II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 January 1983

relating to a proceeding under Article 85 of the EEC Treaty

(IV/30.735 — Deutsche Castrol Vertriebsgesellschaft mbH)

(Only the German text is authentic)

(83/205/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Article 11 (5) thereof,

Whereas :

I

(1) Deutsche Castrol Vertriebsgesellschaft mbH (Castrol) is a subsidiary of Castro Ltd, of the United Kingdom, whose products it markets in the Federal Republic of Germany. Such products consist of engine oils and lubricants for a wide range of applications, but especially for motor vehicles.

(2) The Commission has received a complaint from the proprietor of a motor vehicle repair workshop who is bound by an agreement with Castrol. The agreement, concluded in 1968, provided that Castrol would make available an interest-free loan of DM 40 000 and workshop equipment valued at DM 15 000. In return the complainant undertook, for a period of 20 years, to purchase from Castrol 80 % of all his requirements of lubricants, amounting to about 5 000 litres/kilograms per annum and at least 100 000 litres/kilograms in total, at the prices from time to time in force. The complainant asserts that this agreement forms part of a network of similar exclusive purchasing agreements which Castrol has imposed on the German market. He complains that these agreements preclude the firms which have entered into them for a long period not only from obtaining competing products but also from purchasing Castrol products by means of parallel imports at more favourable prices from other Member States. On account of their restrictive effect on competition, the exclusive purchasing agreements are said to be incompatible with Article 85 of the EEC Treaty.

(3) As a result of this complaint the Directorate-General for Competition, by a letter of 8 October 1982 referring to the legal basis and the purpose of the request and the penalties for supplying incorrect information, requested Castrol to furnish various information with a view to clarifying the facts. The information requested concerns the market position of the undertaking and its behaviour in the Federal Republic of Germany. Castrol did not reply to this request for information. By a letter of 29 November 1982 the Directorate-General for Competition again requested Castrol to answer the questions asked, but without result.

(4) Castrol maintains that the agreement between itself and the complainant cannot infringe Article 85 (1) of the EEC Treaty since it does not affect trade between Member States. Even if

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

the agreement is regarded as forming part of a group of similar agreements, this would not lead to any different conclusion in view of the weak position of Castrol on the relevant market. In any case, it is claimed that the agreements are covered by Regulation No 67/67/EEC [1]. Furthermore, the Commission's questions are not formulated with sufficient precision and are not reasonably relevant to the subject of the investigations.

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(5) The information requested in Article 1 of this Decision is necessary within the meaning of Article 11 (1) of Regulation No 17, in order to determine the applicability of Article 85 (1) of the Treaty, Articles 1 and 6 of Regulation No 67/67/EEC and Article 7 of Regulation No 19/65/EEC to the exclusive purchasing agreements entered into by Castrol. They are thus within the scope of the power to obtain information conferred on the Commission by Regulation No 17.

(6) As an exclusive purchasing agreement, the agreement described above and now before the Commission may fall under the prohibition of Article 85 (1). Such an agreement, even when concluded merely between undertakings in one Member State, may be such as to affect trade between Member States. This is particularly so when it forms part of a series of similar agreements which, taken either in isolation or together with others, and in the economic and legal context in which they are made, may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition. (Judgment of the Court of Justice of the European Communities of 12 December 1967, (1967) ECR 437 — Brasserie de Haecht I). If the requirements of Article 85 (1) of the Treaty were satisfied, it would be necessary to consider the applicability of Regulation No 67/67/EEC. If that Regulation also were found applicable, the Commission would be entitled to consider whether there are sufficient grounds for making use of the power conferred on it by Article 7 of Regulation No 19/65/EEC to withdraw the benefit of group exemption by an individual decision (cf. Judgment of the Court of Justice of the European Communities of 1 February 1977, (1977) ECR 65 — Brouwerij Concordia).

(7) For the the purposes of its examination the Commission needs to ascertain the extent of the exclusive purchasing agreements maintained by Castrol in the Federal Republic of Germany, and the undertaking's economic and market significance. The questions posed are directed to this end. They are concerned merely with data on the activities of Castrol and do not go beyond what is relevant to this case and what Castrol might reasonably be expected to supply.

III

(8) Under Articles 15 (1) (b) and 16 (1) (c) of Regulation No 17 the Commission may, by decision, impose on undertakings or associations of undertakings :

(a) fines of from 100 to 5 000 units of account where, intentionally or negligently, they supply incorrect information in response to a request made pursuant to Article 11 (3) or (5) or do not supply information within the time limit fixed by a decision taken under Article 11 (5);

(b) periodic penalty payments of from 50 to 1 000 units of account per day, calculated from the date appointed by the decision, in order to compel them to supply complete and correct information which it has requested by decision taken pursuant to Article 11 (5),

HAS ADOPTED THIS DECISION :

Article 1

Deutsche Castrol Vertriebsgesellschaft mbH, of Hamburg, is required, within one month of notification of this Decision, to furnish replies to the following questions :

1. Please indicate how many exclusive purchasing agreements of the kind described in I.2 above you have concluded in the Federal Republic of Germany. Please classify these agreements according to their duration as follows :

   (a) over 15 years ;

   (b) 10 to 15 years ;

   (c) five to 10 years ;

   (d) less than five years.

2. What was the total turnover of Deutsche Castrol Vertriebsgesellschaft mbH in motor vehicle lubricants in the last financial year ?

[1] As it stood at 8 December 1972 (OJ No L 276, 9. 12. 1972, p. 15), extended from 31 December 1982 to 30 June 1983 by Commission Regulation (EEC) No 3577/82 of 23 December 1982 (OJ No L 373, 31. 12. 1982, p. 58).

3. What share of your turnover in lubricants, in terms of value and percentage, is attributable to your business relations with firms which are obliged to purchase exclusively from Castrol in the manner described under I.2 ?

4. What is your estimate of your market share of lubricants (engine oils, gear oils and greases) in the Federal Republic of Germany :

   (a) in total ;

   (b) in relation to motor vehicle repair workshops ?

Article 2

This Decision is addressed to :

Deutsche Castrol Vertriebsgesellschaft mbH,
Esplanade 39,
D-2000 Hamburg 36.

An application for judical review of this Decision may be made to the Court of Justice of the European Communities in Luxembourg within two months of its notification on the conditions laid down in the EEC Treaty, in particular Article 173 and 185.

Done at Brussels, 10 January 1983.

For the Commission

Étienne DAVIGNON

Vice-President