II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 December 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/261-A — Belgische Vereniging der Banken/Association Belge des Banques)

(Only the French and Dutch texts are authentic)

(87/13/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 6 and 8 thereof,

Having regard to the notification and application for negative clearance submitted on 31 October 1962 by the Belgische Vereniging der Banken / Association Belge des Banques concerning conventions, agreements and recommendations relating to the activity of virtually all banks established in Belgium,

Having regard to the summary 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 :

I. THE FACTS

(1) On 31 October 1962, the Belgische Vereniging der Banken/Association Belge des Banques — hereinafter referred to as the BVB/ABB — notified to the Commission in accordance with Article 5 of Regulation No 17, a series of restrictive practices entered into by its members within the association, with a view to obtaining negative clearance in respect of the applciation to them of Article 85 (1) of the EEC Treaty or, failing that, an exemption under Article 85 (3) from the prohibition contained in paragraph 1 of that Article.

A. The Belgische Vereniging der Banken/ Association Belge des Banques

(2) The BVB/ABB, which has its registered office in Brussels, was set up on 1 December 1936. As provided for in Article 3 of its statutes, its objects are to represent the Banking profession and to protect its interests, to promote the latter, to deal with social matters and to study any issue of interest to its members. With this in mind, it endeavours, among other matters, to establish permanent contacts between its members, to define and express the banking profession's views on banking matters and to promote agreed standards intended to facilitate the organization and exercise of the profession.

(3) Membership of the BVB/ABB is open to banks established in Belgium, including subsidiaries and branches of foreign banks and banks appearing on the list published by the Banking Commission, the body responsible for supervising banks in Belgium. Admission to membership of the BVB/ABB is decided by its Management Committee. On 1 June 1986, of the 86 banks on the list, 84 were members of the BVB/ABB.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 199, 8. 8. 1986, p. 2.

(4) The organs of the BVB/ABB are the General Meeting, the Management Committee, the President, the Officers, the specialized sections, the regional sections and the Director-General. The Management Committee, consists of the BVB/ABB Officers (President, Vice-Presidents and Director-General), The Chairman of the Management Boards of the Generale Bank/Générale de Banque, the Bank Brussel Lambert/Banque Bruxelles Lambert, the Kredietbank and the Paribas Bank België/Banque Paribas Belgique, and the heads of the BVB/ABB's four specialized sections (regional, private and specialized banks; medium-sized banks; branches of foreign banks in Belgium; subsidiaries of foreign banks in Belgium); it is the Management Committee which lays down the general policy and position of the BVB/ABB towards third parties, and in particular towards the public authorities, and which approves, by common accord, agreed standards.

B. The financial sector in Belgium

1. *The role of banks within the financial sector in terms of deposits*

(5) On 31 December 1984 [1], the shares of total customer deposits held by the various categories of financial institution were as follows:

— banks: 42,8 %,
— public credit institutions: 40,6 %,
— private savings banks: 16,1 %,
— finance companies: 0,5 %.

(6) The banks' share of this total has been growing slowly but surely since 1975 (when it was 39,6 %). This increase has been at the expense of the public credit institutions (44,9 % in 1975) and is due to the growth in international deposits, which have doubled since 1975, accounting for 5,4 % out of 39,6 % in that year and for 10,9 % out of 42 % in 1982 [2].

2. *The role of banks within the financial sector in balance-sheet terms*

(7) The same phenomenon shows up more distinctly in the shares of the balance-sheet total accounted for by the various categories of financial institution. At the end of 1984, the shares were as follows [1]:

— banks: 68,8 %,
— public credit institutions: 22,4 %,
— private savings banks: 8,3 %,
— finance companies: 0,5 %.

(8) The share accounted for by the banks in 1975 was only 56,1 %, whereas the public credit institutions still accounted for 32,5 %. In 1982, the international balance sheet made up two-thirds of the banks' share (44,2 % of the financial sector's total balance sheet) compared with only two-fifths (26,1 % of the total) in 1975 [3].

C. The restrictive practices notified

1. *Notification and updatings*

(9) On 31 October 1962, the BVB/ABB notified to the Commission a series of eight conventions and ten agreements concluded between its members within the association, and seven association recommendations, specifying for each restrictive practice contained therein the member banks of the BVB/ABB party to it, those that had given notice of it, and its date of entry into force.

(10) In response to the request for information sent by the Commission on 6 November 1975, pursuant to Article 11 of Regulation No 17, the BVB/ABB, on 23 January 1976, sent to it, among other documents, a list of the conventions, agreements and recommendations in force on that date, a list of the banks not party to all or some of the restrictive practices, and the text of the amended or new restrictive practices.

(11) On 14 July 1981, the Court of Justice, in Züchner v. Bayerische Vereinsbank [4], gave its ruling on certain points that were still open to discussion as regards the applicability of the competition rules laid down in the Treaty to agreements between banks. Following that judgment and the enquiry conducted by the Commission in each of the Member States, which at the time were ten in number, into national inter-bank agreements on commissions charged for banking services, a further request for information was sent to the BVB/ABB on 3 May 1983. In response to that request, the BVB/ABB informed the Commission on 13, 21 and 27 June 1983 of the amendments made to the restrictive practices already notified and sent to it the texts of the new restrictive practices entered into since 1976, some of which were being redrafted at the time. In response to a further updating request from the Commission on 26 July 1984, BVB/ABB replied on 5 September 1984, indicating the major amendments made since June 1983.

[1] 'De banken binnen de financiële sector in 1984' / 'Les banques au sein du secteur financier en 1984', Aspecten en documenten / Aspects et documents, No 42, p. 30, BVB/ABB, October 1985.

[2] 'De banken binnen de financiële sector sedert 1975' / 'Les banques au sein du secteur financier depuis 1975', Vol. I — 'Vergelijkende analyse' / 'Analyse Comparative', Aspecten en documenten / Aspects et documents, No 29, p. 19, BVB/ABB, May 1984.

[3] 'De banken binnen de financiële sector sedert 1975' / 'Les banques au sein du secteur financier depuis 1975', Vol. I — 'Vergelijkende analyse' / 'Analyse Comparative', Aspecten en documenten / Aspects et documents, No 29, p. 18, BVB/ABB, May 1984.

[4] Case 172/80, ECR (1981), p. 2021.

2. *Restrictive practices in force when the Statement of Objections was issued*

(12) It transpired from that last updating that, when the Statement of Objections was sent on 13 June 1985, twelve conventions, two agreements and eight recommendations were in force (the different terminology used was not based on any precise, pre-established rationale; the effects of the restrictive practices were identical except for the fact that the conventions provided for penalties for breaches of their provisions).

(13) (a) Conventions

AC1 : Accounts and deposits;

AC2 : Collection of cheques and bills;

AC2 bis : Collection of Belgian bills denominated in Belgian francs;

AC3 : Charges for the safe custody of bills;

AC4 : Payment of coupons, repayment and allotment of securities;

AC5 : Miscellaneous transactions in securities;

AC6 : Hiring of safes;

AC7 : Implementation of business conventions concluded or to be concluded between banks carrying on business in Belgium;

AC8 : Competition matters;

AC9 : International payments and foreign-exchange dealings;

AC10 : Conditions applicable to the collection of commercial bills and cheques having direct or indirect links with abroad, transactions in goods having direct or indirect links with aboad, and documentary credit;

AC11 : Conditions applicable to banks and bankers established abroad.

(b) Agreements

AA2 : Article 45 of the Uniform law on Bills of Exchange and Promissory Notes;

AA4 : Reduction in the amount of work involved in checking for stops in connection with transactions in securities.

(c) Recommendations

AR1 : Incorporation into Belgian law of the sixth EEC Directive on VAT;

AR2 : Exemption from charges in respect of inter-bank currency transfers;

AR7 : Promoting the use of cheques;

AR8 : Enforcement of decisions taken by the CIRIB (1)

AR9 : Personal loans;

AR11 : Compliance with interbank conventions and agreements;

AR13 : Banking rationalization;

AR15 : Protection against armed robberies.

3. *Scope of the objections*

(14) The objections were concerned solely with the restrictive practices in respect of commissions charged by banks for services provided. Convention AC1 on accounts and deposits was not, therefore, covered. For the time being, the Commission reserves its position on that convention, the main provisions of which relate to deposit interest rates.

(15) With regard to the restrictive practices covered by the objections, the Commission indicated, in its Statement of Objections of 13 June 1985, that it could consider Agreements AA4 and Recomendations AR1, AR2, AR7, AR8, AR9, AR13 and AR15 as not being in restraint of competition.

