II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 December 1986

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.356 — ABI)

(Only the Italian text is authentic)

(87/103/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 and the notification made on 11 October 1984 by the Associazione Bancaria Italiana, piazza del Gesù, 49 Roma concerning agreements and recommendations relating to the activities of the banks that are members of the Associazione,

Having regard to the summary of the application and of the notification published [2] pursuant to Article 19 (3) of Regulation No 17,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

THE FACTS

I. THE NOTIFICATION

A. The Associazione Bancaria Italiana

(1) The Associazione Bancaria Italiana (hereinafter called the ABI) is a non-profit-making association comprising banks and financial and credit institutions and their associations. Its objects are to defend its members' interests and study and discuss matters of concern to the banking and financial sector.

(2) In order to achieve these objects, the ABI :

(a) represents the collective interests of members ;

(b) cooperates with the public authorities and with economic and social organizations in solving problems connected with the banking and financial sectors ;

(c) informs and assists members ;

(d) promotes studies and research into banking and financial matters ;

(e) promotes exchanges of information and agreements between members on points of common interest.

(3) The ABI has three categories of members :

(a) active members : financial and credit institutions established in Italy ;

(b) corresponding members : the foreign subsidiaries of Italian banks ;

(c) *de jure* members : the professional associations of the various categories of credit institutions.

Corresponding members and *de jure* members have no right to vote at meetings.

(4) Practically all credit institutions (banks, savings banks, agricultural credit institutions and cooperative banks, finance and leasing companies, etc.) are members of the ABI. On 31 December 1984, 1 096 credit institutions were doing business in Italy, with a total of 12 965 branches.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 251, 8. 10. 1986, p. 2.

(5) The ABI's organs are : the Assembly, the Council, the Executive Committee, the President and the Auditors. The Executive Committee is empowered to approve inter-bank agreements and formulate recommendations concerning the uniform application of commission for banking services.

B. The content of the notification

(6) On 11 October 1984 the ABI notified to the Commission a set of 10 agreements and five recommendations concluded through the Association. The notified agreements and recommendations may be divided into the following categories :

— agreements which concern relations between banks,

— agreements which concern relations between banks and their customers,

— recommendations relating to the minimum commissions chargeable to customers.

(7) (a) Agreements which concern relations between banks :

— agreement on the Italian bills and documents collection and/or acceptance service,

— agreement on the service of collecting bank cheques and similar instruments payable in Italy,

— agreement on a new, uniform type of lire traveller's cheque,

— inter-bank Bancomat convention,

— RID (direct inter-bank relations/standing orders),

— RIBA (bank receipts/direct debits).

(8) (b) Agreements which concern relations between banks and their customers :

— agreement on foreign exchange and/or non-resident account lire dealings,

— agreement on the minimum charges that may be made by banks for the safe deposit service,

— agreement on the minimum charges that may be made by banks for the safe custody service,

— agreement on the charging of a commission for the negotiation and collection of foreign currency traveller's cheques.

(9) (c) Recommendations relating to the minimum commissions chargeable to customers :

— inter-bank agreement on mutual obligations,

— commission guidelines in respect of requests for accountancy data from firms of auditors,

— commissions to be charged to foreign banks for information furnished with a view to an audit,

— charges payable by customers for the administration of ordinary Treasury bonds,

— telephone bills payment service.

II. THE PROCEDURE

A. The Statement of Objections

(10) Following the notification, the Commission, by a statement of objections sent on 2 August 1985, informed the ABI that it proposed, under Article 85 of the EEC Treaty :

1. to find that the conditions for the application of Article 85 (1) were satisfied in the case of the following agreements :

— agreement on the Italian bills and documents collection and/or acceptance service,

— agreement on the service of collecting bank cheques and similar instruments payable in Italy,

— agreement on foreign exchange and/or non-resident account lire dealings,

— agreement on the charging of a commission for the negotiation and collection of foreign currency traveller's cheques,

— inter-bank agreement on mutual obligations, but only the following chapters and points :

— Chapters VII to XIII,

— point 8-C of Chapter II concerning the commission for transfers by telegram, telex and telephone,

— point 1 of Chapter III concerning the commission on the maximum overdraft ;

(11) 2. to find that the conditions for the application of Article 85 (1) were not satisfied in the case of the following agreements :

— inter-bank Bancomat convention,

— RID,

— RIBA procedure,

— telephone bills payment service,

— agreement on the minimum charges that may be made for the safe deposit service,

— agreement on the minimum charges that may be made for the safe custody service;

(12) 3. to find that, having regard to the arguments advanced in the notification, the conditions for the application of Article 85 (3) were satisfied in the case of the following agreement:

— inter-bank agreement on a new, uniform type of lire traveller's cheque;

(13) 4. to reserve, for the time being, its position on Chapters I to VI of the inter-bank agreement on mutual obligations, which concern interest rates on loans and deposits, pending the outcome of a possible further examination aimed at checking the information received and examining the soundness of the arguments put forward in the notification.

B. The position of the ABI

(14) After the ABI had sent its written observations, at a meeting between Commission representatives and ABI representatives the latter stated that, of the agreements covered by the statement of objections, they were prepared to abandon the following:

(15) — Agreement on foreign exchange and/or non-resident account lire dealings.

Of this agreement, while Chapter 3 is retained, the first two chapters have been deleted; these concern:

(i) The establishment of the criteria for determining the interest payable in case of late transfer of the currency;

(ii) The conditions to be applied to payments made by Italians resident abroad or to Italians resident abroad;

— Agreement on the charging of a commission for the negotiation and collection of foreign currency traveller's cheques;

— Agreement on mutual obligations.

Chapters VII to XIII concerning the commissions and value dates applicable in relations with customers are deleted, apart from paragraphs 11 to 19 of Chapter VII, concerning the commission and value dates applicable in relations between banks. Chapter II point 8-C (commission for transfers by telegram, telex and telephone) and Chapter III point 1 (commission on the maximum overdraft) are also deleted inasmuch as they are provisions between banks and customers;

— Commission guidelines in respect of requests for accountancy data;

— Commissions payable to foreign banks for information furnished with a view to an audit;

— Charges payable by customers for the administration of ordinary Treasury bonds.

As regards these agreements, the Commission recalls that in its communication it had considered these agreements to be contrary to Article 85 (1) and not capable of benefiting from the exemption provided in paragraph 3 of the same Article.

C. The current situation

At present there remain seven agreements to which negative clearance is granted, three to which an exemption is granted and two points of one regarding which the Commission reserves its position.

(16) 1. Agreements to which negative clearance is granted:

— Inter-bank Bancomat convention,

— RID,

— RIBA procedure,

— Agreement on foreign exchange and/or non-resident account lire dealings (Chapter 3),

— Agreement on the minimum charges that may be made for the safe deposit service,

— Agreement on the minimum charges that may be made for the safe custody service,

— Telephone bills payment service (SIP).

(17) 2. Agreements maintained in force with a view to exemption:

— Agreement on the Italian bills and documents collection and/or acceptance service,

— Agreement on the service of collecting bank cheques and similar instruments payable in Italy,

— Inter-bank agreement on a new, uniform type of lire traveller's cheque.

(18) 3. Parts of the agreement on changes not covered by this Decision.

In the statement of objections, the Commission reserved its position on Chapters I to VI concerning interest rates on loans and deposits. As regards these chapters, the ABI furnished the following information in its notification:

— the guidelines on rates have long since ceased to be operatives,

— an agreement laying down the maximum level of interest payable to customers in relation to the size of deposits was in force until 31 March 1982; however, especially in recent years, the agreement has not been complied with because the levels of rates provided for are too different from the market rates;

— as regards interest rates on loans, banks ceased to be bound by the agreement as long ago as 1970,

— since 1 May 1975, the ABI's Executive Committee has posted the prime rate; however, this guideline is not binding on banks, which remain free to establish their own scale of rates,

— the prime rate, which is determined in the light of money market rates (official discount rate, ordinary treasury bonds rate), economic forecasts and monetary policy trends, is an acknowledgement of the situation existing on the money market,

— since February 1983 the guideline nature of the prime rate and of the top rate has been formally confirmed: the fixing of lending rates is left to the banks, and the ABI simply gives statistical information on the average prime rate of the banking system.

The reservation made in the Statement of Objections is based on the need to check the information received and examine the soundness of the arguments put forward in the notification in the light of experience gained over an extended period of time; this reservation is therefore maintained.

(19) The Decision likewise does not cover paragraphs 11 to 19 of Chapter VII of this agreement concerning the commissions and value dates applicable in inter-bank relations.

As regards these paragraphs it must be borne in mind that the ABI, while it recommends their implementation, does so pending adoption by its organs of appropriate decisions in this sphere. Since the precise date for adopting these decisions has not yet been set, it is advisable for the Commission to reserve its position on the subject.

III. SUMMARY OF THE AGREEMENTS COVERED BY THE DECISION

(20) **1. Agreement on the Italian bills and documents collection and/or acceptance service**

This agreement, which entered into force on 1 October 1968, governs the technical aspects of the Italian bills and documents collection and acceptance service as regards relations between the banks concerned. Within the framework of the technical procedure for the notification of dishonour in the 'special collections' network (maximum period 15 days), the agreement also provides for the setting of a fixed amount which constitutes the remuneration of the bank notifying the dishonour.

(21) **2. Agreement on the service of collecting bank cheques and similar instruments payable in Italy**

This agreement, which entered into force on 27 October 1969, lays down the rules and technical procedures for performing the service of collecting bank cheques and similar instruments as regards relations betweens banks. In this technical context, the agreement fixes uniform value dates for the debit and credit of cheques and other instruments applicable between the banks requesting the service, those providing it and any intermediaries.

(22) **3. Agreement on a new, uniform type of lire traveller's cheque**

This agreement, which entered into force on 1 March 1980, lays down rules governing the issue, circulation and payment of traveller's cheques and proposes standardized types of cheque. Its signatories are either issuer-sellers of cheques or corresponding consignees who do not issue but merely sell cheques.

The technical part of the agreement lays down rules on:

— the supply and safekeeping of cheques,

— the use of cheques in Italy and elsewhere,

— the reimbursement of cheques used, lost, stolen, destroyed or cancelled before issue or of unused cheques,

and

— the characteristics (colour, form) of the uniform cheques.

In this context, the agreement contains provisions concerning the remuneration of the corresponding consignees, the remuneration of the issuer, and the value dates of the debit to the corresponding member of the proceeds of cheque sales.

The agreement refers to the fact that, in determining the usual commission to be paid by the client, the remuneration of the issuer should not be overlooked.

The commission including remuneration is determined as a percentage of the value of cheques sold.

(23) **4. Inter-bank Bancomat convention**

The convention determines the criteria for the creation in Italy of a system of 24-hour automated teller machines. There are two classes of member :

— active : banks which install automated teller machines and issue Bancomat cards to their customers,

— passive : banks which do not install automated teller machines but issue Bancomat cards to their customers, subject to a certain maximum number of cards.

Members undertake not to participate in other networks and organizations of a similar nature in Italy. Ceilings are placed on daily or monthly withdrawals.

Members undertake to remain within the system for three years from 1 October 1983. Membership may be cancelled on three months' notice. Members who breach the agreements and rules may be expelled on the ABI's initiative.

The rules determine the criteria and practical arrangements for setting up the system.

Among other matters, they lay down :

— the conditions of operation of the service (value dates as between the paying bank and the issuing bank, commissions for each transaction and their apportionment between the paying bank and the issuing bank) and the apportionment of administrative expenses among members,

— the logo,

— a map showing the location of machines and the criteria for determining the number of machines to be allocated to each member and their location,

— the general conditions governing relations with users,

— standards for the withdrawals procedure,

— the information to be included in the accountancy data transmitted,

— the information to be included in the lists to be forwarded by the company responsible for administering the system.

(24) **5. RID (Direct Inter-bank relations/standing orders)**

This agreement lays down the technical procedure in respect of collection by pre-authorized debit, on an account in credit, arising under contractual obligations providing for periodic payments the date of which is determined in advance (e.g. gas, electricity).

The agreement fixes :

— the value dates which the payee's bank must apply for debiting the payer's bank with the amount to be collected,

— the commission for the payer's bank,

— the commission for the SIA (the company administering the system).

(25) **6. RIBA (Bank receipts/direct debits)**

This agreement lays down the technical procedure in respect of collection by direct debits and the inter-bank administration of such debits. The beneficiary transmits to his bank the data of the debits (on magnetic tape for processing by computer), which are forwarded through the SIA to the payer's bank, which is responsible for printing the advice that payment is due, printing the entry and making payment.

The agreement sets out :

— the commission due and the value dates applicable in the event of payment ;

— the charges payable and the value dates applicable in the event of the return of unpaid debits.

The agreement entered into force on 15 January 1985.

(26) **7. Agreement on foreign exchange and/or non-resident account lire dealings**

This agreement lays down the conditions and rules governing the execution of orders to transfer liquid assets from non-resident lire accounts which authorized Italian banks are required to apply both to banks abroad and to other authorized Italian banks. Penalties are applicable in the event of late transfer of liquid assets from non-resident lire accounts. The agreement entered into force on 14 February 1972.

(27) **8. Agreement on the minimum charges for renting safes**

The agreement indicates the minimum charges for renting safes. The charges are based on the volume and number of the safes rented. The agreement entered into force on 1 July 1978.

(28) **9. Agreement on the minimum charges for the safe custody service**

The agreement indicates the minimum charges for each deposit and the minimum and maximum charges based on volume.

The agreement entered into force on 1 January 1980.

(29) **10. Telephone bills payment service (SIP)**

This agreement sets out the procedure for the payment of telephone bills by debit to the customer's account or by payment over the counter, and lays down :

(a) in the case of payment by debit to the customer's account :

— the value date for the customer's bank,

— the commission chargeable to the customer,

— the SIA's share ;

(b) in the case of payment over the counter, the amount chargeable to the payer and to the SIP.

IV. COMMENTS FROM THIRD PARTIES

(30) The Commission has not received any comments from third parties in response to publication of a summary of the notified agreements in accordance with Article 19 (3) of Regulation No 17. Its attention was drawn to the purported existence of an additional concerted practice which, on further inspection, could not be proved.

LEGAL ASSESSMENT

I. ARTICLE 85 (1)

A. Undertakings

1. Undertakings

(31) The banks and financial institutions which are members of the ABI are undertakings within the meaning of Article 85 ; moreover, the associations which are members of the ABI are associations of undertakings.

The ABI, which comprises such undertakings and associations, is an association of undertakings.

2. Agreements between undertakings

(32) The notified agreements are agreements between the undertakings which are members of the ABI.

The circulars by which the ABI has continued, by decision of the Executive Committee, to adjust the technical content of the agreements to the market situation and recommend their implementation, are decisions of an association of undertakings within the meaning of Article 85.

B. Assessment of the notified agreements

1. Agreements not covered by Article 85 (1)

(33) The following agreements are not covered by Article 85 (1) because they do not contain any restrictions of competition or because they contain restrictions of competition which do not affect trade between Member States to an appreciable extent.

(a) No restrictions

Agreement on foreign exchange and/or non-resident account lire dealings (Chapter 3)

(34) One of the aims of this agreement is that the transfer of non-resident account lire within the banking system should be effected not later than one day after the value date indicated by the originating foreign bank. To that end the agreement provides that, in the event of late execution of transfer orders, the Italian bank which is responsible for the delay and which has effected the transfer more than one day after the indicated value date must reimburse any interest paid by the recipient bank. It is a technical instrument which sanctions a failure to fulfil obligations, in order to speed up transfers, and which places no obstacle in the way of banks' competitive activity.

This agreement therefore contains no restrictions of competition.

(b) No appreciable effect on trade between Member States

Inter-bank Bancomat convention

RID (direct inter-bank relations/standing orders)

RIBA (bank receipts/direct debits)

Telephone bills payment service

(35) The purpose of these agreements is to standardize and rationalize banking operations at national level ; they concern only relations between banks.

In addition to containing technical provisions, the agreements lay down the amount of commission and the value dates which constitute the remuneration for the service rendered. The fixing of the remuneration constitutes a restriction of competition in the sense that banks' freedom to determine the charge for the service both on the supply side and on the demand side is eliminated. It could also indirectly influence the fixing of the conditions applicable to customers and hence limit banks' freedom to determine the charges payable by their customers.

(36) Moreover, the Bancomat agreement contains an exclusivity clause which, in preventing the participating banks from joining a competing network, constitutes a restriction of competition.

(37) However, these agreements do not appreciably affect trade between Member States for the following reasons :

— the inter-bank services covered by the agreements are limited to Italy and concern economic activities which, by contract or by their very nature, can only be exercised in Italy ; firstly, for technical reasons the use of the Bancomat cards is not possible beyond Italy's borders ; secondly, the other agreements either concern payment for supplies of goods (gas, electricity, telephone) the distribution of which is limited to Italy or payment for services (rental etc) limited to Italy ; as regards the exclusivity clause in the Bancomat agreement, this does not have an appreciable effect on trade between Member States taking into account the fact that possible creation of a competing network in Italy is at present hardly likely, so that the restriction has no real practical effect,

— as far as the impact on the conditions applicable to customers is concerned, this is very slight in relation to the final cost of the service to the customer, and the service rendered concerns economic activities which affect only very indirectly trade between Member States, as explained in the preceding indent,

— moreover, the participation of Italian branches of foreign companies in these agreements is limited.

(38) Agreement on the minimum charges that may be made for the safe deposit service

Agreement on the minimum charges that may be made for the safe custody service

These two agreements, by fixing the conditions applicable to customers, restrict, or even eliminate, the freedom of signatory banks to fix charges.

(39) Although the agreements relate directly to the charges payable by customers, and trade may theoretically be affected, the very object of the service is such that the effect cannot be appreciable.

(40) The very fact of depositing articles or securities in a safe or in safe custody is an indication that their owner does not intend to use them for trade ; moreover, it is unlikely, given Italy's geographical situation, that trade in such services between Italy and the other Member States will develop to an appreciable extent.

2. Agreements covered by Article 85 (1)

(41) The following agreements are covered by Article 85 (1) :

— Agreement on the Italian bills and documents collection and/or acceptance service,

— Agreement on the service of collecting bank cheques and similar instruments payable in Italy,

— Inter-bank agreement on a new, uniform type of lire traveller's cheque.

(a) Restrictions of competition

(42) These agreements limit, or even take away, the freedom of members of the ABI to determine individually the remuneration for the banking services requested or offered. Each member of the ABI, whether it be a bank requesting the service or a bank requested to provide the service, must respect the commissions and value dates provided in the agreements. Competition in respect of an essential element of the business conduct of banks, namely charges, is prevented from operating normally.

(43) This fixing of commissions and value dates influences the possibility for parties to determine the conditions they wish to apply to their customers in the light of their internal profitability situation — notably the cost of the operations — their specialization and their business policy.

(44) The freedom of action of the parties, who make up the entire banking sector in Italy, and the choices open to consumers are restricted. In particular, customers no longer have the opportunity otherwise open to them to take advantage of competition in respect of mutual obligations or of deriving any benefit from entrusting to a given institution all the services they require.

(45) Foreign banks established in Italy must become members of the ABI if they are to benefit from the services it offers. As members, they sign the agreements as soon as their activities extend to the sectors to which the agreements relate. Accordingly, any possibility of their competing with Italian banks is eliminated as they must comply with the commissions and value dates laid down in the agreements and hence are deprived of the freedom to determine a fundamental element of competition : the charge made for the service

rendered. In this situation, penetration of the Italian market by foreign banks is made more difficult and the market cannot develop normally as it would do if the agreements did not exist. The restrictions are all the more serious as they can lead to the total elimination of the — limited — competition offered by foreign banks.

(b) Effect on trade between Member States

(46) Owing to the participation in the ABI of all the financial and credit institutions established in Italy, and hence also of the Italian subsidiaries and branches of foreign institutions and the foreign subsidiaries of Italian banks, the ABI agreements may affect trade between Member States to an appreciable extent.

(47) Because of the considerable volume of Italian international trade and the interpenetration of the national and international capital markets, the operations conducted by the banks that are members of the ABI with establishments abroad and/or in foreign currencies account for a sizeable proportion of their total operations.

The funds administered by foreign banks amounted in 1982 to 2,39 % of all funds administered in Italy. This market share attributable to foreign banks could be greater if they were free to determine the charges for their services and thus enter into real competition with Italian banks.

(48) Moreover, taking account of the fact that, in Italy in 1984, imports represented approximately 32 % of domestic consumption of goods and exports approximately 25 % of gross domestic product, that approximately 42 % of imports were of Community origin and 46 % of exports were sent to the other Member States, and the fact that all such operations are settled through the agency of banks, it must be concluded that, at least within the limits of the operations covered by the agreements in question, trade between Member States is directly affected by the ABI agreements.

(49) The services affected by the agreements can apply not only to domestic operations carried out on Italian territory but also to transfrontier operations. The 'special collections' procedure, under which the remuneration of the domestic banks is fixed by agreement for the Italian bills and documents collection service and/or the acceptance service, can be used for requests for payment originating from other Member States.

(50) The agreement on the service of collecting bank cheques and other similar instruments provides for the application of the value dates specified in the agreement in relation to non-resident lire accounts and foreign currency credit instruments presented for collection.

(51) Finally the agreement on a new uniform type of lire traveller's cheque — which is intended to facilitate payments by Italian nationals in other Member States and payments by nationals of the other Member States in Italy — expressly relates to foreign transactions.

(52) Moreover, this effect is all the more appreciable since the ABI agreements apply also to services provided to foreign clients, considering the importance of these clients.

II. ARTICLE 85 (3)

The four conditions required for exemption under Article 85 (3) are fulfilled in the present case for the reasons set out below.

A. Improvement of the distribution of services and promotion of technical progress

The agreements in question satisfy a need for the standardization and rationalization of the services offered.

1. *Standardization*

(53) As the services involved are banking services the provision of which economic operators can request anywhere in Italy and which require the intervention of one or more banks, the simplification and standardization of procedures contribute to improving the provision of these services. Although it is possible for a bank to know and adapt itself to the procedures peculiar to each bank doing business in Italy, this is very difficult owing to the fact that, before the procedure for the provision of the requested service is started, it is impossible to know who the future parties will be.

(54) The use of standard forms and compliance with standard rules of procedure simplify the work of each intervening bank. Depending on the stage reached in the procedure, each bank knows exactly what service may be requested of it; moreover, regardless of who is operating upstream or downstream, it can plan the conduct of the entire operation.

(55) The standardization of operations, by permitting the use of an automated system for the transfer of instruments and cheques and for the administration of the service, speeds up the operation, improves the payments system, facilitates the distribution of cheques and instruments and makes for speedier circulation of money.

(56) The uniformity of the procedure and the standardization of the operations provided for permit the centralization on management companies or 'category institutes' of certain operations, notably the clearing of credit commissions and debit commissions relating to services rendered.

Moreover, centralization has the advantage, from the point of view of each bank involved, of limiting the number of relationships and grouping together consignments of data and instruments.

As far as each agreement is concerned, standardization permits the following improvements :

(57) (a) Agreement on the Italian bills and documents collection and/or acceptance service

Normally, a customer who hands over an instrument to his bank for collection learns of its dishonour only when the instrument is physically returned to him. Replacing paper with magnetic tape, or better still on-line transmission, saves time which would otherwise be wasted in transmitting and checking instruments manually. Moreover, centralization by the SIA (the company administering the service) of the data concerning dishonoured instruments makes it possible to send to each bank all such data on a single medium.

(58) (b) Agreement on the service of collecting bank cheques and similar instruments payable in Italy

Hundreds of millions of cheques drawn on some 1 100 banks are collected each year. Without the agreement, all these operations would have to be effected manually and individually and each bank would have to maintain relations with all the others. The agreement makes it possible to have a limited number of relationships. The network of relationships created by the agreement permits the clearing of the credits and debits relating to collections. The clearing operation is very substantial when the *four central 'category institutes'* (1), which represent 96,06 % of the financial institutions concerned, intervene.

(59) (c) Agreement on a new, uniform type of lire traveller's cheque

The standardization of amounts and of the presentation and cost of the service contributes to improving the payment system. Under the scheme, cheques which are for a fixed amount may be used outside the country of the establishment which issued them and cashed at banks in various foreign countries, including the Member States of the EEC. In their standard form, the traveller's cheques may be cashed in the local currency of various countries, including the EEC Member States. Under the agreement, cheques are paid in full, free of commission, by paying banks, which facilitates their acceptance by the non-banking sector. The fixing of the charges for the services makes it easier for the paying banks to obtain reimbursement of the cheques they cash.

2. *Rationalization*

(60) The agreements contribute to rationalizing the procedures in question. The procedures proposed in the agreements were determined in the light of the experience of the banks most highly specialized in the provision of such services. As a result, the procedures worked out are effective and easy to implement, all operations whose cost is unjustified or whose utility is not proven having been eliminated.

B. Benefit to the consumer

Each of the agreements in question is of benefit to consumers.

(a) Agreement on the Italian bills and documents collection and/or acceptance service

(61) This agreement, by providing for speedy notification of dishonour, has the following advantages for users of the service :

— a guarantee that the amount fixed does not exceed the optimum cost to banks owing to the fact that, in determining it, account had to be taken both of the requirements of the bank requesting the service and of those of the bank asked to provide the service,

— the possibility of suspending in good time supplies to insolvent purchasers,

— a better use of the enterprise's circulating capital ; after presentation of instruments for collection, the bank places funds at the disposal of the customer ; use of such funds where there is an insolvent debtor would oblige the customer to repay the capital used together with all the related financial charges ; all this can be avoided by timely knowledge of dishonour.

(b) Agreement on the service of collecting bank cheques and similar instruments payable in Italy

(1) The category institutes are :
— Instituto centrale Banche popolari italiana (on 31. 12. 84, 145 banks with 2 415 branches),
— Instituto centrale Banche e Banchieri (on 31. 12. 84, 119 banks with 2 960 branches),
— Instituto di credito delle Casse di risparmio (ICCRI) (on 31. 12. 84, 79 banks with 3 510 branches and 10 other institutions with 131 branches,
— Instituto di credito delle Casse rurali e artigiane (Iccrea) (on 31. 12. 84, 691 banks with 1 174 branches).

(62) This agreement, by fixing uniform value dates, offers consumers the following advantages:

— prompt availability off the amount shown on the instrument and of the funds resulting from presentation of a cheque for collection, owing to the more speedy conduct of the whole operation,

— the fixing of value dates at a level which does not exceed the optimum level for banks, owing to the fact that, in determining their duration, account had to be taken of:

— the value dates of the most efficient banks

— the conflicting interests of those banks which are usually requesters of the service and those which are usually providers of the service.

(c) Inter-bank agreement on a new, uniform type of lire traveller's cheque

(63) Users of the lire traveller's cheques scheme derive the following benefits from it:

— bearers of traveller's cheques have, in practice, every European currency at their disposal; they can obtain cash according to their requirements from credit institutions in every foreign country they visit, they can also use traveller's cheques to settle directly their bills in the non-banking sector of foreign countries, the cheque being honoured for the full amount in local currency at the prevailing exchange rate,

— acceptors in the non-banking sector can be certain that the traveller's cheques will be paid to them in full by their country's banks, without any deduction of collection commission; their business is thus stimulated by the possibility of direct payment by traveller's cheque,

— reimbursement in case of non-use, loss, theft or destruction benefits both bearers and acceptors by affording them an additional safeguard.

C. Indispensability of the restrictions

The restrictions imposed on banks, both on those requesting a service and on those providing it, are indispensable to the proper provision of the services covered by the agreements.

(64) The collection in a given place of an instrument or cheque drawn on a given establishment is a service which the latter cannot render unless it has branches or correspondents in that place. In accepting cheques or instruments issued by banks located anywhere in Italy, paying banks render a service to users who are neither their customers nor those of other banks in the same place, which is neither counterbalanced nor offset by equivalent reciprocal services.

(65) Where such a service is rendered collectively by all banks to bank customers, it is essential that the procedures for accepting and clearing the cheques and instruments concerned should be determined by mutual agreement between the banks requesting the service and those which, in the various places concerned, are called upon to provide it.

(66) Within the framework of such agreements, the joint and uniform fixing of the remuneration for services is inherent in the collaboration between, on the one hand, the banks requesting the service and the intervening management companies or category institutes and, on the other hand, the banks called upon to provide the service which makes centralized clearing possible.

Varying commissions from one bank to another would mean bilateral negotations between the 1 100 banks signatory to the agreements in order that each bank requesting the service might agree with the bank called upon to provide it the remuneration it is to receive; any centralized clearing would thus be rendered impossible and the cost of operating services would be considerably increased.

(67) The restriction imposed on the banks providing the service not to overstep the maximum value dates and commissions provided for is necessary to avoid the charging of additional costs or commissions that are not justified by the service rendered.

D. Elimination of competition

The agreements at issue do not afford the signatory banks the possibility of eliminating competition in respect of a substantial part of the services in question.

(68) 1. The agreements at issue do not directly govern relations between banks and their customers. A possibility of competition therefore continues to exist at the level of relations between each bank and its customers. The extent to which value dates and commissions are passed on to customers is left to the discretion of the bank which requested the service, which makes it only one factor in the ultimate cost of the service rendered to its customers.

(69) Moreover, in the case of the two collection agreements, the customer chooses the bank not only on the basis of the cost of the collection service in general, but also on that of the granting of credit by the bank according to the amount indicated on the instruments or cheques handed over for collection. This element of choice is not limited by the agreements.

(70) As regards more particularly the agreement on traveller's cheques, it should be noted that, in fact, any person visiting a foreign country generally has the choice between various methods of payment such as currency of the country visited, the country of origin or another country, postal payment orders, credit cards, automated teller machine cards usable in more than one country, and Eurocheques.

(71) 2. As regards competition between banks, the agreement operates only where the bank which requested the service has no branch or correspondent in the place where the service is to be provided. Banks remain free to apply a different set of rules to the provision of such services by reaching bilateral agreements between them.

III. ARTICLES 6 AND 8 OF REGULATION No 17

(72) In accordance with Article 6 (1) of Regulation No 17, this Decision should take effect on 11 October 1984, the date of notification of the agreements in question.

(73) In accordance with Article 8 (1) of Regulation No 17, the exemption resulting from this Decision should be granted for an initial period of 10 years in view of the following considerations:

— the restrictions contained in the agreements are not considerable in scope,

— technological developments in the areas covered by the agreements do not seem capable of bringing about major changes during the indicated period of validity of the Decision.

(74) In accordance with Article 8 (1), the ABI must bring immediately to the Commission's attention, so as to enable the latter to check whether the conditions of exemption are being met throughout the duration thereof, any change in the commissions and value dates specified in the notified agreements,

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the facts in its possession, the Commission hereby finds that there are no grounds under Article 85 (1) of the EEC Treaty for action on its part in respect of the following agreements:

— inter-bank Bancomat convention,

— RID (direct inter-bank relations/standing orders),

— RIBA procedure (bank receipts/direct debits),

— agreement on foreign exchange and/or non-resident account lire dealings,

— agreement on the minimum charges that may be made by banks for the safe deposit service,

— agreement on the minimum charges that may be made by banks for the safe custody service,

— telephone bills payment service,

notified on 11 October 1984 by the Associazione Bancaria Italiana.

Article 2

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable, for the period from 11 October 1984 to 10 October 1994, to the following agreements:

— agreement on the Italian bills and documents collection and/or acceptance service,

— agreement on the service of collecting bank cheques and similar instruments payable in Italy,

— agreement on a new, uniform type of lire traveller's cheque.

Article 3

The Associazione Bancaria Italiana shall inform the Commission forthwith of any addition to or change in the commissions and value dates specified in the agreements listed in Article 2, and of any new agreement concluded by the members within the Association.

Article 4

This Decision is addressed to the Associazione Bancaria Italiana (ABI), Piazza del Gesù, 49, Roma, Italy.

Done at Brussels, 12 December 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission