in implementation of Article 14 (3).

Article 16

1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments of from 50 to 1 000 units of account per day, calculated from the date appointed by the decision, in order to compel them :

(a) ...;

(b) ...;

(c) ...;

(d) to submit to an investigation which it has ordered by decision taken pursuant to Article 14 (3).