COMMISSION DECISION

of 12 December 1979

relating to a proceeding under Article 85 of the EEC Treaty (IV/223 — Transocean Marine Paint Association)

(Only the English text is authentic)

(80/184/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 4, 6 and 8 thereof,

Having regard to the Decision of 27 June 1967 [2], whereby the Commission gave an exemption pursuant to Article 85 (3) of the Treaty to the Transocean Marine Paint Association, valid until 31 December 1972,

Having regard to the Commission Decision of 21 December 1973 [3], as amended on 23 October 1975 [4], extending the exemption until 31 December 1978,

Having regard to the application for further extension made on 7 December 1978,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC [5],

Having regard to the notice setting out the main points of the application for extension published in accordance with Article 19 (3) of Regulation No 17 in *Official Journal of the European Communities* No C 252 on 6 October 1979,

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 28 November 1979,

Whereas:

I

1. The Transocean Marine Paint Association ('Transocean') is an association of medium-sized marine paint manufacturers formed in 1959 with the object of manufacturing marine paints of identical composition and distributing and advertising them under the same trademark in a large number of countries so as to establish a world-wide distribution and after-sales service network and hence improve the prospects for competition with other, substantially larger, marine paint manufacturers.

2. The following firms are currently members of the association (listed in chronological order of membership):

Glasurit SA (formerly Urruzola)	— Spain
Astral SA	— France
F. A. C. van der Linden & Co.	— Germany
Pacific Products, Inc.	— Philippines
Spartan Paints Pty Ltd	— Australia
Croda Paints Ltd	— United Kingdom
Veneziani Zonca Vernici SpA	— Italy
North Brunswick Coatings & Chemicals	— USA
Nippon Paint (Singapore) Co. Pte Ltd	— Singapore
Sadolin Industri A/S	— Denmark
Durmus Yasar & Sons	— Turkey
P. T. United Transocean Marine Paint Co.	— Indonesia
Pars Sadolin Chemical Co.	— Iran
Merethe Ring	— Norway
Galleon Paints (SA) Pty Ltd	— South Africa
Copalin SA	— Greece
Toa Paint Co. Ltd	— Japan
Sikkens B.V.	— Netherlands
Consolidated Chemicals Ltd	— New Zealand

The following firms have licensing agreements with the association:

Nippon Paint (Malaysia) Sdn. Bhd.	— Malaysia
Oy Sadolin A.B.	— Finland
Sadolins Paints (E.A.) Ltd	— Kenya
Antillian Paint Factory Ltd	— Netherlands Antilles
Zorka Industries	— Yugoslavia
Montedison (Portugal) Ltd	— Portugal
Copalin Paint Factory	— Egypt

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(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 163, 20. 7. 1967, p. 10/67.
(3) OJ No L 19, 23. 1. 1974, p. 18.
(4) OJ No L 286, 5. 11. 1975, p. 24.
(5) OJ No 127, 20. 8. 1963, p. 2268/63.

3. The departure of the Japanese manufacturer Nippon Paint Co. Ltd has had the effect of substantially reducing Transocean's world-wide sales of marine paints. The Community market share is still below 10 %. Market shares in the individual Member States vary between 5 and 13 %; only in Italy is it as high as 25 %. Even if account is also taken of firms that have economic links with Transocean Members (see Commission Decision of 21 December 1973, OJ No L 19, 23. 1. 1974, p. 18), the picture is still much the same. Montedison has an interest in Veneziani, but its only marine paint business is a distribution firm in Portugal. AKZO, Astral's parent company, does business on the marine paint market through a further subsidiary, Şikkens, which has now become a member of Transocean. Urruzola, a former Transocean member belonging to the BASF Group, has merged with another BASF subsidiary, Glasurit; BASF's only marine paint business is done through Glasurit SA in Spain.

4. Transocean's main competitors are International Red Hand, Hempel, Jotun, Sigma-Coatings and Berger Paints, which are more important than Transocean both in aggregate terms and on individual markets.

5. The main provisions of the Transocean Charter and By-laws are described in the Commission Decision of 21 December 1973; Articles 5 and 8 of the Agreement have been amended as required by Article 2 of the Decision.

Third parties have made no objections subsequent to the publication made under Article 19 (3) of Regulation No 17.

II

6. The exemption given by the Commission can be extended pursuant to Article 8 (2) of Regulation No 17, as the tests of Article 85 (3) are still satisfied. The pooling and coordination of the individual distribution networks of member firms is a suitable and indeed necessary means of enriching the range of goods on offer, improving sales structures in the marine paint industry and promoting intensive competition with the major marine paint manufacturers. The expansion in recent years of the sales and service network for Transocean paints has increased the availability of the products, with a resultant benefit to consumers.

7. The restrictions of competition resulting from the current version of the Transocean charter and By-laws are indispensable for the attainment of these objectives. The territorial protection earlier agreed has now been removed; commission is now payable only where a Transocean member supplies services for another member, and this is acceptable in the special case of cooperation between medium-sized firms competing with large, internationally organized manufacturers. Without this commission arrangement Transocean members would not be ready actively to promote the sale of marine paints under the jointly-owned Transocean trademark instead of under their own trademarks, when for instance the whole or a part of the contract, in the event of ships being built and subsequently repaired, is carried out by another member or involves subsequent contracts in favour of other countries.

8. A share of less than 10 % of a market where there are many other larger and more powerful suppliers does not give the power to eliminate competition in respect of a substantial part of the relevant goods.

9. Experience of the Commission's earlier Decision of 21 December 1973, as amended by the Decision of 23 October 1975, has shown that the obligations therein imposed are appropriate in order to enable the Commission to assess the effects of cooperation between Transocean members in a rapidly changing market for compatibility with the rules on competition in the Treaty.

10. The declaration of exemption should accordingly be extended for eight years to 31 December 1986 and the obligations of the Decisions of 21 December 1973 and 23 October 1975 should again be attached,

HAS ADOPTED THIS DECISION:

Article 1

The declaration of exemption in accordance with Article 85 (3) of the Treaty establishing the European Economic Community, which the Commission issued by its Decisions of 27 June 1967 and 21 December 1973 concerning the Agreement of 1 January 1959 establishing the Transocean Marine Paint Association is hereby extended from 1 January 1979 to 31 December 1986.

Article 2

This Decision is subject to the following obligations:

1. The Commission shall be informed without delay of the following matters:

   (a) any amendment or addition to the Agreement;

   (b) any decision taken by the Board of Directors or the result of any arbitration held, pursuant to the restrictive provisions of the Agreement, and in particular Articles 3 and 9 thereof;

   (c) any change in the composition of membership;

   (d) any link and any changes in such links, present or future, constituted by means of a financial participation amounting to 25 % or more of the share capital or by way of common directors or managers:

      (aa) between members of the Association; or

      (bb) a member of the Association and another enterprise in the paint sector, provided that such non-member carries on business directly or indirectly within the Community in the paint sector, that is to say undertakes business in one or more Member States directly or through a subsidiary undertaking or by means of a joint venture.

2. A report is to be submitted by the Association annually to the Commission on the activities of the Association and in particular on improvements in the production and marketing of marine paint products achieved.

Article 3

This Decision is addressed to the Transocean Marine Paint Association for the attention of the Secretary-General, Mr. W. G. van Aalst, Mathenesserlaan 300, 3021 HV Rotterdam, the Netherlands, and to its members as follows:

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164, rue Ambroise Croizat
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Fritz-Reuter-Straße 32
2153 Hamburg — Neu Wulmstorf
Germany

Croda Paints Ltd
Bankside
Hull HU5 1SQ
Yorkshire
England

Veneziani Zonca Vernici S.p.A.
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PO Box 550
Trieste 34147
Italy

Sadolin Industri A/S
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Glasurit SA
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Embajadores 225/233
Madrid - 5
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Pacific Products, Inc.
Box 406 MCC
Makati, Rizal
Manila
Philippines

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Victoria, Australia

Nippon Paint (Singapore) Co Pte. Ltd
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Republic of Singapore

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Durmus Yasar & Sons
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686 Rosebank Road, Avondale
(Private Bag), Rosebank
Auckland 7
New Zealand

Done at Brussels, 12 December 1979.

For the Commission

Raymond VOUEL

Member of the Commission