II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 December 1978

relating to a proceeding under Article 85 of the EEC Treaty (IV/29.430 — Kawasaki)

(Only the English and German texts are authentic)

(79/68/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 3 and 15 thereof,

Having regard to the application made pursuant to Article 3 (2) (b) of Regulation No 17 by Mrs M. Putz of Deurne, Belgium, made on 17 June 1977,

Having regard to the Commission Decision of 20 June 1977 to initiate proceedings against Kawasaki Motors (UK) Ltd and Kawasaki Motoren GmbH,

Having heard Kawasaki Motors (UK) Ltd and Kawasaki Motoren GmbH in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63 EEC [2],

Having regard to the opinion delivered by the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 10 of Regulation No 17 on 20 June 1978,

Whereas :

I. THE FACTS

1. Kawasaki Motors (UK) Ltd undertakes, through a network of appointed dealers in the United Kingdom, the distribution of motorcycles and related parts and accessories made in Japan and supplied by its parent company Kawasaki Heavy Industries Ltd, Akashi-City, Japan and its subsidiary companies. The same function is undertaken in the Federal Republic of Germany and in West Berlin by another wholly-owned subsidiary of Kawasaki Heavy Industries, Ltd, namely Kawasaki Motoren GmbH.

The agreement

2. Every Kawasaki dealer in the United Kingdom is required to conclude an agreement wih Kawasaki Motors (UK) Ltd known as a 'Kawasaki Motor Cycle Authorized Dealer Sales and Service Agreement' (hereinafter referred to as 'the agreement'). Such Kawasaki dealers are retail dealers, with Kawasaki Motors (UK) itself functioning as the wholesaler.

3. The agreement grants the dealer the right to sell Kawasaki motorcycles, parts and accessories. At present there are around 80 such dealers in the United Kingdom.

4. Clause 3 (v) of the agreement provides :

'During the continuance of this Agreement the Dealer undertakes not without the prior written consent of the Distributor to supply Products for export from the United Kingdom'.

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

5. Clause 8 (vii) provides :

'The Dealer will not either directly or indirectly supply any new Kawasaki Motor Cycle ... to any third party (other than a bona fide retail customer or duly appointed Kawasaki dealer) for resale by such third party without the prior written consent of the Distributor' (Kawasaki).

6. The current agreements expire on 30 September 1978, having been concluded in the majority of cases on 1 October 1976. A previous series of agreements, in the same terms, was concluded in 1975. The first of these was made on 28 May 1975 and contained, in Clause 2 (v), the same export prohibition as Clause 3 (v) of the current series, by which the 1975 agreements were renewed.

The enforcement of the export prohibition

7. Compliance with export prohibition was urged on Kawasaki dealers by circular letter dated 27 April 1976 from Kawasaki Motors (UK), this letter stating that :

'to avoid antagonizing other official overseas Kawasaki Dealers we respectfully draw your attention to Article 2 (v) of the 1976 Sales and Service Agreement' (i.e. the export prohibition).

8. Such compliance was again sought at a meeting of such dealers convened by Kawasaki Motors (UK) held on 27 October 1976 which was also attended by directors of Kawasaki Motoren GmbH. A circular letter dated 4 November 1976 from Kawasaki Motors (UK) to all dealers stated :

9. 'Many requests have been made to all Kawasaki Dealers to refrain from the business of machine re-exports from this country, and particular reference was made to this subject at the 1977 Dealer Meeting, 27 October 1976 ...'.

'... We have consistently asked all Kawasaki Dealers not to re-export ...'.

10. The letter further instructed dealers not to supply Kawasaki products for export, arguing that this would lead to 'the undermining of approved, appointed Kawasaki dealers' confidence and prosperity on other markets'. The final paragraph of this letter declared

'all Kawasaki Dealers must agree that we can neither condone or permit this flagrant disregard to requests for non re-export of Kawasaki machines'.

11. A further circular letter from Kawasaki Motors (UK), dated 18 January 1977, again instructed Kawasaki dealers not to re-export and asked dealers to inform Kawasaki Motors (UK) of any cases of suspected re-export by any other persons. The material paragraph of the letter states :

12. 'Kawasaki Motors (UK) Limited will not tolerate any longer the minority and we mean the one or two dealers still deciding to go their own way. Remember it is your money invested, and any information you can give to allow us to take action against these people will be appreciated by your fellow Dealer.'

13. In a circular letter dated 1 February 1977 Kawasaki Motors (UK) asked dealers for information of any approaches made by an independent importer in Germany for the purchase of three Kawasaki Z 1000 machines.

14. These actions were taken by Kawasaki Motors (UK) in consequence of complaints by Kawasaki Motoren GmbH of parallel imports of Kawasaki machines into the Federal Republic of Germany. This is shown by the following facts.

15. A telex message dated 13 May 1976 from Kawasaki Motoren GmbH to Kawasaki Motors (UK) informed the latter of the parallel import of four Z 900 machines and asked for their 'help in this matter'.

16. Kawasaki Motors (UK) replied (telex dated 24 August 1976) that : 'we have already taken action and are most concerned it is still continuing'. Kawasaki Motors (UK) asked Kawasaki Motoren GmbH to indicate the frame and engine numbers of the machines in question and the identity of the UK Kawasaki dealer supplying the same.

17. Further complaints of parallel importing of Kawasaki machines were made by Kawasaki Motoren GmbH to Kawasaki Motors (UK) on 1 November 1976, and on 14 December 1976. The telex message of 14 December 1976 stated :

18. 'In the region Saarbrücken and Kaiserslautern are turning up for a new time many black imported motorcycles.'

Firma Erkel, Kaiserslautern usually has around five to seven motorcycles of the Z 1000 type on offer.

Price of Z 1000 : DM 7 500 including tax and freight costs. (KMG price of Z 1000 : DM 9 000).

19. A telex message of 28 January 1977 from Kawasaki Motoren GmbH to Kawasaki Motors (UK) requested : 'Please would you be so kind to check following frame-numbers :

Z 1000 (four numbers quoted).

So if the motorcyles were delivered to England please try to find out the motorcycle-dealer.'

20. A similar request was made by telex by Kawasaki Motoren GmbH on 16 February 1977 :

'Please check out wherefrom in Greater Britain following Z 1000s were delivered'.

21. There then follows a list of 10 frame numbers. On the copy of the telex message disclosed by Kawasaki Motors (UK) to the Commission are written the words 'A. Willis will advise'. A. Willis was at the material time sales manager for Kawasaki Motors (UK). Against eight of the listed frame numbers was written the name of a Kawasaki dealer established in the UK.

22. On 22 April 1977 the solicitors of Kawasaki Motors (UK) wrote to four Kawasaki dealers alleging that they had acted in breach of Clause 3 (v) by exporting machines from the United Kingdom and requiring these dealers to undertake to commit any further breaches.

23. Three of these dealers had been identified from the frame numbers listed in the telex message from Kawasaki Motoren GmbH of 16 February 1977.

24. This letter of 22 April 1977 was in the following terms :

'We write to you on behalf of our Clients, Kawasaki Motors (UK) Ltd, in connection with certain breaches of Clause 3 (v) of your Motor Cycle Authorized Dealer Sales and Service Agreement which have been brought to our Clients' attention. As this breach is incapable of remedy our Clients are entitled to terminate the Agreement by 90 days notice under Clause 11 (i) and (iii) of the Agreement. Our Clients have notified this Agreement to the Commission of the European Communities, and have sent a copy of this letter to the Commission with their representation.

25. In the circumstances our Clients have elected to waive these breaches, but require your written undertaking not to commit any further breaches of Clause 3 (v) of the Agreement until the Commission has given some ruling on the question.'

The application

26. A complaint was first made by the applicant to the Commission in March 1977, and subsequently made in writing on 17 June 1977 and 11 August 1977. The substance of the complaint was that a Kawasaki dealer (Kawasaki Paddock Wood Ltd) refused to supply a Kawasaki motorcycle to the applicant on the grounds that export sales by dealers were not permitted by Kawasaki Motors (UK). The applicant, a British subject resident in Belgium, had sought to obtain the mchine for export but this was refused by the Kawasaki dealer who referred to the express terms of the agreement.

27. The application also referred to the considerable difference in price for the same machines in the United Kingdom and Belgium, this difference being said to be of the order of 30 %. The figures in the table below show differences in price of 11 % to 30 %.

Price differences for Kawasaki machines in the EEC

28. There were considerable differences in price for Kawasaki machines in the Member States of the EEC during the period of the export prohibition. Prices at which Kawasaki Motoren GmbH sold machines to its dealers in Germany were on average around 55 % higher than the prices at which Kawasaki Motors (UK) sold the machines to its dealers in the United Kingdom, and were around 25 % higher than the Kawasaki Motors (UK) recommended prices for retail sales to customers in the United Kingdom.

The following table, the accuracy of which was not contested by Kawasaki Motors (UK) or Kawasaki Motoren GmbH at the hearing, sets out a comparison of Kawasaki recommended retail prices for machines sold in the United Kingdom, the Federal Republic of Germany, France, Italy, the Netherlands and Belgium.

Recommended retail prices for Kawasaki motorcycles, minus VAT, fourth quarter, 1976

	United Kingdom		Germany		France		Italy		Netherlands		Belgium		COMPARISON UK price = 100 % increase of other prices added to 100 base					
	£	u.a.	DM	u.a.	FF	u.a.	Lit	u.a.	Fl	u.a.	Bfrs	u.a.	UK	D	F	I	NL	B
Z 1000	1 388·89	2 081	8 108	3 020			2 550 000	2 633	7 624	2 708			100	145		127	130	
Z 900	1 296·30	1 942			12 931	2 332	2 300 000	2 375	7 505	2 666	96 375	2 339	100		120	122	137	120
Z 750	967·59	1 449	5 856	2 181	11 726	2 115	1 765 000	1 823	5 738	2 038	66 000	1 602	100	151	146	126	141	111
Z 650	995·37	1 491	5 856	2 181			1 840 000	1 900	5 328	1 893			100	146		127	127	
Z 400	656·48	983	3 980	1 482			1 275 000	1 317	4 098	1 456	52 125	1 265	100	151		134	148	129
KH 400	684·26	1 025	4 054	1 506	7 463	1 346	1 330 000	1 374	4 016	1 427			100	147	131	134	139	
KH 250	554·63	831	3 470	1 292	6 749	1 217			3 114	1 106	44 625	1 083	100	155	146		133	130
KE 125	369·44	553	2 568	956	4 264	769	780 000	806	2 336	830			100	173	139	146	150	

Parities = average rate of European units of account October to December 1976.

The observation of Kawasaki (UK) and Kawasaki Motoren GmbH

29. In their written submissions in answer to the statement of objections and at the hearing Kawasaki Motors (UK) and Kawasaki Motoren GmbH admitted that they had acted in breach of Article 85 (1) by imposing and assisting in the enforcement of the export prohibition.

30. However, both undertakings advanced the argument that the export prohibition only prevented the supply of Kavasaki machines to dealers who did not belong to the Kavasaki system of distribution in the common market, and that this matter, if notified, would therefore have been exempted under Article 85 (3), reference being made to the BMW Commission Decision (1). Kawasaki Motors (UK) further stated that the export prohibition was imposed in reliance on independent legal advice given in May 1975 to the effect that Article 85 (1) would not be applicable. For these reasons it was argued that no fine or only a nominal fine should be imposed.

31. These arguments are rebutted by the fact that the export prohibition was in general terms and made no reference to a prohibition on sales to unauthorized dealers. The circular letters from Kawasaki Motors (UK) to its dealers did not indicate that the export prohibition was confined to sales to unauthorized dealers. More particularly the circular made no reference to Clause 8 (vii).

32. This provision clearly prohibited sales to unauthorized dealers, whilst permitting sales to retail customers and Kawasaki dealers. The inclusion of an export prohibition in addition to the restrictions contained in Clause 8 (vii) indicates that it imposed further and more general restrictions on Kawasaki dealers. Nevertheless, Kawasaki Motors (UK) in its circular letters relied not on Clause 8 (vii) but on the export prohibition which by implication included sales to retail customers and Kawasaki dealers in other Member States of the EEC.

33. That sales to retail customers in other Member States were prevented is evidenced by the complaint. Documents submitted at the hearing by Kawasaki Motors (UK) contained letters dated 28 April 1977 and 16 May 1977 from customers in the Netherlands and Germany to a Kawasaki dealer (Bob Gollner Ltd) requesting the supply of a Kawasaki machine. The Kawasaki dealer forwarded these letters to Kawasaki Motors (UK) indicating that the prospective purchaser appeared to be 'a genuine retail purchaser' but stating that, 'in view of your request not to export machines we have not replied'. Kawasaki Motors (UK) did not give the dealer permission to export but replied to the prospective purchasers directly, suggesting that they approach their local Kawasaki dealer. This exchange of letters constitutes evidence of the scope of the export prohibition imposed, the terms of which were the same both before and after notification.

34. With respect to sales by Kawasaki dealers in the United Kingdom to Kawasaki dealers in Germany, Kawasaki Motors (UK) stated at the hearing that no Kawasaki dealer in Germany had ordered any machines from any Kawasaki dealer in the United Kingdom.

35. That such transactions did not take place, despite the considerable incentive provided by the large differences in wholesale prices between the United Kingdom and Germany, demonstrates the general nature of the export prohibition, and that it was understood by Kawasaki dealers that such export sales were not to be made.

36. The legal advice relied upon by Kawasaki Motors (UK) was that the export prohibition potentially affected trade between the United Kingdom and other Member States, but that Article 85 (1) did not apply because the agreement fell within the turnover limits of the Commission's Notice on agreements of minor importance (2). The latter part of the advice, as was subsequently admitted by Kawasaki Motors (UK), was mistaken since it did not take into account the need to consolidate the turnover of parent and subsidiary undertakings when assessing the importance of an agreement.

37. The above argument does not reduce the gravity of the infringement since both Kawasaki Motors (UK) and Kawasaki Motoren GmbH knew they were restricting competition. The legal advice relied on did not question that competition was being restricted, but made a false assumption as to the importance of the restriction. Moreover the mistake made in the legal advice was clear and could reasonably have been seen from reading the Commission's Notice. The latter part of the Notice, which was overlooked in the advice, makes it clear that the turnover of parent and subsidiary companies is to be taken into account when assessing whether the agreement falls within the terms of the Notice.

38. In addition, the sales of Kawasaki Motors (UK) in 1975, when the advice was given, were approaching the 5 % market share threshold of the Notice. For large capacity machines of 750 cc and over, which

(1) OJ No L 29, 3. 2. 1975, p. 1.

(2) OJ No C 64, 2. 6. 1970, p. 1.

Kawasaki itself regarded as being a separate class of motorcycle, the market share was no less than 29 %. In 1976 Kawasaki machines accounted for 5·9 % of all motorcycle registrations in the United Kingdom. Kawasaki Motors (UK) cannot have been unaware of these facts.

The proceedings under Articles 3 (1) and 15 (2) of Regulation No 17

39. Kawasaki Motors (UK) and Kawasaki Motoren GmbH have infringed Article 85 of the EEC Treaty in such a manner as to justify the imposition of a fine under Article 15 (2) (a) of Regulation No 17 in respect of the period beginning with the first imposition of the export prohibition on 28 May 1975 up to 28 April 1977, the date of the notification.

40. These proceedings are confined to examining the export prohibition contained in the 'Kawasaki Motor Cycle Authorized Dealer Sales and Service Agreement', the application made in respect of this export prohibition and the conduct of both Kawasaki Motors (UK) and Kawasaki Motoren GmbH. The proceedings are therefore without prejudice to the assessment which the Commission may subsequently make of the remaining clauses contained in the agreement.

II. LEGAL ASSESSMENT

Applicability of Article 85 (1)

41. Article 85 (1) of the EEC Treaty provides that all agreements between undertakings, decisions by associations of undertakings and concerted practices 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 shall be prohibited as incompatible with the common market.

42. Kawasaki Motors (UK) and Kawasaki Motoren GmbH are part of the same economic unit as Kawasaki Heavy Industries Ltd, an undertaking for the purposes of Article 85. The appointed dealers of Kawasaki Motors (UK) are undertakings for the purposes of Article 85 and the 'Kawasaki Motor Cycle Authorized Dealer Sales and Service Agreement' is an agreement for the purposes of that Article.

43. The export prohibition contained in Clause 3 (v) is prohibited by Article 85 (1) because it restricts competition and raises an artificial barrier to trade in the goods in question between Community countries. The parties concerned by these proceedings have admitted that prices for Kawasaki products in the UK were much lower than the prices for the same Kawasaki products in the Federal Republic of Germany. The export prohibition sought to prevent the flow of low-priced goods to areas where higher prices still obtained and was therefore restrictive in its object.

44. Purchasers throughout the common market, other than those in the United Kingdom, were prevented from buying Kawasaki goods from the most economic source. Where significant price differences exist in various Member States for the same products, a prohibition on exporting such products always affects competition by insulating the areas where high prices obtain.

45. Kawasaki Motors (UK)'s own statement that re-exports undermined the prosperity of Kawasaki dealers in other markets (circular of 4 November 1976) and for that reason were to be prohibited shows that the insulation of national markets, enabling the use of different prices, was a feature of the distribution of Kawasaki products on the common market.

46. Kawasaki Motoren GmbH, although not a party to the agreement with the Kawasaki dealers in the United Kingdom, nevertheless took part in the enforcement of this agreement to prevent the export of Kawasaki machines from the United Kingdom and was, with its dealers, the principal beneficiary of the restriction of competition which was brought about. Kawasaki Motoren GmbH sought the assistance of Kawasaki Motors (UK) to prevent such exports and, by disclosing the frame numbers of machines exported to Germany, enabled Kawasaki Motors (UK) to identify the dealers effecting such exports and to demand an undertaking from them to desist.

47. Kawasaki dealers in the United Kingdom and Germany are not parties to this proceeding for these reasons.

48. Kawasaki dealers in the United Kingdom had no interest in enforcing the export prohibition which was a restriction on their commercial freedom. The cooperation of some dealers was only achieved by pressure from Kawasaki Motors (UK). Kawasaki dealers in Germany were not parties to the agreement and it cannot satisfactorily be proved that they were actively involved in ensuring the enforcement of the export prohibition.

49. Sales of Kawasaki motor cycles, amounting in 1976 to some 2 871 machines in Germany, 11 121 machines in the United Kingdom, 8 590 in Italy, 6 020 in France, 1 093 in the Netherlands and 930 in Belgium, representing a value of over 30 million units of account, are important enough for the export prohibition to have had a substantial effect on competition

and trade between Member States. The differences in price for the same machines in the various Member States amounted in some cases to as much as 50 %. In particular the difference in price was so great that it was profitable for German Kawaski dealers and other persons to buy Kawasaki motor cycles from Kawasaki dealers in the United Kingdom for export to Germany and for sale there.

Inapplicability of Article 85 (3)

50. For the period concerned by this proceeding Kawasaki Motors (UK) and Kawasaki Motoren GmbH cannot seek the benefit of an exemption as the Commission had not received a notification and consequently had no opportunity to examine whether the requirements of Article 85 (3) would have been satisfied.

Applicability of Article 15 (2) (a) of Regulation No 17

51. Under Article 15 (2) (a) of Regulation No 17, the Commission may by decision impose fines on undertakings and associations of undertakings from 1 000 to 1 000 000 units of account, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings concerned where, either intentionally or negligently, they infringe Articles 85 (1) or 86 of the EEC Treaty. In fixing the amount of the fine, regard shall be had to the gravity and duration of the infringement.

52. Kawasaki Motors (UK) intentionally imposed the export prohibition on its dealers. The matters concerned by these proceedings demonstrate that the distribution policy of Kawasaki Motors (UK) and Kawasaki Motoren GmbH was to separate and insulate national markets, and to maintain different price levels in the common market. Kawasaki Motoren GmbH took an active part in the implementation of this policy by requesting Kawasaki Motors (UK) to stop exports and by assisting in the enforcement of the export prohibition. These actions enabled Kawasaki Motoren GmbH to protect the high level of retail prices in Germany and were intentional.

53. The circular letters to all dealers dated 4 November 1976, 18 January 1977 and 1 February 1977 show that Kawasaki Motors (UK) sought to bring the collective pressure of itself and its dealers to bear on any person seeking to export Kawasaki products.

54. Three of the four dealers to whom the letter of 22 April 1977 was sent were identified with the help of Kawasaki Motoren GmbH. This letter, sent to the four dealers who were alleged to have disregarded the export prohibition, requiring a written undertaking to comply with Clause 3 (v), showed that Kawasaki Motors (UK) intended to maintain this policy.

53. Kawasaki Motors (UK) and Kawasaki Motoren GmbH intentionally infringed Article 85 (1) in that they knew and intended that potential customers in other Community countries should be denied access to the market in the United Kingdom and that the dealers of Kawasaki Motors (UK) should be denied the opportunity to compete with Kawasaki dealers in the Federal Republic of Germany, Belgium and other Community countries.

56. As to the gravity of the infringement, Kawasaki Motors (UK) and Kawasaki Motoren GmbH knew, or ought to have known, that the imposition of an export prohibition is a serious breach of Article 85, as has been established by a series of Judgments of the Court of Justice [1], and Commission Decisions. In this case no exemption could have been given under Article 85 (3), even if the Commission had been given the opportunity so to do, since the export prohibition in question could not have contributed to technical or economic progress or improved production or distribution. The export prohibition, designed to insulate national markets, in fact impeded rather than improved the supply of goods from the most economic source.

57. By this means Kawasaki Motors (UK) knowingly sought to obstruct in respect of the distribution of Kawasaki products one of the principle aims of the EEC Treaty, namely the creation of a single market between Member States. By participating in the enforcement of the prohibition Kawasaki Motoren GmbH knowingly sought the same result.

58. The export prohibition enabled Kawasaki Motoren GmbH in particular to charge higher prices for Kawasaki machines than would otherwise have been possible. If German Kawasaki dealers had been able to purchase machines from the United Kingdom, the 55 % difference in wholesale prices could not have continued. A considerable profit was made solely because of an export prohibition which infringed Article 85 (1). Consumers throughout the Community would not have paid the high prices in their countries if Kawasaki dealers in the United Kingdom had been free to sell to them.

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[1] E.g. Grundig/Consten, Case No 56, 58/64 (1966) ECR 299.

59. The amount of profit directly attributable to the export prohibition cannot be determined precisely. However, parallel importers undercut the Kawasaki recommended retail prices in Germany by margins of up to 20 %. If parallel imports had not been hindered, it is probable that the Kawasaki recommended retail prices in Germany and other Community countries would have had to be lowered substantially to meet such competition. A lowering of such prices by 10 % would have represented for consumers in Germany during the period concerned by these proceedings an annual sum of around 400 000 units of account, and throughout the Community 2 million units of account. A lowering of such prices in Germany by only 2 ½ %, the least which could reasonably have been expected in the medium term, would have represented a sum of 100 000 units of account. A fall in prices of even this scale would represent 500 000 units of account throughout the Community.

60. It is also evident that Kawasaki Motors (UK) and Kawasaki Motoren GmbH sought to prevent exports by dealers in a determined and vigorous manner. The means employed included making allegations of breach of contract against its dealers, asking dealers to report cases of the suspected re-export of machines, and instructing dealers to disregard offers to purchase made by independent persons in other Member States.

61. Mitigating factors that are taken into account are that a notification of the export prohibition was eventually made on 28 April 1977 and that this prohibition was deleted in July 1977 on receipt of the Commission's statement of objections made under Article 15 (6) of Regulation No 17.

62. The infringement first occurred with the use of the standard form agreement, first signed on 28 May 1975. Intensive action to enforce the export prohibition extended from April 1976 to April 1977.

63. Kawasaki Motors (UK) committed the infringement of Article 85 (1) by imposing the export prohibition and is therefore liable to a fine under Article 15 (2). The fine is imposed on Kawasaki Motors (UK) because it was the member of the Kawasaki group of companies which made the agreements in question, although it was Kawasaki Motoren GmbH, also a wholly-owned member of the Kawasaki group, which was the principal beneficiary of the export prohibition and of the economic effects caused thereby,

HAS ADOPTED THIS DECISION :

Article 1

The imposition by Kawasaki Motors (UK) Ltd of an export prohibition on Kawasaki dealers in the United Kingdom constituted an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

A fine of 100 000 (one hundred thousand) European units of account, that is 67 081·40 pounds sterling is imposed on Kawasaki Motors (UK) Ltd.

This sum is to be paid to Lloyd's Bank Ltd, Overseas Department, PO Box 19, 6 Eastcheap, London EC3 P3AB to the account of the Commission of the European Communities, account No 10-86.341, within three months of the date of notification of this Decision to the undertakings to which it is addressed.

Article 3

This Decision shall be enforceable in the manner provided for in Article 192 of the Treaty establishing the European Economic Community.

Article 4

This Decision is addressed to the following undertakings :

1. Kawasaki Motors (UK) Ltd, 748/749 Deal Avenue, Trading Estate, Slough, Berkshire, United Kingdom.

2. Kawasaki Motoren GmbH, Berner Straße 40—44, D-6000 Frankfurt/Main 56, (Nieder-Eschbach), Germany.

Done at Brussels, 12 December 1978.

For the Commission

Raymond VOUEL

Member of the Commission