(16) However, in that same letter, the Commission gave notice of its intention to take a decision prohibiting the other restrictive practices, viz. Conventions AC2, AC2bis, AC3, AC4, AC5, AC6, AC7, AC8, AC9, AC10 and AC11, Agreement AA2 and Recommendation AR11.

4. *Abrogation by the BVB/ABB of some of the restrictive practices notified*

(17) In response to the Statement of Objections and following the subsequent discussions between the BVB/ABB and the Commission's Directorate-General for Competition, the former announced in a letter dated 8 April 1986 that it had terminated, with effect from 1 April 1986, some of the restrictive practices in their entirety and others in part.

(18) The restrictive practices abandoned in their entirety are Conventions AC2, AC2bis, AC3, AC6, AC7, AC8 and AC11 and Recommendation AR11. The other restrictive practices, *viz.* Conventions AC4, AC5, AC9 and AC10 and Agreement AA2, were abandoned in part; among other matters, all the provisions relating to charges and fees payable by customers were deleted.

D. Scope of this Decision

(19) The BVB/ABB has deleted from Agreement AA2 any charges or fees specified and all references to commissions of whatever kind, with the result that the agreement is no longer restrictive of competition and may be classified with the similar instruments listed in paragraph 15 above.

(1) International Conferences on Rationalization in inter-banking relations.

(20) Accordingly, this Decision applies only to the three conventions relating to commissions charged in interbank relations: one of them, relating to miscellaneous transactions in securities, has replaced Conventions AC4 and AC5 while the other two, which concern international monetary movements and trade, have replaced Conventions AC9 and AC10.

(21) The definitive texts of these three conventions were sent to the Commission by the BVB/ABB on 30 May 1986. Their exact titles are as follows:

— Interbank Convention relating to intermediation by two or more banks in transactions in securities *(Overeenkomst tussen de banken betreffende de tussenkomst van verscheidene banken bij de verrichtingen op effecten — Convention interbancaire relative à l'intervention de plusieurs banques dans les opérations sur titres);*

— Interbank Convention relating to intermediation by two or more banks in payments originating abroad *(Overeenkomst tussen de banken betreffende de tussenkomst van verscheidene banken bij betalingen uit het buitenland — Convention interbancaire relative à l'intervention de plusieurs banques dans les paiements provenant de l'étranger);*

— Interbank Convention relating to intermediation by two banks established in Belgium in the collection of cheques and commercial bills on behalf of principals abroad *(Overeenkomst tussen de banken betreffende de tussenkomst van twee banken gevestigd in België bij het incasso van cheques en handelspapier uit het buitenland — Convention interbancaire relative à l'intervention de deux banques établies en Belgique dans l'encaissement de chèques et de papier commercial provenant de l'étranger).*

E. Substance of the conventions covered by this decision

1. *Convention on transactions in securities*

(22) This convention fixes the amount of the rebates on commissions received for services rendered by registrar banks to other banks in Belgium in consideration of their intermediation in payment transactions in respect of, firstly, coupons and securities, and secondly, various other securities dealings. The amount of the rebate is expressed as a percentage of the commission charged by the registrar bank, the percentage varies according to the nature of the transaction.

(a) Payments of coupons and securities

(23) In the case of securities represented by CIK (CIK: *Interprofessionele effectendeposito en girokas / Caisse interprofessionnelle de dépôts et de virements de titres)* certificates and the corresponding coupons, the refund is 50 %, with a maximum of Bfrs 625 per bearer security and Bfrs 200 per coupon. In the case of securities not represented by CIK certificates and the corresponding coupons, the rebate is 80 %, with a maximum, in the case of bearer securities, of Bfrs 625 per security and Bfrs 200 per coupon and, in the case of registered certificates, Bfrs 1 750 per certificate and Bfrs 625 per coupon.

(24) For supranational and international issues, the rebate is 40 %. For issues floated by the cities of Antwerp, Brussels, Gent and Liège, the rebate is two thirds.

(25) For coupons relating to bearer securities representing foreign stock, the rebate is 40 % if the securities are repreented by CIK certificate and 50 % in all other cases.

(b) Miscellaneous transactions in securities

(26) The rebate is 50 % of the commission charged on miscellaneous transactions in securities: exchange, allotment, revewal of coupons, stamping, signature of registered certificates, and deposit with a view to a general meeting.

(27) Where the securities are deposited with the CIK, the rebate in the case of the first three transactions listed in the preceding paragraph is calculated on the basis of the preferential CIK rate and after deduction of the commission charged by that agency; it is zero in the case of stamping, the CIK collecting the commission for that transaction.

(28) Similarly, the rebate is zero on the special commissions charged (i) by the bank holding the allocation of new securities where exchange takes place with numbers remaining unchanged, and (ii) by the bank holding the allocation of new coupon sheets where coupons are renewed.

2. *Convention on payments originating abroad*

(29) This convention fixes the maximum amount of the payment commission that may be charged between banks on any international foreign-exchange payment transaction originating abroad and transmitted via a bank established in Belgium to another bank established there. The maximum amount is as follows: zero for transactions of less than Bfrs 1 000; Bfrs 225 for transactions of between Bfrs 1 001 and Bfrs 100 000; Bfrs 250 for transactions of between Bfrs 100 001 and Bfrs 300 000; and Bfrs 600 for transactions of over Bfrs 300 000.

(30) The convention specifies that the following are excluded from its scope:

— Eurocheques issued up to the maximum amount accepted for clearing (1),

— European traveller's cheques,

— foreign-currency traveller's cheques issued on behalf of the payee bank,

— operations involving the purchase, sale and collection of securities or coupons,

— payments of foreign pensions of a social nature made by legal persons to the order of recipients having *régnicole* status (2) or treated as having such status.

(31) The convention also stipulates that, in connection with transactions covered by it, the intermediary bank shall refrain from any act of unfair competition involving any contact or attempted contact, whether or not direct, with customers of the payee bank.

3. *Convention on the collection of cheques and commercial bills originating abroad*

(32) This convention no longer contains any schedule of charges and fees. It simply lays down the principle of charging commissions and stipulates who is to collect them. It indicates that the collecting bank may collect commissions and costs from the principal. Where the collection of cheques is concerned, the commission is invariably payable by the principal. In the case of commercial bills, the convention, referring to Article 22 of the relevant uniform rules drawn up by the International Chamber of Commerce (3), lays down that, where the letter of remittance stipulates that the commissions and costs are to be borne by the drawee and where the drawee refuses to pay them, the collecting bank may collect such commissions and costs from the principal except where the order for collection expressly contains instructions to the contrary.

(33) Where presentation to a second bank in Belgium is made at the express request of the drawee, the first bank must expressly mention that fact in its remittance, failing which the second bank charges to it its commissions and costs as if presentation to the second bank had been made on instructions from the foreign principal; the commission that the second bank is entitled to collect may not be charged to the first bank but may be charged to the drawee.

(1) At the moment, this corresponds roughly to Swf 600.
(2) A recipient having *régnicole* status means any natural person having his principal residence in Belgium and any legal person having its registered office there.
(3) Brochure No 322 of the International Chamber of Commerce.

F. Observations by third parties

(34) No observation has been received from third parties following publication, in accordance with Article 19 (3) of Regulation No 17, of the summary of the three conventions.

II. LEGAL ASSESSMENT

A. Article 85 (1)

1. *Undertakings and association of undertakings*

(35) The banks applying the notified conventions, being economic entities carrying on activities of an economic nature, are undertakings within the meaning of Article 85. The BVB/ABB, which comprises such undertakings, is an association of undertakings within the meaning of that same provision.

2. *Agreements between undertakings and decisions by associations of undertakings*

(36) A distinction should be made at this point between those who are members and those who are not members of the BVB/ABB. As distinct from the conventions notified in 1962, the BVB/ABB members have not formally acceded to the three conventions that are the subject of this Decision. The texts were sent to them by the BVB/ABB members, the three new conventions may be treated as decisions by associations of undertakings. Otherwise, since no member bank of the BVB/ABB indicated on receipt of the texts of the new conventions that it would not comply with them, it is possible to take the view that the conventions were acceded to tacitly and hence that they ranked as agreements between undertakings. In both cases, the restrictive practices are, in any event, caught by Article 85.

(37) Banks that are not members of the BVB/ABB may, as in the past, apply the BVB/ABB conventions in whole or in part. From this point of view, the conventions are to be regarded as agreements between undertakings within the meaning of Article 85.

3. *Effect on trade between Member States*

(38) The concept of trade within the meaning of Article 85 of the Treaty is wide-ranging [1]. It relates to economic activity in general, including monetary transactions and banking services.

(39) National pricing agreements covering an entire Member State may have the effect of consolidating the isolation of a national market, thus hindering the economic interpenetration sought by the Treaty. The restrictive practices notified by the BVB/ABB produce their effects throughout Belgium.

(40) Moreover, as indicated by the BVB/ABB in connection with Belgian banks established abroad [2], a branch continues to form an integral part of the structure of the bank which set it up, and operates under its direct control. Whatever considerations are applicable to the subsidiaries of foreign banks established in Belgium, their branches, at the very least, are direct emanations of those banks and hence participate in trade between Member States.

(41) Of the 84 banks established in Belgium at the end of 1985 [3], 61 were incorporated abroad (branches with no legal personality of their own) or incorporated in Belgium but with majority foreign ownership (subsidiaries), of which 27 were from eight Member States [4]. Of these 61 banks, 28 were branches, of which 14 were from seven Member States [5]. The 10 largest banks established in Belgium at the end of 1984 in terms of balance-sheet total [5] included seven incorporated abroad or with majority ownership (six branches and one subsidiary). If banks are considered not in terms of their balance-sheet but in terms of their deposits, four banks incorporated abroad or with majority foreign ownership (two branches and two subsidiaries) were among the 10 largest banks established in Belgium at the end of 1984 [6]. The importance in the Belgian banking sector of foreign-owned banks (branches and subsidiaries with majority foreign ownership) has increased steadily over the last fifteen years: between 1970 and 1985, their share in the balance-sheet total grew from 22,5 % to 51,0 %, in customer deposits from 10,8 % to 19,9 %, in credits to customers from 21,9 % to 40,9 %, and in interbank transactions from 35,7 % to 67,5 % [7].

(42) The degree of internationalization of banking activities also reflects the impact of the interbank conventions on trade between Member States. With the growing number of foreign banks established there account for an even larger share of their total business. In 1985, this share amounted to 69,6 % of their balance-sheet total (41 % in 1970), 27,5 % of total customer deposits (12,5 % in 1970), 55,2 % of total customer credits (23 % in 1970) and 95,7 % of interbank transactions (95 % in 1970) [8].

(43) Furthermore, the three conventions, inasmuch as they relate indirectly to services provided without distinction to national and foreign customers, are likely to affect intra-Community trade. Two of them, inasmuch as they directly concern foreign-exchange transactions or transfers from abroad, have a direct effect on trade between Member States. The third, on cheques and commercial bills, also concerns trade between Member States because it affects, on the one hand, foreign principals who confide the servicing of their cheques and bills in Belgium to Belgian banks and, on the other hand, foreign holders of Belgian cheques and bills.

4. *Restrictions of competition*

(44) Two of the three conventions, the one dealing with transactions in securities and the other with payments originating abroad, restrict and even eliminate the freedom enjoyed by the banks applying them to determine bilaterally charges for services they provide to one another. By complying with the convention relating to transactions in securities, the banks deprive themselves of the right to negotiate, between themselves and on an individual basis, better terms than those laid down in the convention. The restrictions of competition contained in the convention on payments originating abroad are even more pronounced since the convention sets uniform rates expressed in absolute amounts. The amount of the commission is, there-

[1] Judgment referred to in point 11.
[2] 'Het net van de Belgische banken in het buitenland' / 'Le réseau des banques belges à l'étranger', 'Aspecten en documenten / Aspects et Documents,' No 17, BVB/ABB, April 1983, p. 6.
[3] 'Statistisch vademecum van de banksector 1985' / 'Vademecum statistique du secteur bancaire 1985' Aspecten en documenten / Aspects et Documents, No 49, BVB/ABB, May 1986, p. 88.
[4] Including Spain and Portugal.
[5] 'Statistisch vademecum van de banksector 1985' / 'Vademecum statistique du secteur bancaire 1985', Aspecten en documenten / Aspects et Documents, No 49, BVB/ABB, May 1986, p. 34.
[6] *Idem*, p. 37.
[7] *Idem*, p. 89.
[8] *Idem*, p. 83.

fore, determined in advance, unlike in the case of the convention on transactions in securities, which lays down only the percentages of the rebate and not its exact amount. The latter depends on the amount of the commission charged by the registrar bank (that commission no longer being the subject of an interbank convention).

(45) The third convention, which deals with the collection of cheques and commercial bills originating abroad, no longer fixes any rates. Nonetheless, by establishing the principle of, and the procedures for, charging a commission on transactions falling within its scope, it has the effect of appreciably restricting the freedom of action of the banks that are party to it : the banks agree, on the one hand, not to provide this service free of charge and, on the other hand, which party shall be liable for the commission thus provided for. The possibility that the banks might waive the commission is not merely a theoretical one, as the commission in question is not their only source of income, and they could waive it in order to attract business.

B. Article 85 (3)

(46) The four conditions required for an exemption under Article 85 (3) are met in the cases at issue, for the following reasons :

1. *Improvement in the supply of banking services and in the payments system*

(47) The convention on transactions in securities increases the supply of banking services. It allows all the banks to take on for their customers the servicing of the whole range of securities instead of simply securities for which they have been made directly responsible, as registrar banks, by the issuers.

(48) The convention on payments originating abroad improves the functioning of the payments system since it allows an intermediary banker to pass on, if only in part, any commission charged to him by his foreign correspondent. If a maximum amount were not fixed for the commission charged by the intermediary banker, each transaction would have to be the subject of negotiations between the payee banker and the intermediary banker, slowing down transactions and raising their cost to the final user, where that cost were passed on to him. Technical progress associated with the use of information technology for carrying out such transactions and the need to improve the streamlined integrated payment systems provide justification for introducing commissions with a uniform ceiling for transactions between all financial intermediaries operating within an integrated payments system.

(49) The convention on the collection of cheques and commercial bills also makes for an improvement in the payments system by stipulating in advance which costs can be set off, thereby avoiding any subsequent dispute that might jeopardize the smooth conduct of transactions falling within the scope of the convention.

2. *Participation by users*

(50) Holders of securities receive a fair share of the benefit of the convention on transactions in securities, since it allows them to contact their own bank in connection with transactions in securities the servicing of which the bank does not take on. As a result, they are not obliged to contact the different registrar banks since all their transactions in securities can now be dealt with by a single bank, *viz.* the one at which they have an account. Moreover, no extra commission is payable for that service either by the holder of the securities or the issuer, the intermediary bank being remunerated by the registrar bank, which passes on to the intermediary part of the commission which it receives from the issuer of the securities on account of the financial service provided.

(51) Under the convention on payments originating abroad, a fair share of the resulting benefit also accrues to final users, since recipients of payments from abroad are not obliged to contact a bank other than their own bank whenever the latter is not the correspondent of the bank established in the country in which the order originates. Moreover, a commission is not compulsorily charged on the occasion of such a transaction, since the convention does not require the intermediary bank to charge that commission, providing simply for the possibility of so doing. For the rest, a maximum amount is fixed for the commission : if the intermediary bank decides to charge a commission, it may opt for a level below the maximum. In any event, the maximum, which is Bfrs 600 for the largest transactions, is invariably lower than the cost of the transaction to the intermediary bank, which averages some Bfrs 750 ; under no circumstances, therefore, does the final user pay the real cost of the service rendered even though the commission may seem high for small transactions.

Users, who are financial intermediaries acting as payee banks, and above all customers, who are the final users, receive the bulk of the benefit: payments are speeded up, in spite of the ever-increasing number of transactions, and no unforeseen costs calculated *a posteriori* on an arbitrary basis are incurred. The convention has precisely the object of limiting such costs to reasonable amounts that are known in advance and freely negotiated beforehand by all those also taking part in the clearing system, with the result that none of them is subjected to unfair conditions or placed at a competitive disadvantage.

(52) The convention on the collection of cheques and commercial bills originating abroad also allows users a large share of the resulting benefic since, among other things, it allows the Belgian drawee to deal only with his own bank, and not with another bank established in Belgium that is the correspondent of the bank abroad from which the order arrives. In addition, by not fixing the amount of the commission provided for, the convention leaves room for negotiation on that amount, which might benefit the party that is ultimately responsible for paying it.

3. *Indispensable nature of the restrictions*

(53) The restrictions of competition imposed by the convention on transactions in securities are indispensable in order to ensure the smooth operation of the general servicing of securities. By agreeing to take on the servicing of securities for which they are not registrar banks, intermediary banks simultaneously render a service to their customers holding securities, to the registrar banks, whose task they perform in part, and to the issuers of securities, who, as a result, do not need to designate numerous registrar banks. Where such a service is supplied collectively by all banks in a particular country to all customers in that country, it is essential that the relevant arrangements are determined jointly by the banks. Rebates that varied from one bank to another would entail, for each security, bilateral negotiations between the 84 banks party to the convention.

(54) The same points can be made regarding the convention on payments originating abroad: it provides for a service to be supplied collectively by all banks to all customers. In transmitting the order to the payee bank, the intermediary bank supplies a service to the beneficiary of the payment, who is not its customer. The restriction imposed on banks, *viz.* that they must not exceed the maximum amount laid down in the convention, is essential to ensure that the smallest banks, who have few correspondents and, as a result, act first and foremost as payee banks rather than intermediate banks, are not subjected to unfair conditions and thereby placed at a competitive disadvantage.

(55) The restrictions contained in the convention on the collection of cheques and commercial bills originating abroad are necessary in order to harmonize the rules applicable in that connection and hence in order to avoid any dispute involving the set-off of commissions and costs. If there were disputes, there would be a danger that some banks might refuse to continue operating this service which is beneficial to customers.

4. *Scope for competition*

(56) The convention on transactions in securities does not govern relations between banks and their customers, either upstream (the issuers of securities) or downstream (the holders of securities). The banks are free to determine the amount of the commission they charge issuers who instruct them to take on the necessary servicing. The amount of the rebate paid in practice to intermediary banks thus varies in line with the commission that the registrar bank or banks charges or charge the issuer: only the share it accounts for of the commission charged by the registrar bank is determined in advance. Issuers of securities are able, therefore, to play off the different banks against one another in order to obtain the best possible terms by designating as the registrar bank or banks the one or ones charging the lowest commissions.

(57) The convention on payments originating abroad does not govern relations between banks and their customers either. Scope for competition exists at two levels. First, the intermediary bank need not charge any commission or, if it does decide to charge a commission, it may set it at a level below the maximum provided for in the convention. Second, if a commission is charged by the intermediary bank, the payee bank need not pass it on, or may pass it on only in part to the customer who is the beneficiary of the payment: the extent to which the payment commission is passed on to the customer is left to the discretion of the payee bank.

(58) The convention on the collectiion of cheques and commercial bills originating abroad does not contain any provisions relating to the amount of commissions; it provides merely for the charging of commissions. There is, therefore, scope for competition in this area between banks, which can charge different commissions for the same service, as they only know the amount of the commission after the event.

C. Articles 6 and 8 of Regulation No 17

(59) Pursuant to Article 6 (1) of Regulation No 17, this Decision takes effect on 30 May 1986, the date on which the BVB/ABB sent to the Commission the definitive versions of the three conventions concerned by this Decision.

(60) Pursuant to Article 8 (1) of Regulation No 17, the exemption resulting from this Decision is granted for an initial period of ten years, the restrictions contained in the conventions not being significant in scope.

(61) For the Commission to be in a position to ensure that the conditions that have provided the grounds for granting the exemption continue to be met throughout the exemption period, the BVB/ABB must be required to notify the Commission immediately of any addition or amendment to the three conventions in question, and of any new agreement concluded between its members within the association,

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 for the period from 30 May 1986 to 29 May 1986 to the following three agreements concluded between the members of the Belgische Vereniging der banken/Association Belge des Banques:

— Interbank Convention relating to intermediation by two or more banks in transactions in securities *(Overeenkomst tussen de banken betreffende de tussenkomst van verscheidene banken bij de verrichtingen op effecten; Convention interbancaire relative à l'intervention de plusieurs banques dans les opérations sur titres)*,

— Interbank Convention relating to intermediation by two or more banks in payments originating abroad *(Overeenkomst tussen de banken betreffende de tussenkomst van verscheidene banken bij betalingen uit het buitenland; Convention interbancaire relative à l'intervention de plusieurs banques dans les paiements provenant de l'étranger)*,

— Interbank Convention relating to intermediation by two banks established in Belgium in the collection of cheques and commercial bills on behalf of principals abroad *(Overeenkomst tussen de banken betreffende de tussenkomst van twee banken gevestigd in België bij het incasso van cheques en handelspapier uit het buitenland; Convention interbancaire relative à l'intervention de deux banques établies en Belgique dans l'encaissement de chèques et de papier commercial provenant de l'étranger)*.

Article 2

The following obligation is attached to this Decision: the Belgische Vereniging der Banken/Association Belge des Banques shall inform the Commission forthwith of any addition or amendment to the three conventions referred to in Article 1 and of any new agreement concluded between its members within the association.

Article 3

This Decision is addressed to the Belgische Vereniging der Banken/Association Belge des Banques, rue Ravenstein 36 (Boîte 5), B-1000 Brussels.

Done at Brussels, 11 December 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission