II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 December 1981

relating to a proceeding under Article 85 of the EEC Treaty (IV/25.757 — Hasselblad)

(Only the Danish, English, French and German texts are authentic)

(82/367/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 (2),

Having regard to the standard sole distributorship agreement of 2 July 1965, in the version dated 6 March 1978 notified by the company Victor Hasselblad Aktiebolag, Gothenburg, Sweden in accordance with Article 4 of Regulation No 17,

Having regard to the standard agreement on the distribution of Hasselblad products in the United Kingdom (Dealer Agreement), notified by the UK sole distributor Hasselblad (GB) Limited, Wembley, United Kingdom, on 25 January 1980,

Having regard to the complaint lodged by the retailer Camera Care Limited, Belfast, United Kingdom, on 6 July 1979 against Victor Hasselblad Aktiebolag and Hasselblad (GB) Limited,

Having regard to the investigations carried out on 30 June 1980 in accordance with the Commission Decision of 17 June 1980 at the premises of Hasselblad (GB) Limited, Ilford (Ireland) Limited and Têlos SA,

Having regard to the Commission Decisions of 13 October 1980 and 18 November 1980 to initiate proceedings,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 [2],

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

Whereas :

THE FACTS

A. THE VICTOR HASSELBLAD DISTRIBUTION SYSTEM

I. Distribution arrangements and market position

(1) Victor Hasselblad Aktiebolag (hereinafter referred to as Victor Hasselblad), whose registered office is in Gothenburg, Sweden, is the world's leading manufacturer of single-lens 6 × 6 format roll film reflex cameras. Its product range includes four different models of camera and nearly 300 camera accessories.

(2) Victor Hasselblad is part of the Swedish Säfvean Group which is active in the fields of financing, trade and industrial production. In 1980, the Säfvean Group recorded an aggregate turnover in excess of 400 million ECU. Victor Hasselblad acts largely independently as a manufacturer and supplier of photographic equipment.

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

[2] OJ No 127, 20. 8. 1963, p. 2268/63.

(3) Victor Hasselblad exports some 97 % of its production, with the bulk going to the European Community (around 40 %). Within the European Community, Hasselblad cameras are distributed through independent sole distributors in each Member State (except Luxembourg). The sole distributors concerned by this Decision are :

— Hasselblad (GB) Limited, Wembley, United Kingdom (hereinafter referred to as Hasselblad (GB)),

— (up to 31 December 1980) Ilford (Ireland) Limited, Dublin, Ireland (hereinafter referred to as Ilford),

— Nordic Im- and Export Handelsgesellschaft mbH, Hamburg, Germany (hereinafter referred to as Nordic),

— James Polack aps, Birkerød, Denmark (hereinafter referred to as Polack),

— Prolux sprl, Brussels, Belgium (hereinafter referred to as Prolux),

— Têlos SA, Levallois Perret, France (hereinafter referred to as Têlos).

With the exception of the United Kingdom, no special distribution system exists at the wholesale or retail stage in any Member State, and no conditions regarding resale are imposed on dealers.

(4) Victor Hasselblad affixes a serial number to every major item of equipment, including all cameras, lenses and magazines, and keeps a register of all sales to sole distributors. Victor Hasselblad is thus able to determine exactly to whom and on what date it supplied which Hasselblad goods.

(5) Hasselblad cameras are among the most expensive reflex cameras on the world market and enjoy an excellent reputation for quality, workmanship, durability and serviceability as well as for the exceptionally wide range of accessories. Apart from professionals, as a rule only highly-skilled amateur photographers use Hasselblad cameras. Although Victor Hasselblad's annual output (some ... [1]) cameras) is small in terms of the annual world-wide production of reflex cameras, it represents a significant share of the market segment in which Victor Hasselblad is active, viz. reflex cameras taking medium-format roll film.

(6) With a turnover of some ... million ECU in the financial year 1980, Victor Hasselblad estimated that Hasselblad cameras accounted for ... % of the sales of reflex cameras taking medium-format roll film in Denmark and Ireland, for ... % in France, and for ... % in the United Kingdom and Germany.

II. The sole distributorship agreements notified

(7) On 2 July 1965, Victor Hasselblad notified to the Commission a standard sole distributorship agreement for the distribution of Hasselblad equipment in the European Community which had been progressively introduced in the Community since 1 January 1958. Article 1 (2) of this standard agreement prohibited the sole distributor from selling or offering for sale outside his allotted territory Hasselblad cameras, whether directly or indirectly. In addition, Article 8 stipulated that the sole distributor had to take account of the manufacturer's recommendations regarding sales policy, prices and discounts.

(8) By letter dated 23 December 1976, the Commission informed Victor Hasselblad that the prohibition in Article 1 (2) was at variance with the free movement of goods within the common market and would have to be deleted. It also pointed out that Article 8 constituted an infringement of the competition rules laid down in the Treaty. By letter dated 10 February 1977, Victor Hasselblad informed the Commission that it would comply with the points made by the Commission when rewording the standard sole distributorship agreement. On 6 March 1978, Victor Hasselblad sent to the Commission the promised new version of the sole distributorship agreement, pointing out that it had amended the agreement in line with the Commission's recommendations. Article 1 of the new version prohibits the sole distributor from actively promoting or carrying on sales outside its contract area, and in particular from soliciting customers for the contract goods and from setting up branch offices and warehouses outside the contract territory. By letter of 20 February 1979, the Commission informed Victor Hasselblad that, in the light of the facts submitted by Victor Hasselblad, the sole distributorship agreement fell within the scope of Regulation No 67/67/EEC [2] (block exemption

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

[2] OJ No 57, 25. 3. 1967, p. 469/67.

for exclusive dealing agreements). This sole distributorship agreement constitutes the legal basis for relations between Victor Hasselblad and its sole distributors in the Community.

(9) On 2 December 1975, Victor Hasselblad concluded with the UK sole distributor, Hasselblad (GB), an agreement which departed in several particulars from the sole distributorship agreement notified to the Commission. This UK distribution agreement was amended and supplemented on 20 November 1977 and was notified to the Commission on 25 January 1980.

III. Practical application of the sole distributorship agreements

1. *Situation of Hasselblad equipment with regard to prices and competition*

(10) There is price competition in the European Community in respect of photographic equipment, even for the same item. What is more, Hasselblad customers have a good overall view of the market and are aware of the situation with regard to prices. As a result, there is a major incentive for wholesalers and retailers to purchase Hasselblad equipment at favourable prices, even in other Member States, and to pass on the price difference to their customers.

Victor Hasselblad's sales policy is to invoice sales to its sole distributors within the Community on the basis of a single international price list and only in German marks. As a result, any fluctuation in the respective national currency's exchange rate against the German mark has direct implications for the sole distributor in question. This was particularly noticeable in the case of sterling, which fluctuated by more than 20 % against the German mark between 1978 and 1981.

All Hasselblad sole distributors grant their major customers quantity discounts, quantity bonuses or other price rebates. Financially speaking, it is very much in the latter's interests to increase their sales figures in order to receive such advantages and, for this reason, they will readily engage in exports. This may serve to depress prices on the camera market in other Member States.

(11) According to a sales strategy paper (points 3.6 and 5.1) drawn up by Hasselblad (GB) at the beginning of 1980 and entitled 'A policy for Europe', some sole distributors will, of course, find it preferable to operate on a price-cutting basis, with the result that these distributors increase their turnover in Hasselblad products at the expense of others. The paper asserts that parallel imports by retailers totally disrupt the retail price-level which the sole distributor would like to see, and that as a result of parallel imports, sole distributors operating on a high promotion/high margin policy have to cut their costs in order to compete with imported Hasselblad products. This was, the paper states, in the final analysis detrimental to Hasselblad's entire distribution system.

These observations apply above all to Hasselblad (GB) and to the London area, where the situation was the subject of a complaint. In a memorandum to the Hasselblad (GB) management dated 23 May 1979, a sales representative complained of parallel imports. The firm Camera Care was identified in the memorandum as one of the main culprits.

Prolux and Nordic have stated to the Commission that they also experienced similar problems with parallel imports of Hasselblad equipment by retailers and that, as a result, price levels were being threatened.

2. *Prevention of trade between Member States*

The Makro case

(12) In 1974, Prolux had discovered that the Belgian firm Makro was selling Hasselblad equipment in Brussels even though it had not been supplied by Prolux. It is clear that Prolux complained to Victor Hasselblad about it. Victor Hasselblad therefore wrote to Têlos on 18 June 1974, stating that it had found that some Hasselblad dealers who were well-informed of the price and delivery situation in the different countries had in recent years been importing Hasselblad merchandise on their own initiative. These 'pirate imports', it went on, made for considerable market disruption and were very annoying for loyal Hasselblad dealers. Victor Hasselblad pointed out that, in order to protect its distributors on the various markets, it was doing its utmost to control the development of such trade. It had been discovered that a Belgian dealer (Makro) had sold Hasselblad equipment at very low prices and that this equipment had

been supplied to Têlos in January 1974. Victor Hasselblad was sure that Têlos would keep an eye on the situation. In addition, Victor Hasselblad requested Têlos' comments on this dealer.

In its reply dated 8 July 1974, Têlos assured Victor Hasselblad that it was very concerned about this matter and would be certain to 'keep an eye' on the situation although it was very difficult to stop such 'grey' exports.

On 6 December 1974, Prolux also contacted Têlos in connection with such export business, pointing out just how unwelcome such cheap parallel imports were and asking Têlos for its view on the matter. In a letter dated 27 December 1974, Têlos informed Prolux that it had traced the dealer who had carried out the parallel imports, that it found the situation very unhealthy ('très malsain') but that, unfortunately, there was no solution to the problem and that it was very annoyed about the whole affair.

The Ilford case

(13) In April 1978, the proprietor of the the Northern Ireland photographic retailer 'The Amateurs Nook Ltd', Belfast, called at the shop of the Irish sole distributor Ilford in Dublin; the purchase of a considerable amount of Hasselblad equipment was confirmed in an exchange of letters between Ilford and the retailer in question on 28 April and 30 May 1978. Delivery of the goods to The Amateurs Nook took place between June and October 1978. A number of Hasselblad cameras from this consignment were resold to Camera Care's London outlet.

As a result of test purchases made by Hasselblad (GB) from Camera Care and since Hasselblad (GB) notified Victor Hasselblad of equipment serial numbers, by checking these numbers Victor Hasselblad discovered that the goods referred to above had originally been supplied to Ilford. On 13 October 1978, Victor Hasselblad wrote to Ilford expressing its extreme concern that Camera Care was still selling at very low prices equipment that had been 'grey imported'. The letter continued in the following terms: 'We always do our best to protect and help our distributors and we are worried about this situation. This is a very serious matter, especially as this dealer already has caused Hasselblad (GB) Limited a lot of problems and is no more a Hasselblad dealer. Would you please immediately institute an investigation and inform us about the delivery of the equipment.'

(14) This letter left Ilford in no doubt that Victor Hasselblad wanted to prevent sales outside the Republic of Ireland. Ilford, in its reply dated 27 October, attempted to explain its difficulty in refusing to sell to customers from Northern Ireland when they visited its premises; it pointed out that Ilford held and displayed stock which is not available in Northern Ireland and it did not promote business outside its contract territory.

(15) On 15 November 1978, Victor Hasselblad telephoned Ilford and insisted 'in the strongest possible terms', according to Ilford, that Ilford should sell Hasselblad equipment only to customers living and working in the Republic of Ireland and that, in particular, it should not supply Hasselblad equipment to UK dealers or photographers who visited its premises. This export ban was subsequently confirmed in a letter from Victor Hasselblad to Ilford dated 15 November 1978. After stating his conviction that Ilford now understood how serious a view Victor Hasselblad took of the 'grey imports' of Hasselblad merchandise to the United Kingdom, Victor Hasselblad's sales manager went on to say that: 'We cannot accept the fact that you deliver Hasselblad merchandise directly to dealers and photographers from Northern Ireland or England, who visit your premises .... The reason why we fight the grey import is that we want to protect our distributors as much as possible. A distributor, who invests a lot of money in a good Hasselblad Marketing Program, has the right to be protected by the manufacturer. This is our philosophy and I am sure that you agree with us.'

(16) In a letter dated 21 November 1978, Ilford fully endorsed Victor Hasselblad's sales policy of preventing parallel imports and assured Victor Hasselblad that it would discontinue exports and would turn away foreign customers who visited its premises. Ilford complied with the export ban from 15 November 1978 to August 1980.

(17) Immediately after Victor Hasselblad had received Ilford's assurance it informed Hasselblad (GB) of it in a letter dated 24 November 1978. Hasselblad (GB) could now be certain that no Hasselblad equipment would be imported from Ireland in the future.

(18) Hasselblad (GB) was not, however, content with this export ban on Ilford. Since it had bought up the imported Hasselblad equipment from Camera Care and since, in general, it suffered a loss of revenue and profit as a result of parallel imports, Hasselblad (GB) wrote to Ilford on 4 December 1978 requesting compensation for the costs incurred in buying up the parallel imports of cameras from Ireland. In the same letter, the Managing Director of Hasselblad (GB) expressed his appreciation of Ilford's current efforts 'to stamp out this unhealthy trading between countries'. Since, however, Ilford, in its reply dated 17 January 1979, assured Hasselblad (GB) that it was prepared to do everything possible to stamp out grey exports and since it had also advised a customer from Northern Ireland who had approached it to contact Hasselblad (GB), the latter eventually waived its demand for compensation.

The Têlos case

(19) In May 1978, the proprietor of Camera Care visited the premises of Têlos and ordered quite a large amount of Hasselblad equipment, including Hasselblad tools. Têlos accepted the order. Têlos, however, knew that Victor Hasselblad could, at any time, trace the source of Hasselblad goods by checking the serial numbers. Têlos thus laid down as a condition of the sale that the goods supplied must not be sold anywhere in the Community. In June 1978, Têlos delivered to Camera Care the Hasselblad equipment it had ordered, but not the tools, which Têlos would itself have had to order from Victor Hasselblad.

(20) Camera Care sold Hasselblad equipment from the above consignment to customers in the United Kingdom. Through checks carried out by Victor Hasselblad on the serial numbers of Hasselblad equipment test-purchased by Hasselblad (GB), the latter discovered that the equipment had originally been supplied to Têlos. However, Hasselblad (GB) assumed that Camera Care had purchased the equipment from a French dealer supplied by Têlos. On 5 July 1978, Hasselblad (GB) telephoned Têlos, giving details of the 'grey imports' effected by Camera Care and calling on Têlos to 'look into the matter'. According to the minutes of a meeting of Hasselblad (GB) managers on 18 August 1978, these contacts with Têlos served merely to combat grey imports into the United Kingdom. By letter dated 6 September 1978, Hasselblad (GB) reminded Têlos of these parallel imports and once again asked for an explanation. On 7 September 1978, Camera Care urged Têlos to deliver the outstanding consignment of the equipment it had ordered. This time, Camera Care gave an assurance that these supplies would be kept strictly confidential.

(21) Because of the intervention by Hasselblad (GB) and in view of Têlos' sole distributorship agreement with Victor Hasselblad, Têlos, in a letter dated 11 September 1978, refused to do any further business with Camera Care. In November 1978, Victor Hasselblad again intervened to exert pressure on Têlos so that it would not in future engage in any export transactions. In a letter to Hasselblad (GB) dated 24 November 1978, Victor Hasselblad was able to confirm that it had contacted Têlos on the matter of imports and that Têlos had told the retailer Camera Care not to visit its shop any more as it could no longer supply dealers from abroad.

The Prolux case

(22) Hasselblad (GB) and, it is clear, Victor Hasselblad took steps to prevent the Belgian sole distributor Prolux from exporting. Like Têlos, Prolux cited its contract with Victor Hasselblad as grounds for refusing orders from customers outside its allotted territory. For instance, in a telephone conversation with Camera Care on 29 May 1979, Prolux declined to supply Hasselblad equipment direct to Camera Care 'because of (its) contract with the manufacturers'. When Camera Care wrote to Prolux on 30 May 1979, Prolux forwarded this letter to Hasselblad (GB), which expressed its gratitude in a letter dated 19 June 1979, mentioning that Victor Hasselblad's Sales Manager had informed Prolux of the growing problems Hasselblad (GB) was experiencing with grey imports, which they were trying desperately to combat.

3. *Measures to preserve market compartmentalization*

(a) Serial number checks

(23) Under Clause 6 of the standard sole distributorship agreement (Clause 8 of the Agreement with Hasselblad (GB)), the sole distributor is required to keep a register of the serial numbers of equipment it sells together with the name and address of the buyer, and to allow Victor Hassel-

blad to inspect its register whenever it wishes. Victor Hasselblad, acting in conjunction primarily with the United Kingdom, French, Belgian and Danish sole distributors, has used the serial number checks and its right of access to each sole distributor's register to identify the distribution channels and to trace the exporting dealer. Victor Hasselblad continued to do so even after receiving a letter from the Commission dated 23 November 1979 pointing out once again that neither it nor its sole distributors should obstruct exports within the Community.

(24) On 5 February 1980, Victor Hasselblad wrote in the following terms to a UK retailer who had complained about imports by other dealers: '... we follow very carefully the registration of merchandise with serial numbers. In this way we are able to detect if any large amount of cameras, which we delivered to a particular market will later on be registered from some other areas and we then have some small talk with the party involved.'

(25) In the Makro, Ilford and Têlos cases Prolux and Hasselblad (GB) had passed on to Victor Hasselblad the serial numbers of the equipment involved in imports, enabling the latter to discover to whom it had originally supplied the equipment. In addition, Hasselblad (GB), working in close association with Victor Hasselblad, set out to trace the sources of Camera Care's supplies by carrying out serial number checks in 1979 and 1980. These checks revealed that Danish and Dutch dealers had supplied Hasselblad equipment to Camera Care.

(b) Exchange of price lists and terms of business

(26) Victor Hasselblad and its sole distributors for years provided one another with the price lists and terms of business applicable in each Member State. Of considerable interest to Victor Hasselblad and to its sole distributors were also the price rebates allowed to large customers, which were not shown in price lists and which ranked as business secrets.

(27) In the period between 1977 and 1979, Victor Hasselblad regularly asked the sole distributors for their new price lists in its April sales letter, to which it usually attached its new price list for the 12-month period after 1 June. In specific cases where 'pirate' or 'grey' imports, to use Hasselblad terminology, had been discovered by checking serial numbers, Victor Hasselblad also asked the sole distributor from whose allotted territory such exports had come for its price lists and, in addition, for details of the rebates and bonuses granted to dealers. Such was the purpose of the letters to Têlos and to Ilford dated 18 June 1974 and 13 October 1978 respectively. Both sole distributors sent in their price lists and gave Victor Hasselblad details of their system of discounts. Victor Hasselblad immediately forwarded Ilford's price list to Hasselblad (GB) (letter dated 1 November 1978).

(28) Prolux wrote to Têlos on 10 December 1973 and on 20 March 1975 enclosing its price list and asking for Têlos' price list in order to put together a picture of net selling prices on the European market (letter of 20 March). On 27 June 1977, Prolux once again asked Têlos for its price list as Prolux was in the process of drawing up its new Hasselblad price list. In this connection, Prolux also asked for details of Têlos' other terms of business (bonuses, discounts), while at the same time disclosing details of its own bonuses, rebates, etc. When Hasselblad (GB) discovered that parallel imports into the United Kingdom had come from France, its sales manager telephoned Têlos on 5 July 1978 requesting details of the list prices applicable in France and of the rebates granted to dealers and to professional photographers. In a letter to Têlos dated 31 July 1978, Nordic enclosed its price list, gave details of its bonus system and asked Têlos for its price list and for details of the discounts it granted to photographic dealers and photographic studios. According to the minutes of a meeting of Hasselblad (GB) managers on 18 August 1978, it was decided, under item 5: Combating 'grey imports', that the sales manager of Hasselblad (GB) would ask Têlos for its price list. In its letter of 6 September 1978, Hasselblad (GB) enclosed its own price list, gave accurate details of its bonus and discount system and asked for the Têlos price list since, so the letter continued, Hasselblad (GB) felt that the full transfer of such information was to their mutual benefit. On 4 March 1980, Polack, clearly in response to a request made by Hasselblad (GB) over the telephone, sent the latter its price list and provided details of its bonus and discount system.

(29) The exchange of price lists between and the notification of their respective price rebates by Victor Hasselblad and its sole distributors are not provided for in the sole distributorship agreements and as a result were not included in the notification.

(c) Discrimination against parallel imports as regards after-sales service

(30) Under clause 10 of the sole distributorship agreement between Victor Hasselblad and Hasselblad (GB) (paragraph 10 of the standard agreement applicable in the other Member States), the manufacturer provides a 12-month guarantee. The sole distributors undertake to discharge the terms of the guarantee for the cameras covered.

(31) With effect from 1 January 1979, Hasselblad (GB) introduced a new guarantee arrangement extending to 24 months the manufacturer's guarantee for cameras imported by Hasselblad (GB) and sold through the official Hasselblad distribution network (Silver Service Card Guarantee).

The Silver Service Card Guarantee was introduced at a time when many UK importers of photographic equipment were complaining about 'grey' imports and were stating openly that they would not perform any guarantee services for cameras that had been 'grey-imported'. With this special type of guarantee, Hasselblad (GB) sought to combat 'grey imports'. Under Points 6 and 7, 'Counter problem of grey imports of Hasselblad products from Europe', the 1980 marketing objectives drawn up by Hasselblad (GB) contains the following: 'continue to promote Silver Service Scheme benefits to customers purchasing cameras originating in the UK'.

Hasselblad (GB)'s advertisements have drawn attention to the fact that the manufacturer's customary guarantee had been extended from 12 to 24 months and stated: 'advantages of the Silver Service Card: priority warranty repair service with rapid turn-round and Silver Service Card holders will always have our first priority'.

A letter from Hasselblad (GB)'s Service Manager dated 8 December 1980, which has been produced to the Commission, states clearly that officially-imported Hasselblad cameras would benefit from a 24-hour turn-round service, with the implication that this would not apply to parallel imports.

(32) This behaviour by Hasselblad (GB) is widely-known in the United Kingdom. Issue No 58 of the AFAEP Magazine contained the following: 'UK dealers with an interest in providing an after-sales service can only buy through authorized distributors as otherwise the distributor may well refuse to service the cameras. Thus we have Hasselblad who recently introduced their "Silver Card" service which was almost certainly a way of providing a streamed service for UK-bought cameras and identifying foreign-bought cameras for a slower service'.

B. THE DISTRIBUTION ARRANGEMENTS FOR HASSELBLAD EQUIPMENT IN THE UNITED KINGDOM

I. The Hasselblad (GB) Dealer Agreement

(33) In 1974, Group I & E Limited, which had been distributing Hasselblad products in the United Kingdom since 1957, decided to set up a selective sales network for Hasselblad equipment. From then on, only retailers who signed the standard Dealer Agreement were recognized as 'authorized Hasselblad dealers' and supplied by the sole distributor. On 29 December 1975, Group (I & E) Limited changed its name to Hasselblad (GB) Limited. On 1 January 1979, Hasselblad (GB) amended the existing Dealer Agreement in a number of respects. Hasselblad (GB) notified the Commission of this Dealer Agreement on 25 January 1980.

Under clause 6 (a) of the Dealer Agreement, dealers must under no circumstances supply Hasselblad products to other photographic dealers without prior approval in writing from Hasselblad (GB), regardless of whether the latter dealers have their registered office in the United Kingdom or elsewhere.

Clause 23 (c) requires the dealer *inter alia* to withdraw and not to repeat any advertisements or announcements to which Hasselblad (GB) has notified its objection in writing.

Under clause 28, Hasselblad (GB) may terminate the Dealer Agreement without notice if the dealer changes the geographical location of his premises without the prior approval in writing of Hasselblad (GB). The dealer is required to notify Hasselblad (GB) forthwith of any such relocation.

(34) Hasselblad (GB) showed a turnover of £ ... and a ... of £ ... in 1978 and a turnover of £ ... and a ... of £ ... in 1979. In the financial year 1980, it showed a ... of £ ... with a turnover of £ ....

II. Practical implementation of the Hasselblad (GB) distribution arrangement

1. *Admission to the distribution network*

(35) Hasselblad (GB) has signed Dealer Agreements with about 100 of the 2 000 or so specialist photographic dealers in the United Kingdom. Part of its distribution policy is not to give all competent dealers access to Hasselblad products. If Hasselblad (GB) considers that a particular area is 'saturated' with Hasselblad dealers, it will not appoint a new dealer there. Also if an authorized dealer transfers his business premises there, he will lose his authorization.

On 15 February 1980, Hasselblad (GB) stated to the Commission that it could not authorize a dealer which made parallel imports of Hasselblad goods because in such a case Hasselblad (GB) 'would ... have absolutely no control over the products being ordered' and the dealer could not give the Silver Service Card guarantee for those goods.

2. *Influence upon resale prices*

(36) As early as August 1973, a representative of Group I & E (as Hasselblad (GB) was then called) had said at a seminar on 'the effects of cash-and-carry trading on the professional retail trade' that, where retailers cut prices by around 10 %, his firm even held back on supplying certain dealers, and on 1 December 1975 Group I & E had threatened any of its dealers who did not treat the prices given in the retail price list published by it as minimum selling prices with the withdrawal of credit facilities. Hasselblad (GB), in a memo dated 24 March 1980, told dealers that it made no sense to embark on a pricing policy which was damaging profitability in a way that might be difficult if not impossible to recover.

3. *The Camera Care case*

(37) On 7 January 1976, Camera Care was admitted by Hasselblad (GB) to its distribution network. Camera Care was and is a photographic retailer that operates with low profit margins. Camera Care's prices for Hasselblad products were, on average, some .. % lower than the retail prices recommended to retailers by Hasselblad (GB).

After it had joined the Hasselblad distribution network, Camera Care's total turnover rose from £ ... in 1974 to £ ... in 1977. The share of Hasselblad products rose from .. % to .. %, while the share of Hasselblad equipment in a typical Hasselblad dealer's total turnover is between .. % and .. %. For its outstanding success in selling Hasselblad products, Camera Care was awarded a Hasselblad (GB) decoration in spring 1978.

(38) By letter dated 13 February 1978, Hasselblad (GB) gave three months' notice that it was terminating the agreement. Hasselblad (GB) gave as the reason for its decision to terminate the agreement an advertisement in two specialist magazines. The main part of both advertisements read as follows: 'Swedish massage by Victor Hasselblad tones up your pictures. Hasselblad and Camera Care, a love affair'. They went on to say that 'Camera Care sell, buy, exchange, lease, hire, purchase, loan, repair and export Hasselblad products and that 'Camera Care can match any other retailer's selling price'.

(39) Hasselblad (GB) made an oral protest concerning this advertisement when it first appeared. In the talks with Hasselblad (GB) that had preceded the appearance of these advertisements, Camera Care had, at the sole distributor's request, agreed not to use the wording 'we will beat any other dealer's price'. Hasselblad (GB) had even asked Camera Care to delete altogether any reference to other dealers' prices.

In a letter dated 25 January 1978 to its then solicitor (which letter Hasselblad itself produced to the Commission), Hasselblad (GB) said that it disapproved of Camera Care's second advertisement 'strictly on prices'.

(40) In response to Hasselblad (GB)'s oral complaint concerning the first advertisement, Camera Care had attempted to halt publication of the second advertisement but was unable to do so for technical reasons. After receiving the letter giving notice of termination of the Dealer Agreement, Camera Care offered to submit any future advertisements to Hasselblad (GB) for approval, but without success.

(41) After termination of the Dealer Agreement, Camera Care attempted to obtain Hasselblad products from other dealers in the United Kingdom, who refused to do business with Camera Care, sometimes citing clause 6 of the Dealer Agreement and for fear of reprisals on the part of Hasselblad (GB) (Johnson Photographics). In the case of Life Photographics, Hasselblad (GB) intervened personally and threatened to terminate its Dealer Agreement if it supplied Camera Care. Camera Care is today still unable to procure Hasselblad products from authorized Hasselblad dealers in the United Kingdom.

Since termination of the Dealer Agreement, Hasselblad (GB) has continuously monitored Camera Care's trade in Hasselblad products. For this purpose, it also engaged the services of a detective agency to keep under surveillance from 13 October 1978 to 10 December 1979 *inter alia* Camera Care's delivery capacity and prices.

LEGAL ASSESSMENT

APPLICABILITY OF ARTICLE 85 OF THE EEC TREATY

A. CONCERTED PARTITIONING OF THE MARKET

(42) As stated in the judgment given by the Court of Justice of the European Communities on 16 December 1975 in Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 ('Suiker Unie' [1975] ECR 1663), the concept of a 'concerted practice' refers to a form of coordination between undertakings which knowingly substitutes for the risks of competition practical cooperation between them which leads to conditions of competition which do not correspond to the normal conditions of the market. If an undertaking acts on the complaints made to it by another undertaking in connection with the competition from the former's products, this constitutes or is evidence of a concerted practice.

(43) Victor Hasselblad took up the complaints made by its sole distributors Prolux and Hasselblad (GB) concerning parallel imports and contacted Têlos, Ilford, and, on the occasion of Camera Care's imports, also Prolux. It made clear to them and put into practice its general sales policy of protecting its sole distributors from imports. Victor Hasselblad expressly prohibited Ilford from engaging in exports and requested Têlos to keep an eye on the matter. It evidently also contacted Prolux on account of the matters of exports.

(44) Ilford subsequently gave Victor Hasselblad an oral and written commitment that it would comply with the ban and Têlos gave an assurance that it would keep an eye on exports and would not itself supply Camera Care any more. Prolux refused to meet orders from the United Kingdom. Têlos gave a similar assurance to Prolux in December 1974 and to Hasselblad (GB) between July and September 1978. Accordingly, Têlos, Ilford and Prolux discontinued exports to the United Kingdom. In doing so, however, Têlos, Ilford and Prolux also acted on and adopted either explicitly (Ilford and Têlos) or tacitly (Prolux) the respective complaints made by the other sole distributors.

(45) In addition to Victor Hasselblad, which, in its capacity as manufacturer, played a major role in formulating this policy of market compartmentalization, Hasselblad (GB) and Prolux knowingly and intentionally prompted the other sole distributors to act as they did. By acting in this way, the sole distributors in question (Hasselblad (GB), Ilford, Têlos, Prolux and Polack) arranged also among themselves not to export to other Member States in the common market. They thus complied with Victor Hasselblad's general sales policy, which had been notified to them, viz. to afford the sole distributors the maximum feasible territorial protection. This coordinated behaviour made normal market conditions, as they would have evolved in the presence of free circulation of goods, unattainable.

(46) For the purpose of applying Article 85 (1), it need not be decided whether the export ban imposed on Ilford amounts to an agreement. It is sufficiently decisive that Victor Hasselblad and its sole distributors combined to apply a policy of market compartmentalization.

(47) Têlos's and Ilford's submission that they complied with the manufacturer's export ban only in form (Têlos) or only as a result of extreme pressure being exerted on it (Ilford) is irrelevant to the question whether there was a concerted practice. For a concerted practice to exist it is sufficient for an independent undertaking knowingly and of its own accord to adjust its behaviour in line with the wishes of another undertaking. The motive or the knowledge that the act is unlawful is irrelevant.

(48) Moreover, the provisions in the sole distributorship agreements to the effect that the serial numbers of equipment sold and the name and

address of the purchaser should be registered and should be notified to Victor Hasselblad upon request have been used by Victor Hasselblad and by Hasselblad (GB), Ilford, Têlos, Prolux and Polack to trace the source of exports within the Community. Such systematic checks were clearly not isolated measures but part of an overall system of market partitioning. All of the abovementioned sources of exports were detected by serial number checks. The latter is therefore the use for an unlawful purpose of a contractual provision which in itself is lawful.

(49) The exchange of price lists and business secrets between Victor Hasselblad, Hasselblad (GB), Ilford, Têlos, Prolux, Nordic and Polack was another ancillary device to ensure the market partitioning. No objections will normally be raised under competition law merely because a manufacturer asks its sole distributors for their price lists and for information regarding their terms of business (price rebates, bonuses, etc.). However, Victor Hasselblad used the information it received to inform its sole distributors of the prices charged by the other sole distributors. As can be seen from Victor Hasselblad's letters of 18 June 1974 and 13 October 1978 to Têlos and to Hasselblad (GB) respectively, this exchange of information was designed precisely to prevent exports ('pirate exports') or to remove the incentive for them.

The exchange of price information between Prolux and Têlos and between Hasselblad (GB) and Têlos clearly served the same purpose. Polack asked for the price information at a time when parallel imports from Denmark to the United Kingdom were expanding. The exchange of information between Têlos and Nordic took place without any reasons being given but included details of pricing and discount arrangements, and this at a time when parallel imports were also taking place.

(50) The Court of Justice in its Judgment of 17 October 1972 in the 'Cimenteries' case, [1972] ECR 977, and the Commission in several Decisions : (COBELPA/VNP, 8 September 1977 (OJ No L 242, 21. 9. 1977, p. 10), Vegetable parchment 23 December 1977 (OJ No L 70, 13. 3. 1978, p. 54), have pointed out that the mutual notification between competitors of prices and of the conditions governing discounts, bonuses, rebates, etc., which rank as business secrets, constitutes an anti-competitive measure within the meaning of Article 85 (1). This is all the more so where, as is usually the case, such information is sought or given for an anti-competitive purpose or with anti-competitive effects (Court of Justice, Judgment in 'Suiker Unie' [1975] ECR 1663 and 1965 *et seq.*). It was precisely in order to eliminate competition in the form of parallel imports that the parties concerned exchanged the information in question.

(51) The joint submission by the parties concerned that they never increased their prices to match those charged by another sole distributor but, if anything, adjusted their prices downwards in no way affects the above assessment. First, it shows that in this case the arrangement for exchanging information influenced the market behaviour of the parties concerned. Secondly, if information had not been exchanged in the manner described, the price reductions, where they occurred, would have been larger. The joint submission statement that the price lists were 'generally known' is not true of the secret price rebates and bonuses. Further, the fact that it is possible, although bothersome and time-consuming, to obtain price lists with the help of third parties such as dealers in no way detracts from the assessment that the exchange of price information brings about an artificial change in the conditions of competition (cf. Commission Decision in Vegetable Parchment).

B. EFFECT OF THESE MEASURES ON THE SOLE DISTRIBUTORSHIP AGREEMENTS

(52) Under Article 3 (b) of Regulation No 67/67/EEC, sole distributorship agreements do not benefit from block exemption where the parties to them take direct or indirect steps to protect the allotted territories or endeavour otherwise to prevent imports.

(53) Under the agreements as written, there was no lawful means by which Victor Hasselblad or its sole distributors could control the resale of Hasselblad equipment to an extent larger than that permitted under the exemption provided for in Regulation No 67/67/EEC or could demand, say, that resellers supply the equipment only to dealers supplied by Hasselblad sole distributors.

(54) In its Judgment of 1 October 1975 (Case 25/75 — Van Vliet/Dalle Crode [1975] ECR 1103), the Court of Justice declared that the effect of a sole distributorship agreement must not be to prevent imports from other Member States being carried out outside the 'official' distribution network, thereby upholding the Commission's constant endeavours to ensure that sole distributorship arrangements do not restrict supplies of the relevant contract goods and do not divide up markets.

(55) As implemented, the sole distributorship agreements between Victor Hasselblad and the sole distributors Hasselblad (GB), Ilford, Têlos, Prolux, Polack and Nordic do not, therefore, fall within the block exemption provided for in Article 1 (1) of Regulation No 67/67/EEC, with the result that Article 85 (1) of the Treaty applies to them because of their exclusivity.

(56) An anti-competitive measure can consist in a sole distributor giving no, or slower, or lower-quality repair service in respect of parallel-import goods. The Commission has repeatedly stated that, compared with a purchaser of goods that have been imported through regular channels, a purchaser of parallel-import goods must not be discriminated against either financially or technically or as regards access to after-sales service (cf. Commission Decision of 23 October 1978 : Zanussi (OJ No L 322, 16. 11. 1978)). This does not mean that a sole distributor is not allowed to provide any additional guarantee services in respect of goods imported and resold by him. However, parallel-import products must not be placed at a disadvantage in so far as the manufacturer's guarantee and the sole distributor's guarantee are identical. The distributors guarantee must not assure the user priority in speed of repair.

Prompt repair work is an important feature of any guarantee, particularly where, as in the present case, the products in question are, for the most part, used by professionals and where the speed of guarantee and repair services is a fundamental feature of the after-sales service.

(57) Hasselblad (GB) practices a more rapid repair service for 'normally' imported cameras, thereby placing purchasers of parallel-import Hasselblad equipment at a disadvantage. This constitutes a measure acting in restraint of competition. This behaviour on the part of Hasselblad (GB) is caught by Article 3 (b) of Regulation No 67/67/EEC because it is intended to dissuade dealers or consumers from obtaining the goods from within the common market.

(58) It is irrelevant here that this is a unilateral measure since even unilateral action is, as is clear from the ninth recital of Regulation No 67/67/EEC, sufficient for Article 3 of that Regulation to apply. For the same reason, the sole distributorship agreement between Victor Hasselblad and Hasselblad (GB) does not benefit from the block exemption in Article 1 (1) of Regulation No 67/67/EEC.

C. THE DISTRIBUTION ARRANGEMENT IN THE UNITED KINGDOM AND ITS IMPLEMENTATION

I. The terms of the Dealer Agreement

(59) Since clause 6 impedes exports, it is caught by Article 85 (1). The Commission in several decisions and the Court of Justice in numerous judgments have stressed the anti-competitive nature of such clauses. The prohibition on cross-supplies restricts competition because the economic freedom of authorized dealers is impeded seriously, and makes authorized dealers dependent (cf. Commission Decisions concerning : Deutsche Philips, 5 October 1973 (OJ No L 293, 20. 10. 1973, p. 40) ; Omega, 3 June 1975 (OJ No L 159, 21. 6. 1975, p. 22)).

(60) The right under clause 23 to oversee advertisements and other publicity is tantamount to a right of post-publication censorship on the part of Hasselblad (GB). This extensive right of intervention enables Hasselblad (GB) to prevent actively competing and price-cutting dealers, particularly those who import but not through the Hasselblad distributor, from advertising their activities, the more so as Hasselblad (GB) is not required to give any justification for its censorship measures.

(61) The purpose of the right under clause 28 to terminate an agreement where a dealer transfers his business premises is *inter alia* to shield authorized dealers' 'sales territories' from competitors, to secure territorial protection for the former and thereby to restrict competition. This restriction on competition is all the greater when, in the event of a transfer of business premises, existing authorized dealers are also expelled from the distribution system even though they may have invested extensively in Hasselblad equipment.

(62) Clauses 6, 23 and 28 therefore restrict competition within the meaning of Article 85 (1).

II. Practical application of the distribution system

1. *Restricted access to the distribution system*

(63) As the Court of Justice held in its Judgment of 25 October 1977 in Case 26/76 (Metro [1977] ECR 1875), selective distribution systems constitute an aspect of competition which accords with Article 85 (1), provided that resellers are chosen on the basis of objective criteria of a qualitative nature relating to the technical qualifications of the reseller and his staff and to the suitability of his trading premises and that such conditions are laid down uniformly for all potential resellers and are not applied in a discriminatory fashion. It follows that selective distribution systems based on admission criteria which go beyond a simple and objective selection of a qualitative nature normally restrict competition (Judgment of the Court of Justice, 10 July 1980, Case 99/79 — Perfumes [1980] ECR 2511).

The Court of Justice, when considering selective distribution systems in relation to Article 85 (1) has also established that the economic and legal context in which they are operated and all the relevant legal and factual circumstances must be taken into account (Judgment of 11 December 1980 in L'Oreal [1980] ECR 3775).

(64) Hasselblad (GB) refuses to admit dealers to its distribution network for reasons additional to those laid down in the Dealer Agreement and rejects some dealers who satisfy all the terms and conditions of the distribution arrangement. This hinders potential competition within the territories allotted to authorized dealers. Resellers are thus selected not only on the basis of objective criteria of a qualitative nature but on the basis of the quantitative assessment made by Hasselblad (GB). This is the policy behind clause 28.

2. *The Camera Care case*

(65) The Camera Care case and the other measures to influence prices show that Hasselblad (GB) used the Dealer Agreement as a means to establish its chosen price-level at the retail stage. This is the policy behind clause 23.

In the context of the Dealer Agreement, dealers were not free to charge prices which were too far from the recommended prices. Camera Care's pricing strategy was also the main reason for the termination of the latter's Dealer Agreement. It was intended to exclude from the distribution system a competitor at the retail stage which had shown that it was able to sell Hasselblad equipment in large quantities and at low prices. Hasselblad (GB) thus made it clear that further supplies under the Dealer Agreement depended on conformity with the recommended prices. Similarly, the purpose of the boycott against Camera Care which Hasselblad (GB) tried to impose under the Dealer Agreement in the United Kingdom and in concert with Victor Hasselblad and the other sole distributors elsewhere and of the systematic monitoring of Camera Care (point 41) was to shield from competition the dealers which were closely bound to Hasselblad (GB) by the Dealer Agreement.

(66) Hasselblad (GB) thus interferes with the freedom of the authorized dealers to fix their prices, using the dealers' fear of termination of the Dealer Agreement as a means of hindering price competition between authorized dealers.

In so far as the policy of Hasselblad (GB) on the operation of the Dealer Agreement limits the access of qualified dealers to Hasselblad equipment by quantitative selection, and in so far as Hasselblad (GB) used its position under the Dealer Agreement as a means to influence retail prices, there is a restriction of competition within the meaning of Article 85 (1).

D. EFFECT ON TRADE BETWEEN MEMBER STATES

I. Concerted practices and sole distributorship agreements

(67) The principal purpose and effect of the concerted practices described above and of the measures taken under the sole distributorship agreements was to impede the circulation of goods within the common market. The sole distributorship agreements and related export bans restrict trade between Member States since they are exclusive national dealing agreements based on territorial protection.

(68) This effect is appreciable. Hasselblad products are expensive pieces of precision equipment which are easily transported and of identical specification in all Member States, and in which cross-frontier trade is profitable. For the reasons set out at points 10 and 11 above, dealers have a substantial economic interest in exporting those products. Moreover, Victor Hasselblad's restricted output can lead to temporary shortages of supplies in particular Member States, which dealers seek to even out through parallel imports.

II. The distribution system in the United Kingdom

(69) The Dealer Agreement supplements Victor Hasselblad's distribution system, the purpose of which was the maintenance of the price level in each Member State, by partitioning-off the national markets. For the United Kingdom, this market partitioning was carried into effect at the retail level by the Dealer Agreement and its practical application.

The exclusion of parallel-importing dealers, the bans on exports and cross-deliveries contained in Clause 6, the exclusion of price-competitive dealers, the quantitative selection, the territorial protection of dealers (Clause 23), the direct influence on resale prices, the indirect influence on prices through Clause 28 and the use of the Dealer Agreement as a basis for the boycott of Camera Care all served as means towards this maintenance of the price-differences between the United Kingdom and the other Member States. These clauses and measures are closely interconnected and must not be considered separately. Further, restrictions of competition contained in the Dealer Agreement and the quantitative selection of dealers are likely to bar dealers who might have exported Hasselblad equipment from access to the system. Those dealers which are prepared to deliver Hasselblad products to other Member States but have not been authorized by Hasselblad (GB) are thereby prevented from exporting to purchasers in such countries (cf. Commission Decision — Deutsche Philips ; and Commission Decision — BMW, 13 December 1974 (OJ No L 29, 3. 2. 1975, p. 1)). These dealers and dealers like Camera Care who wish to reduce prices are compelled to seek parallel imports if they want to sell Hasselblad products at all. These restrictions are therefore also likely to affect trade between Member States.

(70) Hasselblad (GB)'s influence on prices within the framework of the Dealer Agreement led the selected dealers in the United Kingdom to charge virtually similar prices for Hasselblad equipment. The imposed resale price policy covered all Hasselblad goods, thus including goods imported from other Member States. This eliminated, so far as the selected dealers were concerned, the incentive for and probability of intra-Community trade, although the high price of Hasselblad equipment which Hasselblad (GB) charged the selected dealers would make it financially attractive for them to look for sources of supply outside the United Kingdom. The high prices of Hasselblad equipment mean that even small percentage differences make it worthwhile to seek supplies in other Members States. To this extent, the Dealer Agreement created an artificial barrier to trade between the United Kingdom and the other Member States. Moreover, the effects of Hasselblad (GB)'s resale price maintenance policy cannot be separated from the effects of the other infringements of Article 85 (1) dealt with in this Decision.

In view of all these circumstances taken together, the appreciable effect on trade between Member States of the anti-competitive results of the Dealer Agreement and of its practical application is clear.

INAPPLICABILITY OF ARTICLE 85 (3) OF THE EEC TREATY

(71) Under Article 4 (1) of Regulation No 17, agreements, decisions and concerted practices in respect of which the parties seek an exemption pursuant to Article 85 (3) must be notified to the Commission. Neither Victor Hasselblad nor the sole distributors have notified the Commission of their cooperation in market partitioning. For this reason alone, consideration cannot be given to exempting the concerted practices or the sole distributorship agreements with which they are closely connected. In addition, no individual exemption could be granted in respect of these restrictions of competition or of the sole distributorship agreements, as the resulting isolation of markets provides the undertakings concerned with the opportunity substantially to eliminate competition in Hasselblad equipment. The market partitioning which is the object and effect of the Dealer Agreement and the restrictions of competition contained in the Dealer Agreement and applied in association therewith are detrimental to the interests of consumers.

They tend towards ossification of the price structure and hence towards higher consumer prices, and cannot be exempted in any case.

APPLICABILITY OF ARTICLE 15 (2) (a) OF REGULATION No 17

1. **Intentional infringement**

(72) Victor Hasselblad and Hasselblad (GB), Ilford, Têlos and Prolux have intentionally infringed Article 85 (1). They willingly and intentionally took measures aimed at isolating the various markets and thus at restricting competition.

Victor Hasselblad has repeatedly described the territorial protection of its sole distributors as one of the objectives of its sales policy. Nor can Victor Hasselblad claim in response to the foregoing that it had erroneously and in good faith assumed that the export ban was permissible. Victor Hasselblad had been informed by letter dated 23 December 1976 that export prohibitions were inadmissible. Nor could the Commission's letter of 20 February 1979 to the effect that the sole distributorship agreement fell within the scope of Regulation No 67/67/EEC give rise to any misinterpretation, since that Regulation expressly stipulates that the possibility of parallel imports must remain secured. Victor Hasselblad itself led the Commission to believe that the agreement neither contained an export ban nor was intended to lead to such a ban and it was not until January 1981 that Victor Hasselblad began to claim that it had notified an ambiguous contractual clause containing an export ban. An undertaking cannot take advantage of a notification which even on the interpretation most favourable to it is ambiguous so as to obtain both protection from fines and, because it has misled the Commission, the opportunity to continue to practise clearly unlawful behaviour.

Hasselblad (GB) knew and intended that objectively suitable resellers would be prevented from importing Hasselblad products into the United Kingdom, and thus from competing within the common market. The measures to influence resale prices were also intended. Following the exclusion of Camera Care on account of its pricing strategy, the Dealer Agreement was intentionally used after July 1978 as a means and a legal basis of boycotting this dealer.

2. **Duration of the infringements**

(73) From June 1974 onward, Victor Hasselblad progressively arranged with its sole distributors Prolux and Têlos (June 1974), Hasselblad (GB) (summer 1978) and Ilford (November 1978) that it would try to protect their respective sales territories against imports and that the sole distributors would themselves abstain from exporting Hasselblad products and would impede exports by the dealers they supplied. This arrangement continued at least until August 1980. The mutual exchange of information between Victor Hasselblad, Hasselblad (GB), Ilford, Têlos, Prolux, Polack and Nordic existed, at least, from June 1974 between Victor Hasselblad and Têlos; from March 1975 between Têlos and Prolux; and from April 1977 between all the sole distributors in this case and Victor Hasselblad. Through the Dealer Agreement and its application in practice, Hasselblad (GB) infringed Article 85 (1) from 1 January 1975 onwards. The measures to influence resale prices were applied only intermittently as required; the facts set out at points 36 to 41 and the Camera Care incident show that Hasselblad (GB) exercised this influence in 1973, 1975, 1978, 1979 and 1980.

(74) By virtue of Article 15 (5) (a) of Regulation No 17, the 1974 market-partitioning agreement between Victor Hasselblad and the sole distributors Prolux and Têlos is protected, as far as events up to February 1977 are concerned, against fines. On 15 February 1977 Victor Hasselblad informed the Commission that it would discontinue the export ban. The system of exchanges of information has not been notified to the Commission and therefore does not benefit from the protection of Article 15 (5). The same applies to the application in practice of the amended wording of the sole distributorship agreements, and to Hasselblad (GB)'s discrimination against parallel-importing dealers in regard to admission to the distribution system and against goods imported outside the 'official' channels in giving after-sales service. No fine is to be imposed on Hasselblad (GB) in respect of the restrictions upon competition contained in the Dealer Agreement or of the quantitative selection of dealers, for the period since 25 January 1980.

3. Gravity of the infringements

(75) The partitioning of markets constitutes a serious infringement of Article 85 (1). Victor Hasselblad and Hasselblad (GB) were the driving force behind attempts to prevent trade between Member States and imports into the United Kingdom. Hasselblad (GB) showed particular zeal in urging the other sole distributors to monitor cross-supplies into other Member States and to exchange price information. Hasselblad (GB) also acted unilaterally in connection with the Dealer Agreement to discriminate against parallel-importing dealers and, in regard to after-sales service, against parallel-import goods. The introduction of the Dealer Agreement in furtherance of the policy of market compartmentalization at the retail stage constitutes a further element of a serious infringement, as do the other restrictions of competition connected with the Dealer Agreement.

(76) Infringements of this kind are inherently likely to have substantial effects on prices to users in the Community. The goods concerned in this case are not in mass consumption, but they are of very high unit value and the impact of the infringements on even a relatively small number of users is therefore considerable. Many users are professional photographers, for whom a Hasselblad camera may be an essential working tool. These photographers were themselves affected in their individual ability to compete with others. Where price-differences between countries exist, even a small volume of parallel imports can have marked effect in the higher-price zone, as Hasselblad (GB) itself stated (point 11 above). Hasselblad (GB)'s exclusion of qualified dealers on anti-competitive grounds also tends to keep prices high. Apart from prices, users were also affected in that physical availability of the products was restricted.

Specialist dealers undoubtedly make a significant contribution to the efficient distribution of goods of the kind dealt with here. Any measures to restrict their access to such goods or their commercial freedom in selling them (other than measures applied on valid qualitative criteria) are therefore serious distortions of trade and competition. Moreover, the economic effects of inability to obtain Hasselblad products or of resale price maintenance on dealers are not confined to their actual or potential turnover in those products alone : the ability to offer the uniquely extensive and costly Hasselblad range may be an important element in a dealer's prestige, and the buyers of Hasselblad cameras are by definition those who are disposed to spend substantial sums of money on photographic equipment and supplies. A dealer who cannot supply the major items of Hasselblad equipment or cannot freely fix resale prices for them will be hampered in selling other supplies to Hasselblad users.

(77) It is not possible to establish the economic effect of each of those inter-connected infringements separately. It is also impossible properly to measure the profit which these two undertakings drew from their infringements or the extra which they imposed on users. It is, however, established that these infringements made it difficult for dealers and consumers in the Member States and especially in the United Kingdom to find and benefit from the cheapest sources of Hasselblad products. This behaviour also caused dealers such as Camera Care to lose substantial business which they would probably have done had it not been for the infringements.

Ilford, Têlos and Prolux took part in Victor Hasselblad's and Hasselblad (GB)'s policy of partitioning the market. They previously showed themselves willing to do export business, and agreed only reluctantly to practical cooperation in that policy.

(78) In fixing the amount of the fines the Commission has also considered the respective sizes of the undertakings and the necessity of dissuading the undertakings from repeating the infringements.

(79) In the cases of Nordic and Polack, the question of an infringement only arises in relation to the number-checks and to the exchanges of information. There is no evidence that the behaviour of these undertakings was directly related to the hindrance of parallel imports. A fine would therefore be inappropriate.

APPLICABILITY OF ARTICLE 3 (1) OF REGULATION No 17

(80) The requirement under Article 3 (1) of Regulation No 17 must be appropriate to the nature of the infringement which has been found, and can take the form of an order to discontinue specified activities.

(81) Victor Hasselblad has claimed to its sole distributors that it is legally entitled to prevent them from exporting and to oblige them to make exporting difficult for their dealers. Victor Hasselblad must therefore be required to inform its distributors in the European Community that neither exports by those distributors nor exports by the dealers they supply, to other member-countries, may be discouraged or forbidden. The Commission must be informed concerning the foregoing within a certain time.

Hasselblad (GB) must inform its dealers that they are free to fix their own resale prices for Hasselblad equipment and that cross-supplies to other dealers and exports to other Member States are not forbidden. Hasselblad (GB) further must inform the public, that it will grant after-sales service under the manufacturer's guarantee to all Hasselblad products without discrimination. It must inform the Commission concerning the foregoing within a certain time. Victor Hasselblad and Hasselblad (GB) must also be required not to prevent or hinder Camera Care's access to Hasselblad products.

APPLICABILITY OF ARTICLE 16 OF REGULATION No 17

(82) In this case it is appropriate to state that pursuant to Article 16 of Regulation No 17 a periodic penalty payment will be imposed on all the undertakings concerned, if they do not meet the obligations to put an end to the various infringements within three months of notification to them of this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The concerted practice engaged in between Victor Hasselblad, Hasselblad (GB), Têlos, Illford, Prolux, Polack and Nordic to prevent, limit or discourage exports of Hasselblad equipment between the Member States of the European Community constitutes an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

(a) The sole distributorship agreements covering Hasselblad equipment between Victor Hasselblad and Hasselblad (GB), Têlos, Ilford, Prolux, Polack and Nordic constitute, in so far as they grant exclusivity of distribution of Hasselblad equipment, infringements of Article 85 (1).

(b) An exemption pursuant to Article 85 (3) for the concerted practices and sole distributorship agreements referred to in Article 1 and in (a) above is refused.

Article 3

(a) The selective distribution system applied since 1974 by Hasselblad (GB) infringes Article 85 (1) by Clauses 6, 23 and 28 of the Dealer Agreement, the quantitative selection of dealers and the influence on resale prices.

(b) The application for exemption pursuant to Article 85 (3) for the selective distribution system is refused.

Article 4

The undertaking to which this Decision is addressed shall forthwith bring to an end the infringements found in Articles 1, 2 and 3 and shall refrain for the future from taking any measure having the same object or effect.

Article 5

Victor Hasselblad is required to inform its sole distributors in the European Community within three months of the date of notification of this Decision in writing and in a form previously approved by the Commission that exports to other Member States of the EEC are not forbidden and must not be prevented or discouraged. Victor Hasselblad is further required to inform the Commission within four months of the date of notification of this Decision of the way in which this has been done.

Article 6

Hasselblad (GB) is required to inform within three months of the date of notification of this Decision and in a form previously approved by the Commission:

(a) its dealers, that cross-supplies to other dealers and exports of Hasselblad products to other Member States are not forbidden and must not be prevented or discouraged, whether by resale price maintenance or otherwise, and

(b) the public, that it will grant after-sales service under the manufacturer's guarantee to all Hasselblad products without discrimination.

Hasselblad (GB) is further required to inform the Commission within four months of the date of notification of this Decision of the way in which this has been done.

Article 7

Victor Hasselblad (GB) are required not to prevent or hinder access by Camera Care to Hasselblad products.

Article 8

The following fines are hereby imposed:

upon Victor Hasselblad, a fine of 560 000 (five hundred and sixty thousand) ECU, that is £ 317 815·68 (three hundred and seventeen thousand eight hundred and fifteen pounds sterling and sixty-eight pence),

upon Hasselblad (GB), a fine of 165 000 (one hundred and sixty-five thousand) ECU, that is £ 93 642·12 (ninety-three thousand six hundred and forty-two pounds sterling and twelve pence),

upon Ilford, Têlos and Prolux, fines of 10 000 (ten thousand) ECU each, that is £ Irl 6 903·18 (six thousand nine hundred and three Irish pounds and eighteen pence), FF 61 833·10 (sixty-one thousand eight hundred and thirty-three French francs and ten centimes), Bfrs 414 054 (four hundred and fourteen thousand and fifty-four Belgian francs) respectively.

These sums shall be paid to the Banque Bruxelles Lambert, account No 310.0231000.32, or to the Société Générale, Paris, account No 5.770.006.5, or to Lloyds Bank Ltd, Overseas Department, 6 Eastcheap, London EC3P 3AB, account No 108.63.41 or to the AIB, Dublin, account No 0751.4084 within the said three months of the date of notification of this Decision to the undertakings to which it is addressed.

In the event of an appeal to the Court of Justice and subject to any order of that Court, the appealing party may produce within a three months' period a continuing and irrevocable banker's guarantee of payment of the fine given by a bank established in the European Economic Community. Failing such guarantee the fine remains payable by the date fixed herein.

Article 9

In respect of the obligations set out in Article 5, a periodic penalty payment of 1 000 ECU per day shall be payable by Victor Hasselblad and in respect of Articles 6 and 7 a periodic penalty payment of 500 ECU per day shall be payable by Victor Hasselblad and Hasselblad (GB) in respect of each day of delay from the date three months after notification of this Decision to them.

Article 10

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

Article 11

This Decision is addressed to the undertakings listed below:

— Victor Hasselblad Aktiebolag
Östra Hamngatan 3
S-40123 Gothenburg

— Hasselblad (GB) Limited, York House
Empire Way, Wembley
UK-Middlesex HA9 0QQ

— Ilford (Ireland) Limited
Dundrum Castle
IRL-Dublin

— James Polack aps
Blokken 38
DK-3460 Birkerød

— Têlos SA
72-76, rue Paul Vaillant Couturier
F-92300 Levallois-Perret

— Prolux sprl
75 rue des Champs Elysées
B-1050 Bruxelles

— Nordic Im- und Export Handelsgesellschaft mbH,
Hufnerstraße 20
D-2000 Hamburg 76.

Done at Brussels, 2 December 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission