II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 July 1985

relating to a proceeding under Article 85 of the EEC Treaty
(IV/29.420 – Grundig's EEC distribution system)

(Only the German text is authentic)

(85/404/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, first Regulation implementing Articles 85 and 86 of the Treaty (1), as last amended by the Act of Accession of Greece, and in particular Articles 6 and 8 thereof,

Having regard to the notification filed by Grundig AG on 29 March 1977 of its EEC dealership agreements with specialist wholesalers and retailers,

Having published a summary of the agreements in accordance with Article 19 (3) of Regulation No 17 (2),

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. FACTS

A. Grundig's distribution system and market position

On 29 March 1977, Grundig AG, Fürth, Federal Republic of Germany (hereinafter 'Grundig'), notified to the Commission the dealership agreements forming the basis of a selective distribution system for its consumer electronics products in the common market. It introduced the system on 1 April 1977.

Grundig distributes its television sets, video recorders, hi-fi equipment and related accessories in the Federal Republic of Germany through a network of specialist wholesalers and retailers and in the other Member States through sole distributors (some of them subsidiaries of Grundig) supplying specialist wholesalers and retailers. Altogether, some 28 000 dealers belong to the Grundig sales network in the Community. Grundig does not issue recommended prices for its products.

Grundig is one of Europe's largest manufacturers of consumer electronics equipment with a turnover in 1983/84 of approximately DM 2,8 billion. For its top-selling lines, colour televisions and video recorders, it has EEC market shares of 10,6 % and 6 % respectively. In some Member States its shares are higher. For colour televisions it has a share of 19,5 % in the Federal Republic of Germany, 12,4 % in Italy and 9,6 % in France. For video recorders its market share in the same countries is 16,5 %, 5,5 % and 3,3 %.

Since 1 April 1984 Grundig has been controlled by Philips (Philips-Gloeilampenfabrieken, Eindhoven, the Netherlands), which had had a 24,5 % stake in the company since 1979.

B. Grundig's distribution system

The dealership agreements forming the basis of the selective distribution system which Grundig introduced on 1 April 1977 were framed in the light of the principles which the Commission had established in its Decision 76/159/EEC (3)

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 276, 16. 10. 1984, p. 2.
(3) OJ No L 28, 3. 2. 1979, p. 19.

on SABA's distribution system. Following the modifications in the Commission's policy towards selective distribution in the consumer electronics sector signalled in its second Decision on the SABA system, Decision 83/672/EEC (hereinefter 'SABA II') (1), Grundig amended its dealership agreements to meet the new requirements.

Grundig's distribution of its products in the EEC is now based on:

— the Grundig EEC dealership agreement with wholesalers and

— the Grundig EEC dealership agreement with retailers.

The main terms of these agreements are as follows:

1. (a) Under the Grundig EEC dealership agreement with wholesalers, Grundig admits to its network as a wholesaler any wholesaler who, *inter alia:*

— carries on a wholesale business specializing in the sale of consumer electronics equipment, or has within his business a department specializing in the sale of such equipment which is equivalent to such a specialist wholesale business,

— employs a technically trained staff and a professional sales force capable of providing expert advice to customers,

— has the necessary facilities and resources to carry and stock as far as possible the whole Grundig range and ensure prompt delivery to his customers, and

— signs the Grundig EEC dealership agreement.

If Grundig fails to process a wholesaler's application for admission to the network within four weeks, the wholesaler is deemed admitted and Grundig undertakes to sign a dealership agreement with him immediately and to place him on the list of authorized Grundig dealers.

(b) Grundig specialist wholesalers undertake the following obligations, *inter alia:*

— to supply Grundig products for resale in the common market only to authorized Grundig dealers and before supplying a dealer to check if necessary with the trustee appointed by Grundig whether he is authorized by Grundig to sell its products;

— to sell Grundig products to consumers only where they carry on a business, purchase the goods for use in that business and furnish objectively verifiable evidence to that effect by signing a special declaration;

— to keep records of all Grundig products sold so that they can, if necessary, be traced by their serial numbers, and to preserve such records for at least three years;

— to assist Grundig in keeping the selective distribution system intact and in proceeding against breaches of the dealership agreement.

(c) Grundig specialist wholesalers are entitled to admit to the Grundig specialist dealer network any specialist retailer who satisfies the selection criteria laid down in the Grundig EEC dealership agreement with retailers.

(d) Grundig specialist wholesalers are free to supply or take supplies from any Grundig dealer anywhere in the common market and to set their own resale prices.

(e) Grundig undertakes, *inter alia*, to guarantee the integrity of its EEC selective distribution system and to maintain an up-to-date list of all authorized Grundig dealers with a trustee, who is responsible for answering inquiries as to whether particular dealers are members of the network.

(f) Where a Grundig specialist wholesaler is found not, or no longer, to satisfy the admission criteria Grundig may terminate the wholesaler's dealership forthwith, specifying in writing its reasons for so doing. Where a wholesaler is found to have breached the terms of the dealership in a manner which endangers the distribution system, Grundig may temporarily or, in the case of repeated breaches, indefinitely withhold supplies from the wholesaler and terminate his dealership forthwith. Where the breach involves an infringement of national law against unfair competition, Grundig may apply this sanction only if the infringement is not denied or has been proved in a court of law. A power of ordinary termination is enjoyed by Grundig only in the event of its abandoning its EEC distribution system.

2. (a) Under the Grundig EEC dealership agreement with retailers, a retailer must satisfy, *inter alia*, the following criteria to be admitted to the Grundig network as a specialist retailer. He must:

— carry on a retail business specializing in the sale of consumer electronics equipment, or alternatively;

— have within his business a department specializing in the sale of consumer electronics equipment which is comparable to a specialist consumer electronics business;

(1) OJ No L 376, 31. 12. 1983, p. 41.

— demonstrate Grundig products and display a representative selection of them in sales premises whose appearance is in keeping with the prestige of the Grundig brand. Specialist departments in stores must be separate from the store's other departments;

— employ trained sales staff possessing the requisite technical knowledge to advise customers in a competent manner;

— present as full a range of Grundig products as is reasonable for a specialist business or department of that size;

— keep adequate stocks of a representative selection of the relevant Grundig range, commensurate with the size, local importance and turnover of the business, and order immediately any Grundig products demanded by customers which he does not have in stock;

— provide competent and prompt after-sales service and all repairs and servicing under warranty, either in his own workshop or in a workshop under permanent contract to him;

— sign the Grundig EEC dealership agreement with retailers.

The retailer is prohibited from advertising or conducting his business in such a way as to put his exclusive capacity as a retailer in doubt, from making misleading references in notices or advertising, in connection with the sale of Grundig products, to sell at cash-and-carry, self-service or take-away prices and from selling Grundig products by mail order.

(b) Grundig will admit to its network any retailer fulfilling the selection criteria. Grundig wholesalers are also entitled to admit retailers, as stated above. Applications to Grundig will be deemed to have been accepted if Grundig fails to process them within four weeks, in which case Grundig undertakes to sign the dealership agreement with the retailer immediately and to put him on the Grundig dealer list.

In view of the fact that the dealership agreement is standard throughout the common market, Grundig has reserved the right to waive individual admission conditions in the light of national circumstances. However, it insists on the requirements that retailers be specialists, run a shop with unrestricted access to any member of the public, display Grundig products attractively, employ trained sales staff and provide after-sales and warranty services.

(c) Grundig specialist retailers undertake the following obligations, *inter alia:*

— to supply Grundig products for resale in the common market only to authorized Grundig dealers and before supplying a dealer to check if necessary with the trustee that he is a member ot the Grundig network;

— to keep records of all Grundig products sold to dealers so that the products can if necessary be traced by their serial numbers, to preserve such records for at least three years and to let Grundig know should there appear to be a need to check distribution channels either for technical reasons or in cases of reasonable suspicion of a breach of the EEC dealership agreement.

The Grundig EEC dealership agreement with retailers expressly provides that the retailers are free to supply or to take supplies from any approved Grundig dealer anywhere in the common market and to set their own resale prices.

(d) Grundig's obligation to guarantee the integrity of the distribution system and to appoint a trustee, and the rules governing ordinary termination and termination for breach of contract, correspond to those for wholesalers (see I.B.1. (e) and (f) above).

C. The extent of selective distribution for consumer electronics products

The extent of selective distribution in the consumer electronics industry varies in different Member States. In the Federal Republic of Germany, in particular, it has traditionally been a common method of distributing consumer electronics products. In other Member States, it is much less widespread. At all events, in all Member States there are a large number of manufacturers selling their products without dealer selection and in most cases these account for the bulk of sales of the products in the Member State concerned. The distribution systems of the manufacturers who do require their dealers to meet selection criteria also vary widely. Some of the systems notified to the Commission are purely national and so do not cover the whole Community. Some only lay down requirements pertaining to the dealer's professional, specialist status, which do not fall under Article 85 (1). Finally, several of the manufacturers practising dealer selection do not sell a full

range of consumer electronics products but are only represented in particular segments of the market. All in all, the number of selective distribution systems notified to the Commission has not increased since the judgment of the Court of Justice of 24 October 1977 in Case 26/76, *Metro* (1).

D. Comments by third parties

In response to publication of a summary of the Grundig dealership agreements the Commission received four submissions from interested parties. Their principal arguments were that the Grundig distribution system, in combination with the similar systems operated by other manufacturers, led to the *de facto* exclusion of the non-specialist trade from this sector and to a restriction of competition between Grundig dealers, especially on prices, and to price rigidity. Doubt was expressed as to whether in practice the approved dealers actually provided the advice and after-sales service required under the dealership agreements. After-sales service was, it was suggested, in any case no longer essential for a proper distribution of modern consumer electronics products since they were less likely to need repair than was the case in the past. One submission also criticized one of the selection criteria for retailers, concerning the character of sales premises and the attractive display of the products, as being too vague.

II. LEGAL ASSESSMENT

A. Article 85 (1)

1. The majority of the obligations contained in the standard dealership agreements with wholesalers and retailers which form the basis of Grundig's EEC distribution system are purely qualitative and, as such, do not fall under Article 85 (1). The agreements contain few clauses which have as their object and effect a restriction of competition within the common market and which are liable to affect trade between Member States, and which therefore require exemption under Article 85 (3).

2. In so far as the Grundig EEC dealership agreements merely lay down professional criteria for dealers, which are applied in a non-discriminatory fashion and which determine the procedure for admission to the network and impose ancillary policing obligations, they do not bring the agreements within the scope of Article 85 (1). This applies, in particular, to the following provisions of the agreements:

   (a) The requirements regarding the professional qualifications of dealers, the specialist knowledge of their sales staff, the provision of after-sales service and the character of sales premises are no more onerous than is necessary in a selective distribution system based on qualitative criteria for such technically sophisticated goods as consumer electronics products. The fast pace of innovation that is characteristic of the industry not only means that completely new products are being developed all the time but also that the uses of established products are constantly being extended. Another feature of the present-day industry is the increasing interpenetration between consumer electronics and data transmission and processing, which means, for instance, that domestic television sets are now used as terminals for connecting up many types of peripheral equipment as well as for their original purpose. Requirements as to the dealer's technical competence to provide advice and warranty services are therefore still necessary. This is true even though modern consumer electronics products are less likely to need repair than they used to. Apart from the fact that warranty and repair work is only one of the comprehensive range of services provided by specialist dealers, a competent repair service still needs to be provided to rectify such faults as do occur, even if they are not as frequent as in the past.

   (b) The requirement that dealers should demonstrate Grundig products in suitable sales premises and display them attractively must also be regarded as necessary. Grundig has a legitimate interest in ensuring that its high-quality products are presented to the consumer in appropriate surroundings, and an obligation of this nature is bound to be couched in general terms which leave some room for discretion. Furthermore, there is little danger of Grundig's being able to apply this condition in a discriminatory fashion, since the power to admit retailers, and hence the power to check that this condition is fulfilled, is also delegated to wholesalers and any retailer refused admission by Grundig is free to challenge the decision in court.

   (c) The prohibition on dealers advertising Grundig products at 'cash-and-carry, self-service or take-away prices' is justified because all dealers are obliged under the dealership agreement to provide certain types of advisory and after-sales services. This means that dealers are not allowed to pursue a marketing policy which does not in general include these services. Yet if a dealer advertises or offers for sale Grundig products at 'take-away prices' or the like, he is encouraging the consumer to waive such services. The contractual prohibition of such marketing practices can thus be subsumed under the qualitative selection criteria. There is no ground to fear that a dealer is consistently abandoning a policy of providing after-sales services, however, where he does not provide such services to a customer at the

(1) ECR 1875 (1977).

customer's own request. In such cases there is nothing in the dealership agreement to prevent the dealer from granting the customer a discount for the resultant cost savings.

The ban on selling Grundig products by mail order can also be subsumed under the obligation to provide customers with advice and to display the products. A dealer is not prohibited from mailing equipment to a customer at the customer's own request, however.

(d) The qualitative selection criteria applied by Grundig are a legitimate means of ensuring that its products are distributed by suitably qualified dealers. The vetting of dealers before they are admitted to the network, and the checks made on them afterwards where necessary, are intended to ensure that all dealers actually meet the selection criteria. With such a large number of dealers in the Grundig network, there is bound to be a possibility that individual dealers will fail to discharge their obligations properly. However, this possibility does not take away Grundig's right to continue to select its dealers on the basis of qualitative criteria.

(e) The policing obligations laid upon dealers when selling to other dealers and the obligation on wholesalers to assist Grundig in keeping the selective distribution system intact do not have an independent anti-competitive character. Grundig's exercise of its right to inspect a dealer's records is expressly limited to cases of reasonable suspicion of a breach of contract by the dealer or by another customer. The obligatory check on whether a prospective trade customer is (still) on the approved Grundig dealer list can be made either with Grundig or with a trustee. Thus, any possibility of these clauses being applied in an anti-competitive manner can be ruled out.

(f) The ban on wholesalers supplying private consumers does not fall within Article 85 (1) because it is meant to underpin the division of functions between wholesaling and retailing and prevent distortions of competition (cf. judgment of the Court of Justice in Case 26/76, *Metro/1977/* ECR 1875 at 1908, ground 28).

(g) Nor are the rules of the procedure for admitting dealers to and excluding them from the network liable to cause any significant restriction of competition, since here Grundig has followed the principles established in the Commission's SABA II Decision (at II.A.6 (b) and (c) thereof):

(aa) Grundig must decide on applications to join the network within four weeks.

(bb) Approved wholesalers, too, can admit qualified retailers to the network.

(cc) Dealerships cannot be terminated, other than for breaches of the terms of the dealership, except in the event of Grundig's abandoning the entire selective distribution network.

(dd) Termination of a dealership and/or withdrawal of the dealer's supplies on the ground of a breach of the law against unfair competition is only possible if the allegations are not denied or, if denied, have been proved in court.

3. A different view must be taken, however, of selective distribution systems which impose obligations on the undertakings concerned or contain selection criteria which go beyond the limits indicated above. They then fall under Article 85 (1), but can in appropriate cases be exempted under Article 85 (3).

In its dealership agreements with wholesalers and retailers Grundig undertakes not to supply dealers who do not belong to its distribution network. Grundig dealers, for their part, are forbidden to supply dealers who have not been admitted to the network by Grundig itself or by a Grundig wholesaler.

In the present case these obligations constitute a restriction of competition because in order to be admitted to the network dealers must not only satisfy certain general technical and professional criteria but must also be prepared to make specific commitments in terms of sales effort and to provide particular services.

Grundig retailers must display as full a range of Grundig products as is reasonable for a specialist business or department of that size and must keep stocks of a representative selection of the current Grundig range.

Grundig wholesalers must have the necessary facilities and resources to carry and stock as far as possible the whole Grundig range.

These obligations go beyond what is necessary for a competent distribution of the products and do constitute restrictions of competition, since they create impediments to the commercial independence of the authorized dealers.

4. Grundig's EEC-wide distribution system, which contains the restrictions of competition described above at point 2, is inherently likely to affect trade between Member States. There can be no doubt that this effect is appreciable, in view of the market shares held by Grundig in individual Member States.

B. Article 85 (3)

The agreements making up Grundig's EEC distribution system fulfil the conditions of Article 85 (3).

1. The qualitative selection criteria and the special commitments which wholesalers and retailers must make in terms of sales effort together contribute to improving the distribution of Grundig products, because they ensure that the products are distributed only by dealers who will give customers competent advice and provide after-sales service to install, run in and maintain the equipment and are also prepared to make a particular effort to sell the manufacturer's products. In this way, Grundig can rely on a network of professionally qualified dealers to present a suitably broad selection of its products to the consumer and have them in stock so they are readily available to intending purchasers. These arrangement are likely to make the distribution of its products more efficient. They will therefore tend to increase competition between Grundig and other brands without lessening competition between individual Grundig dealers.

2. The resulting advantages, particularly the efficient after-sales service and the availability of a wider range and faster delivery from wholesalers and retailers, are of immediate benefit to the consumer.

With their professional expertise, Grundig dealers are able both to advise consumers on general technical developments in consumer electronics, explaining how new products work and established products can be used in new ways, and to give them an indication of the specific characteristics of different brands. Manufacturers' sales brochures and even reports in technical journals and consumer magazines are only a partial substitute for a person-to-person talk between the specialist dealer and the consumer, and then only for the relatively small section of the population that is technically interested. From Grundig dealers, consumers can also gain a good idea of at least the main items in the Grundig range and can be sure of immediate, or at least very quick, delivery should they decide to buy a Grundig product. Finally, having decided to buy, the consumer can be sure that the dealer will give him expert advice on how to operate the equipment and if necessary will install and set it up for him in his home and provide after-sales service and carry out repairs of the product both during and after the guaranteee period.

These benefits will accrue to the consumer without his having to pay significantly higher prices as a result, given the continuing fierce price competition that exists in the sector, especially between specialist dealers (see 4 below).

3. The restrictions of competition contained in the Grundig selective distribution system are indispensable for the attainment of the above advantages. This applies both to the ban on supplying Grundig products to dealers not in the network and to the sales commitment required of dealers who are. Without these clauses in the dealership agreement, the advantage in terms of the distribution of the products and the resulting benefits for the consumer could not be attained. It should be noted that indispensability does not mean that there must be no other feasible way of distributing the products, but only that the restrictions of competition are necessary for the particular marketing strategy adopted by the manufacturer, which is judged to have the beneficial effects referred to in Article 85 (3). Another relevant consideration is the fact that since the Commission's SABA II Decision, Grundig has made changes to the procedure for granting and terminating dealerships which make such decisions more objective and offer no scope for the manufacturer to misuse the selective distribution system for anticompetitive ends.

4. Finally, the agreements making up the Grundig selective distribution system do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

(a) The restrictions contained in the dealership agreements affect only the relations between Grundig and its dealers. They have no appreciable effect on competition between Grundig and other consumer electronics manufacturers. In particular, dealers are in no way prevented by the dealership agreement from selling or promoting competing brands.

(b) Nor does Grundig's selective distribution system eliminate competition between dealers.

This is guaranteed by the terms of the dealership agreement itself:

The admission procedure in its present form ensures that any dealer fulfilling the selection conditions can be admitted to the network. Within the network dealers throughout the common market, at both wholesale and retail levels, can compete with one another, are free to set their own prices and can take advantage of the most favourable source of supply in the particular circumstances since there are no restrictions at all on dealers within the network supplying one another.

Also, Grundig does not have a strong enough position either in the common market as a whole or in a substantial part of it to eliminate competition between dealers.

Even in the geographical and product market where Grundig is strongest, the German colour television market, where it has a share of 19,5 %, Grundig faces effective competition from firms in the Thomson-Brandt group (Telefunken, SABA, Nordmende), which have a market share of around 23 %, and other large firms, and so cannot exert a decisive influence on competition between dealers through its selective distribution system. In the prevailing competitive conditions this still holds true even if the share of this market segment held by Philips, which controls Grundig, is added to Grundig's own, making a combined share of 33,5 %. This does not put Grundig and Philips together in a position to eliminate competition in the distribution of colour televisions in Germany. In any case, a danger of a reduction in competition at the distribution stage would only arise if Grundig and Philips had a uniform or at least very similar policy for distributing their products. This is not the case. Philips does not operate a selective distribution system in any Member State.

Finally, this conclusion is not upset by a consideration of the similar selective distribution systems operated by other manufacturers – an aspect which only requires examination in the case of the Federal Republic of Germany. Apart from the fact that these systems show considerable differences from one another (EEC-wide or purely national, open to any specialist dealer or subject to additional sales commitments, and covering one or two levels of distribution), they have not led to price rigidity or to the *de facto* exclusion of certain types of sales outlet.

(aa) Although the Court of Justice in its leading judgments in Case 26/76, *Metro,* ground 21, and in Case 107/82, *AEG-Telefunken,* ground 42 [1], assumed that in selective distribution systems the emphasis will be on service rather than price competition and accepted this reduced price competition in return for the stimulation of competition in other areas, the Commission's experience over many years of monitoring the situation in the Member State where selective distribution in this sector is most widespread has been that there is in fact fierce price competition in the retail trade generally, and between Grundig dealers in particular. This is also true of different product lines, with even completely new products showing substantial falls in prices soon after being launched on the market because of the pressure of competition. The prices of consumer electronics products have in general, despite technical improvements, risen much less than the rate of inflation. Colour television sets, for example, are in real terms only half as expensive as in 1968 despite their improved performance.

(bb) Nor has the Commission found that because of selective distribution systems certain types of outlet such as discount stores, cash-and-carry wholesalers and retail supermarkets are systematically excluded from selling such products. Self-service stores, like any other outlet, are naturally excluded from selling Grundig products by the selective distribution system if they are not prepared to fulfil the selection conditions, most of which are qualitative and so do not fall within Article 85 (1), provided they are not applied in a discriminatory fashion. If such outlets do meet the conditions for a dealership, however, they can sell Grundig products and several stores that sell mainly by self-service but have set up specialized consumer electronics departments with specialist staff are in fact in the Grundig network.

Apart from the fact that it is open to any interested dealer to take the necessary steps himself to gain admission to the network of a manufacturer operating a selective distribution system, only a minority of manufacturers in the Community, and even in the Federal Republic of Germany not all the major ones, have such a system. Furthermore, in the case of the manufacturers who only operate a national selective distribution system, self-service stores can bypass the system by obtaining the manufacturer's products for example through parallel imports and cannot legally be prevented from selling those goods in Germany.

Therefore, there is no *de facto* exclusion of the above types of outlet from the sale of consumer electronics products either in the Community as a whole or in a substantial part of it.

C. Articles 6 and 8 of Regulation No 17

Grundig notified its EEC dealership agreements with wholesalers and retailers to the Commission on 29 March 1977. At that time the agreements conformed in all essential respects to the standards set for such agreements in the

[1] ECR (1983) 3151, pp. 3196 – 97.

Commission's practice and the Court's case law. Subsequently, in the light of numerous investigations of the consumer electronics business the Commission modified its policy on certain common provisions of selective distribution systems governing the procedure for admitting dealers to and excluding them from the network, although not on the qualitative selection criteria and sales commitments which form the substantive core of such systems.

After the Commission had informed Grundig of its modified approach towards admission and exclusion procedures, Grundig brought its agreements into line with the new standards. It is therefore appropriate to set the date for the exemption pursuant to Article 85 (3) of the EEC Treaty to take effect under Article 6 of Regulation No 17 at 29 March 1977. Up to the time the Commission informed Grundig of the change in its approach and gave it an opportunity to bring its agreements into line with the new standards, the agreements can be judged against the old standards. It is found that Grundig's EEC selective distribution system in its old form fulfilled the exemption conditions set by the Commission and confirmed by the Court of Justice at the time. Furthermore, the Commission's investigations into price competition and Grundig's operation of the selective distribution system did not reveal any factors liable to render the selective distribution system ineligible for exemption. The Commission's aim in setting the new standards for admission and exclusion is to provide stronger safeguards against potential discriminatory application of selective distribution systems in the future. There are no grounds for applying the new standards to past practice, since how selective distribution systems were operated in practice in the past can be investigated, as it has been in Grundig's case. The new standards should therefore be applicable only from the time Grundig was informed of them.

The Grundig selective distribution system, the substantive core of which conformed from the outset to the Commission's standards, which have not changed, has therefore been eligible for exemption in its amended and its original form since the date of notification.

In view of the time that has elapsed since the notification, it is desirable to fix the period of exemption under Article 8 (1) of Regulation No 17 as extending until 28 March 1989. The Commission will then be able to look again at the effects on competition of Grundig's distribution system after a relatively short time.

Certain obligations must be attached to the Decision to enable the Commission to check that Grundig does not act in a discriminatory fashion in refusing admission to or excluding wholesalers or retailers from the network. Grundig must therefore be required to send the Commission every year a report of every case in which it has refused to grant a wholesaler or retailer a dealership or has terminated a dealership or withdrawn a dealer's supplies or has demanded to inspect a dealer's records of the serial numbers of equipment passing through his hands. This part of the Decision is based on Article 8 (1) of Regulation No 17,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable to:

— the Grundig EEC dealership agreement with wholesalers, and

— the Grundig EEC dealership agreement with retailers.

This exemption shall apply from 29 March 1977 until 28 March 1989.

Article 2

Grundig AG shall submit annual reports to the Commission, the first of them by 31 December 1985, setting out all cases in which it has:

— refused to grant a wholesaler or retailer a dealership or has terminated a dealership or withdrawn a dealer's supplies;

— exercised its right to inspect a dealer's records of serial numbers.

Article 3

This Decision is addressed to:

Grundig AG,
Kurgartenstraße 37,
D-8510 Fürth.

Done at Brussels, 10 July 1985.

For the Commission
Peter SUTHERLAND
Member of the Commission