COMMISSION DECISION

of 30 September 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/28.959 — VIFKA)

(Only the Dutch text is authentic)

(86/499/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 Spain and Portugal, and in particular Articles 2, 4, 6 and 8 thereof,

Having regard to the application for negative clearance submitted on 30 October 1974 by the *Vereniging van importeurs en fabrikanten van kantoormachines* (VIFKA — Association of Office Equipment Importers and Manufacturers), The Hague (The Netherlands), of the Association's rules and standard form agreement with non-members on participation in office equipment exhibitions in the Netherlands,

Having regard to the application submitted on 21 February 1978 by the *Vereniging van importeurs en fabrikanten van kantoormachines* for exemption of its rules and standard form agreement with non-members on participation in office equipment exhibitions under Article 85 (3) of the EEC Treaty,

Having published a summary of the VIFKA rules and agreement [2], pursuant to Article 19 (3) of Regulation No 17,

After consultation with the Advisory Committee on Restrictive Practices and Monopolies,

Whereas :

I. FACTS

(1) The *Vereniging van importeurs en fabrikanten van kantoormachines* (Association of Office Equipment Importers and Manufacturers) — hereinafter referred to as 'VIFKA' — is an association under Netherlands law, which was founded in 1950 and has over 200 members. The board of VIFKA can admit as members of the association any person or corporate body that has been carrying on business in the Netherlands for at least two years and that, during this time, has been exclusively or predominantly :

(a) manufacturing office equipment, or

(b) importing and/or dealing in, repairing and maintaining office equipment as the exclusive distributor in the Netherlands for one or more domestic or foreign manufacturers.

Firms that have not yet been in the trade for two years can be admitted as extraordinary members.

About 80 % of VIFKA's members are importers and about 20 % manufacturers. More than half of all Netherlands importers and manufacturers of office equipment, including some with considerable market shares, are members.

(2) The articles of associations of VIFKA state that the purpose of the association is to promote the economic and social interests of its members in the broadest sense, as they relate to import of, and dealing in, new office equipment and systems, the repair and maintenance of such equipment, and the supply of spare parts and accessories. The defence of the interests of the members in the broadest sense is also stated to be one of the association's objects.

(3) Among other activities, VIFKA organizes office equipment exhibitions in the Netherlands, of which the *'Efficiencybeurs'*, held every even year in Amsterdam, is the most important. In December 1973, VIFKA adopted two sets of rules, the 'Exhibition Rules' and the 'Disciplinary and Appeal Rules', governing members' participation in the *'Efficiencybeurs'* as well as a standard agreement with non-members wishing to participate.

(4) VIFKA initially applied to the Commission for negative clearance of the rules and agreement. Subsequently it notified the rules and agreement for the purpose of obtaining an exemption under Article 85 (3) of the EEC Treaty.

(5) At the Commission's request, VIFKA amended its exhibition rules, its disciplinary and appeal rules, and its standard form agreement with non-members to remove as far as possible their most restrictive elements. The changes were approved by the general meeting and the new text of the exhibition rules was finally adopted by the general meeting on 8 January 1986 and subsequently renotified to the Commission.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 146, 13. 6. 1986, p. 9.

(6) The main provisions of the new rules and standard form agreement are as follows :

— Participation at the *'Efficiencybeurs'*, at which office machines, furniture and equipment, copiers and data-processing equipment are exhibited, is open to members and non-members whose applications are accepted by the Exhibition Committee, and who must be manufacturers or suppliers of office equipment,

— Applications are considered in the light of the purpose of the exhibition, which is to show as wide a range of new or improved equipment as possible ; participation in previous exhibitions is also an important consideration when space is limited,

— Exhibitors at the *'Efficiencybeurs'* may not participate in any other office equipment fair or exhibition not organised or approved by VIFKA in the same calendar year ; 'office equipment fair or exhibition' is here taken to mean any fair or exhibition at which at least 60 % or 10 000 m^2 of the floor space is given over to office equipment, and any fair or exhibition of any size recognized as an office equipment exhibition by the public ; 'participation' is taken to include advertising of office equipment undertaken directly or indirectly by the applicant at or in the vicinity of such a fair or exhibition, supplying office equipment to others for showing at such a fair or exhibition, and advertising in publications concerned with the fair or exhibition,

— Firms not exhibiting at the *'Efficiencybeurs'* are free to participate in any other fair or exhibition,

— The Exhibition Committee may waive the ban on participation in other exhibitions for certain exhibitions or categories of product,

— Any applicant refused space at an exhibition may appeal to an Appeals Committee,

— Decisions on alleged breaches of the exhibition rules are taken by a Disciplinary Committee, with a right of appeal to the Appeals Committee ; the possible penalties are :

  — exclusion from the *'Efficiencybeurs'* or any other VIFKA activity for up to two years,

  — fines of up to Fl 5000.

  The Appeals Committee is composed of three members, two of whom are from outside the office equipment industry.

(7) It is further to be noted that VIFKA has declared that the exhibition rules are limited to exhibitions in the Netherlands, although that is not specified in the rules.

(8) Under the previous rules governing participation in the *'Efficiencybeurs'*, VIFKA members, whether they exhibited at the *'Efficiencybeurs'* or not, were strictly banned from participating in other office equipment fairs except with a special dispensation from VIFKA.

(9) Non-members wishing to exhibit at the *'Efficiencybeurs'* had to promise not to participate in any other office equipment fair in the two years following signature of the agreement, and had no redress in the event of refusal of admission or of fines imposed by VIFKA.

(10) The Commission did not receive any representations from third parties in response to publication of a summary of the rules and standard form agreement, pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(11) Article 85 (1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions of associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

(12) VIFKA, the members of which are undertakings in the office equipment industry, is an association of undertakings within the meaning of Article 85. The decisions taken by the general assembly of VIFKA, adopting the exhibition rules, the disciplinary and appeals rules, and the standard form agreement with non-members, were decisions of an association of undertakings within the meaning of Article 85. The agreement with non-members is an agreement between undertakings and an association of undertakings. Any measure or decision by VIFKA in implementation of the exhibition rules constitutes a decision by an association of undertakings.

The exhibition rules in their present form have as their object or effect the restriction of competition within the common market in the following ways :

(a) Competition between the manufacturers and importers of office equipment exhibiting at the *'Efficiencybeurs'* is restricted or distorted in that, in the years when the VIFKA is holding the *'Efficiencybeurs'*, they are hindered in, or

presented from, exhibiting and promoting their products to the trade and to the general public in competition with each other at any fair or exhibition not organized or approved by VIFKA;

(b) Competition between the organizers of exhibitions at which office equipment can be shown is restricted or distorted since they are hindered in, or prevented from, securing the participation of manufacturers and importers in years when the VIFKA is holding the *'Efficiencybeurs'*.

(13) The above restrictions of competition are liable to affect trade between Member States as follows:

(a) In years when the *'Efficiencybeurs'* is held, importers of office equipment who participate in the *'Efficiencybeurs'* are prevented entirely or in part from showing office goods manufactured in other Member States at fairs or exhibitions in the Netherlands that are not organized or approved by VIFKA. The result may be that only a limited or incomplete range of office equipment from other Member States can be shown to the trade or to potential customers at such fairs or exhibitions;

(b) Organizers of fairs and exihibitions which have not been approved by VIFKA are deprived of the opportunity of exhibiting in the Netherlands office equipment manufactured in other Member States during the calendar year in which the *'Efficiencybeurs'* is held. This obstacle to trade in services between Member States provided by organizers of exhibitions is liable to jeopardize freedom of trade between such States in a manner contrary to the objective of creating a single market of all those States.

(14) In view of the total sales of office equipment represented by the participants in the *'Efficiencybeurs'* these effects upon trade between Member States are far from negligible.

(15) 85 (1) consequently applies to the VIFKA exhibition rules.

B. Article 85(3)

(16) Under Article 85 (3) of the Treaty, the provisions of Article 85 (1) may be declared inapplicable in the case of any decision by an association of undertakings which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(17) The Commission has, on a number of occasions [1], confirmed that its policy in the field of fairs and exhibitions is to accept agreements or arrangements — such as the VIFKA exhibition rules — where they achieve rationalization and cost-savings and also present advantages to consumers which objectively outweigh the restrictive elements involved.

(18) The abovementioned advantages of rationalization and cost-saving are achieved by the VIFKA exhibition rules as follows:

(a) The *'Efficiencybeurs'* provides the most effective and high-level exposure of the widest possible range of office equipment to potential customers, the general public and the media;

(b) The costs incurred by manufacturers and importers in participating in office equipment exhibitions in the Netherlands are reduced since they are concentrated on such exhibitions at which the widest available variety of office equipment is exhibited and which are the most effective from a marketing point of view.

It may therefore be concluded that the exhibition rules contribute to improving the distribution of office equipment in the Netherlands and also to promoting economic progress.

(19) A fair share of these improvements in distribution and economic progress accrues to consumers. The periodic concentration of the *'Efficiencybeurs'* enables consumers to gain a complete view of the range of products available and to make a better-informed choice without having to travel from one exhibition to another in order to see all available products. This conclusion is strengthened by the fact that non-members can also participate in the *'Efficiencybeurs'*. It follows that the range of office equipment exhibited is increased.

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[1] Commission Decisions in cases: EMO (OJ No L 69, 20. 3. 1969, p. 13), renewed on 7 December 1978 (OJ No L 11, 17. 1. 1979, p. 16); Cematex (OJ No L 227, 8. 10. 1971, p. 26), renewed on 24 May 1983 (OJ No L 140, 31. 5. 1983, p. 27); UNIDI (OJ No L 228, 29. 8. 1975, p. 17), renewed on 23 November 1984 (OJ No L 322, 11. 12. 1984, p. 10); BPICA (OJ No L 299, 23. 11. 1978, p. 18), renewed on 30 April 1982 (OJ No L 156, 7. 6. 1982, p. 16); SMM & T (OJ No C 376, 31. 12. 1983, p. 1).

(20) The restrictions imposed upon exhibitors at the *'Efficiencybeurs'*, regarding their participation, in even years, in office equipment fairs and exhibitions not organised or approved by VIFKA, can be regarded as indispensable for the attainment of the benefits of rationalization of office equipment exhibitions. The rule for exhibitors at the *'Efficiencybeurs'* against participation in other equipment exhibitions not organised or approved by VIFKA during the same year is a necessary condition for the rationalization of the system of fairs and exhibitions of office equipment. It does not go beyond what is necessary for attaining this objective because, in the years when no *'Efficiencybeurs'* is held, manufacturers and importers exhibiting at the *'Efficiencybeurs'* are free to exhibit at any fair or exhibition they wish. They may also choose not to participate in the *'Efficiencybeurs'* in which case they are free to participate in any other fair or exhibition held in the same years as the *'Efficiencybeurs'*. This limits the restrictions on participation in other exhibitions to the minimum indispensable for attaining the aims of rationalization. However, it is necessary to ensure that these restrictions are not increased in practice beyond requiring that refusals of admission be brought to the attention of the Commission without delay. The fact that buyers can acquaint themselves not only with the products offered by the members of the VIFKA but also with those of non-members further supports the conclusion that the restrictions of competition are kept within the limits of what is indispensable.

(21) The exhibition rules do not eliminate competition between manufacturers and importers of office equipment in the Netherlands or between organizers of exhibitions at which office equipment is, or can be, displayed. The choice to participate in the *'Efficiencybeurs'* is free, and participation at exhibitions is not the only way manufacturers and importers of office equipment can attract the attention of the trade or potential customers to their products. A wide range of other advertising and promotion media are also available. Furthermore, their dealers, apart from having direct daily contact with the majority of potential customers, are free to participate in any fair or exhibition they wish, and their promotion activities will ultimately contribute to maintaining a high degree of competition between manufacturers and importers.

(22) As far as competition between organizers of exhibitions is concerned, this is only moderately affected by the exhibition rules. Any organizer who wishes to arrange an exhibition in the years when there is no *'Efficiencybeurs'* is free to do so. Even in years when VIFKA holds its own *'Efficiencybeurs'* only organizers of exhibitions not approved by VIFKA will be prevented from attracting to their exhibitions manufacturers and importers exhibiting at the *'Efficiencybeurs'*.

(23) Since all the requirements of Article 85 (3) are therefore satisfied, it is possible to grant an exemption for the exhibition rules currently applied by the VIFKA.

C. Articles 6 and 8 of Regulation No 17

(24) Under Article 8 (1) of Regulation No 17, decisions in application of Article 85 (3) must be issued for a specified period and conditions and obligations may be attached. In addition, under Article 8 (2) of the Regulation, the Commission has a duty to ensure that the requirements of Article 85 (3) continue to be satisfied.

(25) The exemption can only take effect from the date on which the amendments requested by the Commission were introduced. Therefore, the present exemption can take effect on 8 January 1986.

(26) In determining the duration of its Decision under Articles 6 and 8 of Regulation No 17, the Commission must take account of the specific characteristics and needs of the office equipment industry as well as the frequency of the events covered by the exhibition rules. It would therefore seem appropriate to grant exemption for the period from 8 January 1986 to 31 December 1996.

(27) Pursuant to Article 8 (1) of Regulation No 17, obligations may be attached to the Decision enabling the Commission to ensure that the requirements of Article 85 (3) continue to be satisfied during the period of exemption.

VIFKA should therefore be required to inform the Commission immediately of any changes in the exhibition rules, disciplinary and appeal rules, and the standard form agreement with non-members, and of any alteration in the manner in which they are applied.

Furthermore, VIFKA should immediately inform the Commission of any refusal of approval under the exhibition rules of office equipment exhibitions organized in the Netherlands by others.

Any refusal to admit would-be exhibitors to the '*Efficiencybeurs*' should also be communicated immediately to the Commission.

Finally, before the end of January of each year in which the '*Efficiencybeurs*' is held, VIFKA should submit to the Commission a calendar of all office equipment exhibitions organized or to be organized in the Netherlands during that year,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85 (1) of the EEC Treaty are, pursuant to Article 85 (3), hereby declared inapplicable to the exhibition rules, disciplinary, and appeal rules, and the standard form agreement with non-members adopted by VIFKA.

This Decision shall apply from 8 January 1986 until 31 December 1996.

Article 2

The following obligations shall be attached to this Decision:

— VIFKA shall immediately inform the Commission of any changes in the exhibition rules, disciplinary and appeal rules, and the standard form agreement with non-members, and any alteration in the manner in which they are applied,

— VIFKA shall immediately inform the Commission of any refusal of approval, under the exhibition rules, for office equipment exhibitions organized in the Netherlands by others,

— VIFKA shall immediately inform the Commission of any refusal to admit would-be exhibitors to the *'Efficiencybeurs'*,

— Before the end of January of each year in which the '*Efficiencybeurs*' is held, VIFKA shall submit to the Commission a calendar of all office equipment exhibitions held that year in the Netherlands.

Article 3

This Decision is addressed to the *Vereniging van importeurs en fabrikanten van kantoormachines,* Scheveningseweg 42, 2517 KV The Hague, The Netherlands.

Done at Brussels, 30 September 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission