II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 December 1981

relating to a proceeding under Article 15 of Council Regulation No 17 (IV/AF 512 — SA National Panasonic (Belgium) NV)

(Only the Dutch and French texts are authentic)

(82/260/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 11 and 15 thereof,

Having regard to the request for information addressed by the Commission to SA National Panasonic (Belgium) NV on 11 June 1981, and the reply of the undertaking in response to that request, dated 30 June 1981,

Having regard to the Commission's decision of 4 August 1981 to initiate a proceeding in this case,

Having given the undertaking concerned the opportunity, in accordance with Article 19 of Regulation No 17 and with Commission Regulation No 99/63/EEC [2], of being heard on the matters to which the Commission has taken objection,

Having regard to the opinion of the Advisory Committee for Restrictive Practices and Dominant Positions delivered pursuant to Article 10 of Regulation No 17 on 24 November 1981,

WHEREAS:

The facts

A. *The undertaking*

1. SA National Panasonic (Belgium) NV (hereinafter called 'NPB'), an undertaking with its registered office at Stationstraat 26, 1720 Groot Bijgaarden, is a wholly-owned subsidiary of the Japanese undertaking Matsushita Electrical Trading Company, itself a subsidiary of Matsushita Electric Industrial Company, the leading Japanese manufacturer of electrical and electronic equipment.

2. The principal activity of NPB is the import and marketing in Belgium of consumer electronic products made in Japan and other countries by Matsushita, including hi-fi and stereo equipment sold under the brand-names 'Technics', 'National Panasonic' and 'Panasonic'.

B. *The Commission investigation*

3. On 27 June 1979 the Commission carried out an investigation pursuant to Article 14 (3) of Regulation No 17 at National Panasonic (UK) Ltd, also a subsidiary of Matsushita, and which carries out the same function in the United Kingdom as NPB in Belgium.

4. The object of the investigation was to obtain information and documentary evidence concerning the suspected imposition by National Panasonic (UK) Ltd on its hi-fi dealers in the United Kingdom of a

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

ban from exporting this product to other EEC Member States, in order to protect the distribution network in those States from the competitive effect of parallel imports.

5. During the investigation the Commission officials obtained a number of documents regarding the policy and practice of the firm concerning parallel exports of Technics and National Panasonic equipment.

6. On 24 August 1979 National Panasonic (UK) Ltd appealed to the Court of Justice of the European Communities against the decision ordering an investigation. On 26 June 1980 the Court dismissed the appeal.

7. An examination of the documents obtained during the investigation showed that it was necessary to obtain further information in order to ascertain precise details concerning the price structure for the sale of Technics hi-fi equipment in the EEC, particularly the trade price paid by dealers and the retail selling price.

C. *The request for information*

8. On 25 May and 11 June 1981 the Commission addressed to the marketing subsidiaries of Matsushita in Germany, France, the United Kingdom and Belgium and to its exclusive distributor in the Netherlands a request for information under Article 11 of Regulation No 17. The request contained the usual reference to the sanctions provided for in the said Regulation in the case that the undertaking provided incorrect information.

9. The request stated that the Commission had carried out an investigation at National Panasonic (UK) Ltd on 27 June 1979 under Article 14 (3) of Regulation No 17 in order to ascertain whether that undertaking had participated in agreements or concerted practices of which the object or effect might be the prevention of parallel exports to other EEC Member States, and that an examination of the documents obtained made it necessary to obtain information concerning the marketing of Technics products in the Community.

10. In its request the Commission required *inter alia* details of the price structure in the Member State concerned. In the letter to NPB the relevant part of the request was formulated as follows:

> 'Have you since 1 January 1976 communicated to wholesalers and/or retailers, in any form whatever, a list of, or calculation method for, recommended and/or maximum and/or minimum retail selling prices which the dealer was required to use, or could use, in order to set his prices at the retail level? Please supply a copy of all such price lists issued by your firm since the said date.' (Translation from the original Dutch).

11. The letter stated in its penultimate paragraph that the request was addressed to NPB pursuant to Article 11 of Regulation No 17 and fixed a period of three weeks for the reply.

D. *The reply of NPB*

12. NPB replied to the request for information by registered letter dated 30 June 1981.

The letter, signed by the Managing Director, reads:

'In conformity with the "contrat de programme" of 29 September 1972, concerning the selling prices of household (electrical) apparatus, our company neither fixes nor recommends any retail prices.' (Translation from the original Dutch).

E. *The retail prices of NPB in Belgium*

13. The 'contrat de programme' regulates the margins, conditions of sale and prices of household electrical and consumer electronics equipment in Belgium. Adherence to the programme is not obligatory although most manufacturers and distributors and dealers have signed, and refusal to join involves certain disadvantages. Under the version dated 17 July 1979, manufacturers and importers are required to abstain from fixing or issuing mandatory retail prices or catalogue prices and may only set the net prices at which they supply to the trade.

14. The normal practice of NPB is, however, to issue lists showing the retail prices which its dealers are required to apply. These price lists give no indication that they come from NPB and consist of photocopied sheets on plain paper without any heading. The lists are communicated to dealers either as part of the prepared documentation on the occasion of so-called 'dealers' days' when NPB introduces a new range of models to its dealer network or in the course of visits to their premises by NPB's representative.

15. The Commission has obtained from different sources independent of each other the retail price lists for Technics equipment applicable from September 1976, April 1978, March 1979, September 1979 and April 1980 and is satisfied of their authenticity. These

list against each model in the Technics range a retail price which corresponds with base price × 1·66, giving a coefficient of × 1·75 on the maximum trade price, since all retailers receive a 5 % discount off base price. This calculation gave dealers a coefficient of × 1·40 after tax (then charged at the rate of 25 % on most items).

16. The Commission has obtained information from dealers that NPB's commercial policy as determined and supervised at a senior level of management is to ensure that its recommended retail prices are respected by dealers and, if any lower ticketed prices are displayed, to intervene by requiring the dealer to put his prices back up.

17. During at least the period from September 1976 until April 1980 it was was the policy and practice of NPB to issue such retail price lists to its dealer network in Belgium. The Commission has ascertained that while actual price lists may no longer be issued by NPB, dealers in Brussels were still calculating their retail prices on the basis of the coefficient × 1·66 in August 1981. (Since the introduction of an extra 8 % luxury tax in Belgium in September 1981 this may have increased).

Legal assessment

18. By Article 15 (1) (b) of Regulation No 17 the Commission may by decision impose upon undertakings fines of from one hundred to five thousand units of account where intentionally or negligently they supply incorrect information in response to a request made under Article 11 (3) or (5) of said Regulation.

19. In its answer NPB stated in clear and unequivocal terms that it did not fix or recommend any retail prices.

In fact, the standard practice of NPB and its senior management during almost the whole of the period covered by the Commission's request was to issue to dealers lists showing retail prices for each model in the range. The precise extent to which NPB ensured observance by its dealers of the retail prices shown in the price lists need not be determined here since, at the very least, issuing such price lists constituted a price recommendation, a practice of which NPB had categorically denied the existence.

20. In response to the statement of objections addressed to it by the Commission, NPB stated that it did not believe it had intentionally or negligently supplied incorrect information in response to the request for information but said it would abide by the decision of the Commission 'based on the record' and waived the opportunity of an oral hearing.

21. The Commission, however, considers that NPB did provide incorrect information in response to a request made under Article 11 (3) of Regulation No 17. Since the facts were entirely whithin the knowledge of the undertaking, and the price lists were issued to dealers on occasions organized at a senior level of management, the only conclusion to which the Commission can come is that the incorrect information was supplied intentionally.

22. The infringement is considered to be a serious one. Differences in retail price levels and *a fortiori* the existence of recommended or mandatory retail prices in the various EEC Member States are of considerable importance in the assessment by the Commission of the economic effects of a suspected export prohibition such as was believed to have been imposed by National Panasonic (UK) Ltd. Had the Commission been obliged to accept the answer given by NPB, its impression of an important aspect of the price structure for the sale of Technics products in the EEC would have been totally incorrect. Such an incorrect impression might considerably distort the Commission's assessment of the effect or even the existence of a suspected export prohibition. NPB had the benefit of legal advice at the time it made its reply and there is no likelihood of a misunderstanding having occurred.

23. The Commission therefore intends to impose a fine upon NPB. Having regard to the circumstances set out above it sets the fine at 5 000 ECU,

HAS ADOPTED THIS DECISION:

Article 1

By stating in its letter dated 30 June 1981 that it did not recommend any retail prices SA National Panasonic (Belgium) NV intentionally supplied incorrect information in response to a request for information made under Article 11 (3) of Regulation No 17.

Article 2

A fine of 5 000 (five thousand) ECU, that is, Bfrs 208 646 (two hundred and eight thousand six hundred and forty six Belgian francs) is hereby imposed on SA National Panasonic (Belgium) NV. This amount shall be paid within three months of notification of this Decision to SA National Panasonic (Belgium) NV to the following account: Commission of the European Communities, Banque Bruxelles Lambert, Brussels, account No 310-0231000-32.

Article 3

This Decision is addressed to SA National Panasonic (Belgium) NV, Stationstraat 26, 1720 Groot Bijgaarden, Belgium.

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

Done at Brussels, 11 December 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission