II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 November 1981

relating to a proceeding under Article 15 of Council Regulation No 17 (IV/29.895 — Telos)

(Only the French text is authentic)

(82/124/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 15 (1) (b) thereof,

Having regard to the Commission's letter of 21 November 1979 addressed to Telos SA and consisting of a formal request for information in accordance with Article 11 (3) of Regulation No 17 and to the reply from Telos dated 7 February 1980,

Having regard to the Commission's decision of 18 November 1980 to initiate proceedings,

Having heard the undertaking concerned in accordance with Article 19 of Regulation No 17 and with Commission Regulation No 99/63/EEC [2],

Having regard to the opinion delivered by the Advisory Committee on Restrictive Practices and Dominant Positions on 17 June 1981, in accordance with Article 10 of Regulation No 17,

Whereas :

I. The facts

1. Since January 1972, Telos SA (hereinafter referred to as Telos) has been the sole distributor in France of cameras and camera accessories manufactured by Victor Hasselblad AB, Goteborg, Sweden (hereinafter referred to as 'Victor Hasselblad').

2. On 6 July 1978, Camera Care Ltd (hereinafter referred to as 'Camera Care'), a camera retailer based in Belfast, submitted a complaint to the Commission under Article 3 of Regulation No 17 against Victor Hasselblad and its sole United Kingdom distributor, Hasselblad (GB) Ltd (hereinafter referred to as 'Hasselblad (GB)').

3. In the light of the facts set out in Camera Care's complaint, the Commission has found that in 1978, Victor Hasselblad, acting in conjunction with Hasselblad (GB), successfully hindered imports from EEC Member States, and in particular from France, to the United Kingdom.

4. In order to be able to investigate the matter in full knowledge of the facts, the Commission, acting in accordance with Article 11 of Regulation No 17, sent a formal request for information to Telos on 21 November 1979.

5. The request for information mentioned in particular that the Commission was taking action in response to a complaint made by Camera Care against

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

Victor Hasselblad and Hasselblad (GB) and that the conduct of the latter two undertakings might constitute an infringement of the rules on competition laid down in the EEC Treaty.

6. The request for information also contained *inter alia* the following:

'...

3. In your letter dated 11 September 1978, you wrote to Camera Care Ltd in the following terms: "... considering our contract with Hasselblad Sweden, we are obliged to confirm that we cannot do any business with you".

Out of which clause does this obligation arise and who has prohibited you from exporting Hasselblad cameras to the United Kingdom?' (translation).

7. On 7 February 1980, Telos addressed to the Commission a letter in German from which the following extract is taken:

'...

3. Wir haben keinerlei vertragliche Abmachung, die es uns untersagt, Material an Kunden aus der EWG oder sonstigen Ländern zu exportieren. Wir unterscheiden grundsätzlich nicht zwischen französischen und ausländischen Kunden, solange unsere Rechnungen bezahlt werden.'

Translation:

'We are party to no contractual agreement of any kind under which we are prohibited from exporting equipment to clients in the EEC or other countries. We make no distinction, in principle, between French and foreign clients as long as our invoices are settled.'

Telos further explained that it had broken off its business relationship with Camera Care only:

'weil Camera Care die gelieferten Waren nicht abredegemäß in arabische Länder, sondern in Großbritannien verkauft habe und weil Camera Care zusätzlich auch Ersatzteile geliefert haben wollte, ...'

Translation:

'because Camera Care sold the goods supplied to it, contrary to our agreement, not in Arab countries but in Great Britain and because, in addition, Camera Care wanted to be supplied with spare parts.'

The reference to the contract with Victor Hasselblad was, it was claimed, only a pretext to terminate this business relationship.

8. During an investigation carried out on 30 June 1980 at the premises of Telos and Hasselblad (GB) in accordance with Article 14 of Regulation No 17 Commission officials found documents that yielded the information set out below.

9. On 18 June 1974, Victor Hasselblad had sent Telos a letter complaining generally about 'pirate imports' from France, pointing out that it, i.e. Victor Hasselblad, was doing its utmost to protect its sole distributors' allotted territories from such imports. It called on Telos to trace the dealers engaging in such exports and to make known its views on the matter.

10. By letter dated 8 July 1974, Telos promised Victor Hasselblad that it would keep an eye on these 'pirate imports'.

11. On 5 July 1978, Hasselblad (GB) telephoned Telos informing it that Camera Care had sold on the UK market a Hasselblad lens that had been sold by Victor Hasselblad to Telos in April 1978. Hasselblad (GB) also explained the difficulties it was experiencing with parallel imports in general. Telos stated its willingness to look into the matter and to provide Hasselblad (GB) with any information that might help trace the dealer who had exported the lens.

12. At the time, Hasselblad (GB) was still clearly unaware that Telos had sold the lens to Camera Care and presumed that the supplier had been a French retailer. For this reason, Hasselblad (GB) did not impose any direct export ban on Telos but merely requested it to take care of the matter. For Telos, however, it was clear, that it had supplied this lens itself and that Hasselblad (GB) wanted to prohibit parallel imports of Hasselblad products in general from France.

13. In its letter dated 6 September 1978, Hasselblad (GB) again asked Telos for any information it might possess on the lens that was supposed to have been exported to Camera Care by a retailer supplied by Telos. It is also evident from this letter that Hasselblad (GB) wished to put a stop to parallel exports of any kind to its allotted territory.

14. Telos' letter to Camera Care of 11 September 1978 is fully in accord with these wishes of Victor Hasselblad and Hasselblad (GB). It reads as follows:

'We received a letter from Hasselblad (GB) Ltd, in which they inform us, that *they* found out that the lens that turned up in England was sold *by you* to one of their customers ... As you can well imagine, this is an intolerable situation caused entirely by you ...'

15. On 24 November 1978, Victor Hasselblad, in agreement with Hasselblad (GB), contacted Telos on the matter of exports to the United Kingdom since it had by then become clear that it was not a French retailer but Telos itself which had supplied Camera Care. In a letter of 24 November 1978, Victor Hasselblad's sales manager informed Hasselblad (GB) of the outcome of the measures it had taken *vis-à-vis* Telos, stating that Victor Hasselblad had just telephoned Telos abut the exports to the United Kingdom. Telos informed it of the letter Telos had written to Camera Care requesting it not to visit any more as Telos could not sell to any dealers from abroad. He also mentioned that Telos' employees had been informed of this fact.

II. Legal assessment

16. Under Article 15 (1) (b) of Regulation No 17, the Commission may by decision impose on undertakings fines of between 100 and 5 000 units of account where, intentionally or negligently, they supply incorrect information in response to a request made pursuant to Article 11.

17. Where incorrect information has been supplied, it is, contrary to Telos' submission, immaterial as regards application of Article 15 (1) (b) whether this was in response to a 'simple' request for information under Article 11 (1) or to a decision under Article 11 (5) requiring information to be supplied.

18. Telos gave the Commission an incorrect answer to the second part of the question ('who has prohibited you') by its reply to the effect that there was no contractual agreement under which it was prohibited from exporting and that it made no distinction between French and foreign clients. In its answer Telos falsely claims that Victor Hasselblad and/or Hasselblad (GB) had not taken any action to prevent it from exporting equipment to the United Kingdom and that it had sold equipment to, and had decided not to do business with, Camera Care of its own free will.

19. The instruction issued by Victor Hasselblad in 1974 to the effect that its sole distributors' markets should be protected against parallel imports continued to apply to Telos and is to be regarded as being tantamount to an export prohibition. Telos also complied with this prohibition by stipulating that any equipment sold by it to Camera Care was not to be sold on the territory allotted to Hasselblad (GB) (that is the United Kingdom). In its reply to the Commission, Telos should have replied that Victor Hasselblad had instructed it in June 1974 to protect sole distributors' allotted territories, by neither exporting itself, nor permitting exports by retailers supplied by itself, to these territories.

20. However, the statement is also incorrect in that it makes no mention of the other steps taken by Hasselblad (GB) and by Victor Hasselblad to hinder exports to the United Kingdom, which are also tantamount to export prohibitions.

21. Any statement is incorrect which gives a distorted picture of the true facts asked for, and which departs significantly from reality on major points. Where a statement is thus false or so incomplete that the reply taken in its entirety is likely to mislead the Commission about the true facts, it constitutes incorrect information within the meaning of Article 15 (1) (b).

22. In reality, the telephone conversation of 5 July 1978, the letter from Hasselblad (GB) and above all the action taken by Victor Hasselblad in mid-November 1978 renewed the prohibition which had existed since 1974 of exports of Hasselblad products to the territories allotted to another sole distributor and made it clear to Telos that both firms regarded parallel exports in general to the United Kingdom as posing a serious problem and as being harmful to business. This was even true of exports by completely independent retailers.

23. Hasselblad (GB) acted on the mistaken assumption that the equipment in question had been exported by a French retailer who had been supplied by Telos. It was for this reason that Telos was asked 'to look into the matter'. This made it clear to Telos that the wish on the part of Hasselblad (GB) to stamp out exports to the United Kingdom by — independent — retailers was directed in the first place against sole distributors, particularly since Telos was aware of Victor Hasselblad's instruction that national markets be protected and had promised to keep a watch on this type of transaction.

24. When it intervened in November 1978, Victor Hasselblad sought, therefore, Telos' cooperation in refraining in future from engaging in exports to the contractual territories of a sole distributor.

25. The purpose and effect of the action taken by Victor Hasselblad and by Hasselblad (GB) was, therefore, to prohibit exports to the United Kingdom. Telos also understood the purpose of this action correctly and, referring to the letter from Hasselblad (GB) and to its contractual relationship with Victor Hasselblad, discontinued its exports to Camera Care.

26. Telos, however, did not reveal to the Commission these prohibitions by Victor Hasselblad and Hasselblad (GB), giving the impression that it had not been subjected to any pressure as regards exports to the United Kingdom and that it had severed relations with Camera Care of its own free will. By stating immediately thereafter that it did not distinguish between French and foreign customers, Telos also tried to strengthen this impression. Moreover, this statement is also false, because Telos did indeed distinguish between clients in its own and clients in another sole distributor's territory.

27. The incorrect information supplied had significant repercussions on the course of the proceedings since it gave the Commission the mistaken impression that no pressure had been exerted on Telos. It was only in June 1980, when investigations were carried out on the premises of Telos and Hasselblad (GB), that the Commission became aware of the true facts and was for the first time in a position to institute proceedings under Article 85 (1) of the Treaty against Victor Hasselblad and its sole distributors on the ground that they had engaged in concerted practices.

28. Telos also supplied the incorrect information intentionally. Telos did clearly regard the measures taken by Hasselblad (GB) and Victor Hasselblad as constituting an export prohibition and an obligation to supervise exports of other dealers. Telos also realized that the Commission's request for information was concerned generally with export prohibitions and in particular the boycott on supplies to Camera Care.

29. In this case a serious infringement of the fundamental principles of the common market was concealed. Precisely by framing its answer in the manner it did, Telos sought to divert attention away from the existence of a serious infringement, viz. a concerted practice aimed at prohibiting exports. The incorrect reply delayed the proceedings considerably and, if no investigations had been carried out on the premises of the undertakings concerned, it is highly likely that the conduct of Victor Hasselblad and Hasselblad (GB) towards Telos would not have come to light. In view of the above considerations, a fine of 5 000 ECU appears appropriate,

HAS ADOPTED THIS DECISION:

Article 1

A fine of 5 000 ECU, that is FF 30 880·45, is hereby imposed on Telos SA for having supplied intentionally incorrect information in reply to a request for information made by the Commission of the European Communities.

The fine imposed shall be payable within three months from the date of notification of this Decision to the following account:

Commission of the European Communities, Société Générale Paris, No 5.770.006.5

Article 2

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

Article 3

This Decision is addressed to Telos SA, 72-74, Rue Paul Vaillant Couturier, F-92300 Levallois-Perret, France.

Done at Brussels, 25 November 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission