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*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 18 September 1987**

**relating to a proceeding under Article 85 of the EEC Treaty**

**(IV/31.739 — Internationale Dentalschau)**

**(Only the German text is authentic)**

(87/509/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 submitted by the Verband der Deutschen Dental-Industrie eV (VDDI — German Dental Industry Association) for negative clearance or for exemption under Article 85 (3) of the EEC Treaty in respect of the 'special participation conditions' governing participation in the *Internationale Dentalschau* (IDS — International Dental Exhibition),

Having published a summary of the 'special participation conditions' [2], pursuant to Article 19 (3) of Regulation No 17,

Having consulted the Advisory Committee on Restrictive Practices and Monopolies,

Whereas :

### I. THE FACTS

(1) On 30 December 1985, the Verband der Deutschen Dental-Industrie (VDDI — German Dental Industry Association) notified the Commission of the 'special participation conditions' applicable to participants in the IDS and applied for negative clearance under Article 2 of Regulation No 17, or alternatively for exemption under Article 85 (3) of the EEC Treaty.

(2) The VDDI is a registered association under German law. Its purpose is to represent the interests of dental manufacturers *vis-à-vis* the authorities and the other sectors of the economy. Any natural or legal person who is established in the Federal Republic of Germany or West Berlin, and manufactures dental articles on an industrial basis there, may become a member.

(3) Every three years, the VDDI holds the International Dental Exhibition at various locations in the Federal Republic. The IDS is held in collaboration with the local trade fair association, under the auspices of the VDDI and with the trade fair association handling the actual organization. The VDDI has laid down rules governing admission to the IDS in the form of 'special participation conditions'. In accordance with the VDDI's contract with the relevant trade fair association, the latter must incorporate the 'special participation conditions' into its contract with each individual exhibitor.

(4) Dental products and equipment of all kinds are displayed at the exhibition. Since 1921, when it was first held, the VDDI's IDS has become the largest dental exhibition in the world. In 1983, the surface area covered by the exhibition was about 15 000 square metres. Roughly a third of the exhibitors are foreign manufacturers.

(5) Admission to the exhibition is decided on by a VDDI committee in consultation with the trade fair association.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 167, 25. 6. 1987, p. 3.

(6) The 'special participation conditions' are to be applied for the first time at the 1989 exhibition. The main provisions may be summarized as follows :

— The exhibition is open to all domestic and foreign manufacturers exhibiting products of their own or others' manufacture. Products manufactured by other manufacturers may be included only if they are not being exhibited by the relevant manufacturer itself. The exhibition is also open to importers and dealers. Importers and dealers participating in the exhibition must submit a list of the products they intend to display. If the exhibition space available is limited, so that the display of one and the same product by a number of exhibitors would prevent other products from being exhibited at all, the number of exhibitors for one and the same product may be restricted, or only one exhibitor allowed per product. When limited exhibition space gives rise to a selective procedure amongst several exhibitors, priority is given to the manufacturer ahead of the distributor or importer. If the manufacturer has nominated no distributor or importer, priority is given to those who applied first. Would-be exhibitors are then selected in the following order of priority :

1. manufacturers ;

2. importers or dealers appointed by manufacturers ;

3. other importers or dealers in the order in which their application was received.

Companies associated with the exhibiting undertakings (holding 50 % or more of the company concerned) are admitted as exhibitors only if they intend to exhibit products not already exhibited by the parent company with which they are associated.

— Exhibitors may not take part in any other exhibition of dental products in the Federal Republic for a period of three months before and two months after the IDS (period of restraint). This does not apply to 'open days' organized by exhibitors, but it does apply to displays organized by individual companies in conjunction with a dentistry congress, unless the display involves the exhibiting of products directly connected with symposia or congresses on specialized areas of dentistry. The period of restraint also applies to firms associated with the exhibiting undertaking (as defined above) if, during the period of restraint, they have exhibited the same products as those shown at the IDS.

— Penalties are imposed on exhibitors which fail to comply with the period-of-restraint rule. The exhibitor may be barred from the current IDS and the subsequent exhibition ; either all or half the participation fees paid are forfeited, depending on when the infringement is discovered.

— Where admission is refused or penalties imposed, the undertaking concerned may refer the matter to an arbitration tribunal. The details of the procedure are laid down in an arbitration code. Where an undertaking is refused admission to the exhibition on the grounds of a lack of space, the burden of proof lies with the organizer.

(7) The arbitration code stipulates that the arbitration tribunal must consist of three arbitrators. The VDDI and the exhibitor each designate an arbitrator ; the two arbitrators designated then appoint an umpire. If the arbitrators cannot agree on an umpire, he is appointed by the Chairman of the Cologne Chamber of Industry and Commerce. The arbitration tribunal may reach its decision on the basis of the documents submitted ; if one of the parties requests oral proceedings, such proceedings must be carried out. The grounds of the arbitration award must be set out in writing.

(8) In the course of the proceeding, the VDDI partially clarified and extended the 'special participation conditions'. In particular, it became clear that a limitation on the number of exhibitors for the same product would occur only because of lack of space. It was also made clear that the period-of-restraint rule applied only to exhibitions in the Federal Republic and, in the case of associated undertakings, only if the products concerned were also to be exhibited at the IDS.

(9) Following the publication of a Notice under Article 19 (3) of Regulation No 17, the Commission received the observations of the Association Dentaire Française opposing exemption for the period-of-restraint rule.

## II. LEGAL ASSESSMENT

### A. Article 85 (1)

(10) 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.

(11) Article 85 (1) applies to the 'special participation conditions' laid down by the VDDI for admission to the IDS:

(12) 1. The VDDI is an association of undertakings within the meaning of Article 85. The 'special participation conditions' drawn up by the VDDI constitute a decision by an association of undertakings. In so far as the relevant trade fair association is required by the VDDI to incorporate the 'special participation conditions' into its contract with each individual exhibitor, what is involved is an agreement between an association of undertakings and an undertaking.

(13) 2. The 'special participation conditions' have as their object and effect the restriction of competition within the common market:

(14) (a) The rule on the period of restraint restricts competition in the following ways:

— Competition between the organizers of exhibitions of dental articles is restricted in that other organizers are prevented, during the period of restraint laid down by the VDDI, from securing the participation of exhibitors who also wish to exhibit at the IDS,

— competition between manufacturers and importers of and dealers in dental articles is restricted in that, during the period of restraint, they may not participate in both the IDS and other exhibitions of dental articles, and are thus prevented from making use of other exhibition and marketing opportunities in the Federal Republic of Germany;

(15) (b) The rules on the procedure for admission to the IDS have the effect of restricting competition between exhibitors wishing to display the same articles in that, because of limited exhibition space available, the number of exhibitors of one and the same product may be restricted or only one exhibitor allowed per product.

(16) 3. These restrictions of competition are liable to affect trade between Member States:

(17) (a) — During the period of restraint, other organizers of dental exhibitions are deprived of the opportunity of securing the exhibition of products which are also being displayed at the IDS. Since the IDS is an important exhibition with a substantial proportion of foreign participants, the result is that only a limited and incomplete range of dental articles from other Member States can be presented at other exhibitions,

— manufacturers and dealers from other Member States and importers of products from other Member States are prevented during the period of restraint from participating in the Federal Republic of Germany in exhibitions other than the IDS;

(18) (b) The rule that, where exhibition space available is limited, the number of exhibitors of one and the same product may be restricted or only one exhibitor per product allowed prevents different forms of distribution and service from being presented for products manufactured in other Member States or products imported from other Member States.

## B. Article 85 (3)

(19) 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;

or

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

(20) Both the period-of-restraint rule and the provisions governing admission satisfy the requirements laid down in Article 85 (3). The Commission has on a number of occasions [1] stated that it is prepared to exempt agreements and arrangements relating to fairs and exhibitions where they achieve rationalization and cost-savings and also present advantages to consumers which objectively outweigh the restrictive elements involved:

[1] Commission Decisions: 69/90/EEC, EMO (OJ No L 69, 20. 3. 1969, p. 13); 71/337/EEC, Cematex (OJ No L 227, 8. 10. 1971, p. 26); 75/498/EEC, UNIDI (OJ No L 228, 29. 8. 1975, p. 14); 77/722/EEC, BPICA (OJ No L 299, 23. 11. 1977, p. 18); 83/666/EEC, SMM & T (OJ No L 376, 31. 12. 1983, p. 1); 86/499/EEC, VIFKA (OJ No L 291, 15. 10. 1986, p. 46).

(21) 1. The period-of-restraint rule and the provisions governing admission contribute to improving the distribution of dental articles and to promoting economic progress:

(22) (a) The period of restraint ensures that, because of the concentration of exhibitors, as complete a range of dental articles as is possible can be presented to customers. The simultaneous presentation of a virtually complete range also creates an additional incentive for competition between exhibitors. Manufacturers and importers of, and dealers in, dental products can cut their distribution costs since, in marketing their products, they need participate only in those exhibitions which attract the largest numbers of customers.

(23) (b) The purpose of the restriction which may be imposed on the admission of exhibitors wishing to exhibit the same article is similarly to ensure that the range of dental articles exhibited is as complete as possible. Such restrictions ensure that the multiple display of certain articles does not prevent a complete range of dental articles from being presented.

(24) 2. The consumer, i.e. the purchaser of dental articles, is allowed a fair share of the resulting benefit. The periodic organization of the IDS enables consumers to gain a comprehensive view of the range of products available without having to travel from one exhibition to another in order to see all the available products before making their choice. It is also likely that concentration on one exhibition leads to lower distribution costs and, to that extent, lower selling prices, thus further benefiting the consumer.

(25) 3. The rules governing the period of restraint and admission to the exhibition do not impose any restrictions which are not essential:

(26) (a) The restriction imposed on participants in the IDS regarding their participation in other exhibitions during the period of restraint is essential for the attainment of the benefits described above. The rationalization effect associated with the concentration on one exhibition cannot be achieved in any other way.

If goods which are to be shown at the IDS were also to be exhibited at other events simultaneously or shortly before or after the IDS, this would run counter to the desired process of concentration and would lead to higher distribution costs. A period of restraint of five months overall is reasonable and does not exceed that which is necessary to the attainment of the objective. The IDS being held only every three years, exhibitors still have ample opportunity to display their goods at other events.

(27) (b) The current procedure for selecting from a number of exhibitors where there is limited space available is also essential. Admissions to the exhibition can be restricted only if the multiple display of the same products would prevent other products from being exhibited because of lack of space. The organizer cannot use this as a pretext for refusing admission, since, in the event of arbitration proceedings, it is up to him to prove that admission was refused solely because of lack of space. If only one exhibitor can be admitted, it is appropriate that the manufacturer should be given precedence over the dealer, since the manufacturer is in the best position to present his products. If a selection must be made between several dealers, it is proper that the dealer appointed by the manufacturer should be admitted, since he may be assumed to enjoy the confidence of the manufacture.

(28) 4. The rules governing the period of restraint and admission to the IDS do not eliminate competition either between manufacturers and importers of, and dealers in, dental products, or between exhibition organizers, in respect of a substantial part of the products in question.

(29) Participation in the IDS is not the only means by which manufacturers, importers and dealers can present their products and their form of distribution and service to the trade and to customers. They can participate in other exhibitions and pursue other forms of advertising.

(30) As far as competition between exhibition organizers is concerned, it must be borne in mind that a period of restraint totalling five months is relatively short when set against the three-yearly intervals at which the exhibition is held. This leaves sufficient scope for the organization of competing exhibitions.

(31) The observations of the Association Dentaire Française, received by the Commission following the publication of a Notice under Article 19 (3) of Regulation 17, are not such as to alter the Commission's assessment of the 'special participation conditions' of the VDDI. The Association Dentaire Française feared that exemption for the period-of-restraint rule would create a precedent. However, for the reasons set out above, the rule is essential for the attainment of the objective, and exemption of it therefore accords with the Commission's long-established policy.

### C. Articles 6 and 8 of Regulation No 17

(32) Under Article 6 (1) of Regulation No 17, decisions pursuant to Article 85 (3) must specify the date from which the decision shall take effect. Under Article 8 (1) of Regulation No 17, the decision must be issued for a specified period, and conditions and obligations may be attached thereto.

(33) This Decision should apply from 30 December 1985, since at the time of their notification the 'special participation conditions' were fundamentally in accordance with the Commission's established criteria.

(34) Since the IDS is held only every three years and the period of restraint is relatively short, leaving exhibitors ample opportunity to use other events between times, exemption may be granted for a period of 15 years.

(35) In order that the Commission can ensure that the requirements for the application of Article 85 (3) continue to be satisfied during the period of exemption, the VDDI should be required to inform the Commission of any changes in, and additions to, the 'special participation conditions', and to send it a copy of any arbitration award refusing an exhibitor's application for participation,

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 for the period from 30 December 1985 to 29 December 2000 to the 'special participation conditions' laid down by the Verband der Deutschen Dental-Industrie relating to the Internationale Dentalschau.

*Article 2*

The following obligations shall be attached to this Decision:

1. The Verband der Deutschen Dental-Industrie shall inform the Commision immediately of any change in or addition to the 'special participation conditions' relating to the Internationale Dentalschau.
2. The Verband der Deutschen Dental-Industrie shall send the Commission immediately a copy of any arbitration award refusing an exhibitor's application for participation.

*Article 3*

This Decision is addressed to the Verband der Deutschen Dental-Industrie eV, Pipinstraße 16, D-5000 Cologne 1.

Done at Brussels, 18 September 1987.

*For the Commission*

Peter SUTHERLAND

*Member of the Commission*