II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 December 1987

relating to proceedings under Article 85 of the EEC Treaty

(IV/31.206 — Rich Products/Jus-rol)

(Only the English text is authentic)

(88/143/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17, 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 and 8 thereof,

Having regard to the application for negative clearance and the notification filed on 25 April 1984 by Jus-rol Limited, Berwick-upon-Tweed, United Kingdom, in respect of an agreement which it concluded on 31 July 1983 with Rich Products Corporation, Buffalo, United States,

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

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

Whereas :

I. THE FACTS

A. The notification

(1) On 25 April 1984, Jus-rol Limited ('Jus-rol') notified to the Commission, in accordance with Articles 2 and 4 of Regulation No 17, a know-how licensing agreement which it had concluded on 31 July 1983 with Rich Products Corporation ('Rich Products') with a view to obtaining negative clearance in respect of the application of Article 85 of the EEC Treaty to the agreement or, alternatively, an exemption under Article 85 (3) from the prohibition contained in paragraph 1 of that Article.

Under the agreement, Rich Products authorizes Jus-rol to use its know-how for the manufacture of frozen yeast dough products ('the licensed product').

B. The undertakings

(2) Rich Products manufactures food products, including non-dairy creamers and frozen yeast doughs. It has production units in the United States and Canada which manufacture products for sale mainly on those markets. At present, Rich Products does not have any production units in the European Community. In 1986, Rich Products had a consolidated annual turnover of approximately US $ 500 million from total sales, of which approximately (...) [3] represented sales of the licensed product.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 209, 6. 8. 1987, p. 3.

[3] In the published version of this Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

(3) Jus-rol, a subsidiary of Fitch Lovell plc, United Kingdom, manufactures food products and, in particular, a range of frozen dough products such as puff and shortcrust pastry, *vol-au-vent,* sausage rolls and cornish pasties. These products are all based on non-yeast doughs. Through its agreement with Rich Products, Jus-rol has been able to add frozen yeast dough products to its range of products. Jus-rol's production units are situated solely in the United Kingdom. In the financial year ending 26 April 1986, Jus-rol had an annual turnover of £ 16,9 million from total sales, of which (...) represented sales of the licensed product.

The Fitch Lovell group comprises Fitch Lovell plc and 21 principal operating units, grouped in two divisions (production and distribution), managed by an executive director from the parent company. The group's activity consists of the manufacture and production of a wide range of food products. In the financial year ending 26 April 1986, the Fitch Lovell group as a whole had a turnover of £ 461,2 million from total sales. Jus-rol is the only undertaking in the group which is engaged in the manufacture of licensed product or similar products.

C. The product and the market

(4) The know-how provided by Rich Products consists of a body of written confidential non-patented information on the process for freezing the yeast used in the licensed product. The written information also relates to the composition, preparation and processing of the licensed product and to production techniques, timing and apparatus. Any improvements and other develoments made by Rich Products to the initial know-how also form part of the know-how covered by the agreement. Finally, know-how includes notes of oral discussions between the employees of the two parties with a view to the delivery of technical information.

Dough used in certain bakery products (and in particular in bread) has to contain yeast to ensure that it will rise during the baking process and thus produce the required aerated texture. The freezing of yeast dough products poses technical difficulties, since yeast is a living micro-organism and when frozen to very low temperatures can be killed. Particular precautions are necessary to ensure that the yeast maintains its characteristics during the period in which it is frozen and that the dough subsequently rises when it is baked.

Rich Products, having undertaken a great deal of research work, developed a yeast freezing process which it currently uses in its production units in the United States and Canada. Jus-rol applied to Rich Products for a know-how licence in order to enable it to extend its range of products to include frozen dough products matching in quality products made from non-frozen dough. In view of these considerations, it is evident that the technical know-how is of particular value to Rich Products and is of great importance for the production of frozen yeast dough by Jus-rol. Therefore, the know-how provided by Rich Products has to be considered as substantial and capable of improving the performance of the licensee who is thus willing to pay royalties for it.

It has to be noted that other firms in the United Kingdom and in other Member States have developed processes which provide the means for freezing the yeast, but they are not easily accessible. In such circumstances, it cannot be considered that the present know-how licence agreeement concerns the introduction and protection in the licensed territory of 'new technology' within the meaning of the case law of the Court (1).

(5) The product covered by the agreement is a frozen yeast dough, which is manufactured by Jus-rol using the know-how provided by Rich Products. The dough is intended to be used in the making of fresh bakery products such as bread. In its premises at Berwick-upon-Tweed, Jus-rol prepares and shapes the dough which is frozen immediately thereafter. Unlike traditional bread dough, which must be used within a short period of time, the licensed product may be stored for an extended period (up to (...)) and can, therefore, be transported considerable distances without deterioration.

The licensed product is sold in frozen form. Jus-rol makes weekly deliveries by refrigerated lorry to shops having in-store bakeries, notably supermarkets, and to hot-bread shops. Such purchasers, being equipped with 'Jus-bake units', can store the product in a freezer and subsequently, on the basis of their expected daily requirements, place the defrosted product in special proving cabinets and then bake it in their ovens for sale to the final consumer. Jus-bake sales are covered by the 'Jus-bake system', which provides for promotions, regular deliveries, appropriate training and after-sales assistance for customers. The above information indicates that transport costs for the licensed product are of considerable importance (on average, (...) of the sales price). However, imports and exports of such products to and from the United Kingdom are possible, both technically and economically.

(6) Jus-rol does not sell the licensed product directly to final consumers. Although this is theoretically possible, it would be neither economic nor practical since the licensed product is sold in bulk to customers and it would, therefore, be necessary to repackage it into smaller units whilst in a frozen state in order to sell it to consumers. It is also highly improbable that the product would be attractive to final consumers since it has to be placed in a prover as well as baked in an oven before it can be consumed. Although they are free to do so, Jus-rol's customers do not sell the

(1) See judgment of 8 June 1982 in Case 258/78, Nungesser v. Commission, [1982] ECR, p. 2015.

licensed product directly to consumers for the reasons set out above.

(7) The agreement enables Jus-rol to put frozen yeast dough on the market. Supermarkets and other retailers of bakery products now have a choice between: (a) buying baked bread from local bakeries; (b) making their own dough which they then bake on their own premises; (c) buying-in par-baked bread (i.e. bread dough which is, say, 70 % baked) whose baking is completed on the premises; or (d) buying frozen yeast dough for baking into fresh bread on the premises.

At present, demand for frozen dough for bakery products is still relatively limited but may be expected to increase considerably in view of the many advantags which the process has over other possible options, namely low capital cost, low labour costs, the small surface area occupied, low hygiene risk and, in particular, the length of possible storage.

(8) On the United Kingdom market, other producers supply products which may be considered similar to the licensed product. The largest such producer is Freshbake with (...) of the market. Next is Jus-rol with some (...) and the remainder is shared among a dozen other producers specializing in specific sectors of the market.

There are imports of such products into the United Kingdom, in particular by Delifrance.

(9) Jus-rol began to manufacture the licensed product at the beginning of 1984. So far, manufacture and sales have been limited to the United Kingdom.

Rich Products does not manufacture, nor has it ever, either directly or through distributors, marketed the licensed product in the common market. It has not to date granted licences for the product to any other licensee in the Community except Jus-rol, but stated during the proceedings that it was considering doing so.

D. The agreement notified

(10) The agreement was concluded on 31 July 1983 for a period of 10 years. Each of the parties has the right to terminate it on 31 July 1988 subject to the sending of written notice prior to 30 April 1988.

(a) *Undertaking given by the licensor to disclose the know-how covered by the agreement*

(11) The licensor undertakes to disclose promptly (and in any event not later than three months after the entry into force of the agreement) all the information necessary for manufacturing the licensed product ('confidential information'). Such information, which remains the property of the licensor, may be written or oral. In addition, the licensor undertakes to assist the licensee in exploiting the know-how provided. Lastly, provision is made for reciprocal visits by the staff of the two parties.

(b) *Exclusive right to manufacture the licensed product*

(12) The licensor grants to the licensee, for the entire term of the agreement, the exclusive right to use its know-how for the purpose of manufacturing the licensed product in the United Kingdom. This right carries an obligation on the licensor not to grant other manufacturing licences in the United Kingdom. In addition, the licensor undertakes not to exploit itself in the United Kingdom the know-how made available, either by manufacturing or by directly marketing the product in the licensed territory.

However, the manufacturing licence ceases to be exclusive if the licensee does not pay the minimum royalties provided for by the agreement.

(c) *Restriction to the United Kingdom of the right to manufacture the licensed product*

(13) The right to manufacture the licensed product is restricted to the United Kingdom. The licensor reserves the right to exploit its know-how in the other Community countries.

(d) *Non-exclusive right to sell the licensed product*

(14) The licensor grants to the licensee, for the entire term of the agreement, the non-exclusive right so sell the licensed product in all the Member States of the European Community. In all Member States, except the United Kingdom (see above, point 12), the licensor is free to sell the licensed product or to appoint distributors or licensees. During the proceedings, the parties stated that any new licensees could export to the United Kingdom and that Jus-rol would continue to be free to export to the other Member States of the European Community, including those in which Rich Products appoints licensees.

(e) *Obligation on the licensee to keep secret the information provided*

(15) The licensee undertakes at all times during and after the term of the agreement to maintain the secrecy of the know-how and any other information received from the licensor during the term of the agreement. The secrecy requirement does not apply in the case of : (a) information made available by the licensor which the licensee already possessed ; (b) information which was in the public domain when it was made available by the licensor to the licensee or information which subsequently came into the public domain through no fault of the licensee ; and (c) information made available to the licensee by a third person who did not derive such information from the licensor.

The licensee may disclose the licensor's know-how only to the staff directly involved in the manufacture of the product and only to the extent that such disclosure is necessary for the manufacture of the product.

The licensee must promptly notify the licensor of any wrongful use or disclusore of the know-how of which it has knowledge. The licensee has the right to take legal action, at its own expense, against the authors of such acts, and the licensor agrees to collaborate with the licensee in the taking of such action. In the event that the licensee does not wish to take such action, or if the action taken is judged unsatisfactory by the licensor, the licensor has the right to take legal action itself at its own expense against the authors of such acts.

(f) *Ban on the granting of sub-licences by the licensee*

(16) The licensee may not grant sub-licences unless : (a) the sub-licence is given to a wholly-owned subsidiary of the licensor or of the licensee's parent company ; and (b) the written consent of the licensor has been obtained.

(g) *Ban on the use of the know-how by the licensee following termination of the agreement*

(17) The licensee may not make, use, sell or dispose of the licensed product for at least 10 years following termination of the agreement, unless the contract is terminated through the default of the licensor. Upon termination of the agreement, the licensee must, at the licensor's request, immediately return all the original documents relating to the know-how and may not retain any copies of them.

(h) *Obligation on the licensee to use the know-how only for the manufacture of the licensed product*

(18) The licensee undertakes to use the know-how only for the manufacture of the licensed product. It should be borne in mind that the licensed product is defined as being any frozen dough product, notably bread, cookies, rolls and speciality dough products, whose manufacture involves any use of the know-how. According to the parties, this definition covers all possible applications of the know-how made available.

(i) *Obligation on the licensee to grant the licensor a licence in respect of improvements*

(19) The licensee undertakes to grant to Rich Products a non-exclusive licence in respect of any improvements, whether or not patented, made by the licensee to the know-how originally supplied. Such licence will be world-wide, royalty-free and will give Rich Products the right to grant sub-licences to third parties. The licence in respect of improvements will end at the same time that Jus-rol's right to use the original know-how terminates. The obligation relating to improvements is reciprocal in nature, since the concept of know-how supplied includes both the information initially made available and any improvements which Rich Products might make thereto during the term of the agreement.

(j) *Obligation on the licensee to purchase a pre-mix from the licensor*

(20) The licensee undertakes to purchase from the licensor a pre-mix for the manufacture of the licensed product and to use the pre-mix in the quantity and manner laid down in the know-how made available. The price of the pre-mix shall be consistent with the standard price charged by Rich Products and its weight shall not exceed 1 % of the total weight of each product.

(k) *Obligation on the licensee to pay royalties*

(21) In return for the know-how received, the licensee undertakes to pay royalties to the licensor. The royalties are of two types: (a) minimum royalties, the amount of which is progressive and is set for each year; and (b) percentage royalties which are calculated on the basis of the net turnover resulting from sales of the product. Percentage royalties are payable by the licensee only if they are greater in amount than the minimum royalties. The licensee is required to continue to pay the royalties in the event of the know-how coming into the public domain during the term of the agreement.

(l) *No other clauses governing the behaviour of the parties on the market*

(22) The agreement notified does not contain any other clauses designed to restrict the business freedom of the parties.

E. Observations from third parties

(23) Following the publication of a notice pursuant to Article 19 (3) of Regulation No 17, third parties stressed the fact that other private companies have developed know-how which provides the means to preserve, to various degrees, the vitality of yeast in dough throughout long periods of frozen storage.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(24) Article 85 of the EEC Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by 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.

(25) The parties concerned are undertakings within the meaning of Article 85 of the EEC Treaty, and the agreement in question is an agreement between undertakings within the meaning of that Article.

(26) The know-how supplied by the licensor concerns a body of substantial technical knowledge which is not generally known or easily accessible relating to a process for manufacturing a product. The knowledge has enabled the licensee to begin immediately manufacturing the product and continues to be exploited by it.

(27) While the transfer of technical knowledge is in principle a factor favourable to competition, since it enables firms other than the owner of the know-how to exploit a body of technical knowledge that has not been made public with a view to the manufacture and sale of a product, the contracts governing such transfer must nevertheless be examined in order to determine that the notified licensing agreement does not contain any clauses restrictive of competition that go beyond what is necessary for transferring the knowledge.

(a) *Clauses covered by Article 85 (1)*

(28) The exclusive right granted to Jus-rol to manufacture the licensed product in the United Kingdom, as described above (point 12), means that other undertakings cannot obtain, during the term of the agreement, a licence to manufacture the product in the same territory, and equally prevents future licensees, that Rich Products wishes to appoint for other Community countries, from manufacturing the licensed product in the United Kingdom. Consequently, future licensees are excluded in advance from the competitive advantage of being able to manufacture the product themselves in the United Kingdom. Indeed, in the present case, transport costs, although they are not so high as to render imports to the United Kingdom economically non-profitable, do nevertheless have the effect of making less competitive the sales in the United Kingdom of future licensees of other Member States. This is even more true given the fact that the product licensed must be transported in refrigerated lorries and that deliveries are made to customers directly, normally on a weekly basis. Likewise, the obligation on Jus-rol not to manufacture the licensed product outside the territory of the United Kingdom discourages sales of this product by Jus-rol in other Member States.

(29) With regard to the existence of other processes which provide the means for freezing the yeast, it is not possible to consider that in the present case the exclusivity clauses concern the introduction of new technology in the licensed territory which would necessitate territorial protection. Therefore, given the special facts of the case, the abovementioned clauses have as their object the restriction of competition within the common market within the meaning of Article 85 (1) of the EEC Treaty. Thus, they must be assessed on the basis of Article 85 (3).

(30) The exclusive manufacturing right granted to Jus-rol and the obligation imposed on it not to manufacture the licensed product outside the licensed territory prevents, on the one hand, future licensees in other Member States from manufacturing the licensed product in the United Kingdom and, on the other, Jus-rol from manufacturing the product in the other Member States of the Community. Consequently, these clauses must be deemed liable to affect trade between the Member States of the Community.

(b) *Clauses not covered by Article 85 (1)*

(31) The granting by the licensor to the licensee of a non-exclusive right to sell the product in all the Member States of the European Community does not restrict the licensor's freedom to sell the product in the Member States (except the United Kingdom) either directly or through the intermediary of distributors. In addition, should Rich Products grant licences to other licensees in respect of other territories within the common market, Jus-rol will continue to be free to sell the licensed product in such territories, and the new licensees will be entitled to sell it in the United Kingdom. This clause must therefore be deemed not restrictive of competition within the meaning of Article 85 (1).

(32) The licensee's obligation not to disclose, throughout the term of the agreement or subsequently, the confidential information supplied by the licensor must be deemed not to be covered by Article 85 (1). The commercial value of know-how, which is a body of technical knowledge not protected by the legal provisions governing industrial property, is dependent on its secrecy. The obligation imposed on the licensee not to disclose the know-how is a necessary condition for maintaining such value and, consequently, for enabling its owner to grant it to other undertakings. This obligation may be maintained after the termination of the licensing agreement as long as the know-how has not come into the public domain. This latter requirement is observed by the agreement notified.

(33) The same assessment applies to the obligation imposed on the licensee not to grant sub-licences to third parties without the approval of the licensor, since this type of clause protects the licensor's right to use its know-how as it sees fit and to grant licences only to undertakings which enjoy its confidence.

(34) The obligation imposed on the licensee not to use the know-how for a period of 10 years following termination of the agreement (unless the agreement is terminated through the default of the licensor) and to return to the licensor all the documents relating to the know-how must be regarded as inherent in this type of agreement and accordingly as not falling within Article 85 of the Treaty. Acknowledgement of the exclusive right which the owner enjoys over its know-how means that the owner is free to decide whether it intends to transfer the confidential information permanently or temporarily in granting a licence. If the granting of a know-how licence meant that the owner would lose the exclusive right to make use of the know-how upon expiry of the licensing agreement, the owner would be less willing to grant a licence. This would ultimately be harmful to the transfer of technical knowledge.

However, the ban on using the know-how after expiry of the agreement would become anti-competitive if the know-how became freely accessible through no fault of the licensee or if the licensee had freely acquired identical knowledge from a third party. Except in such hypothetical situations, the ban on using the know-how following termination of the agreement does not fall within Article 85 (1) of the Treaty.

(35) The requirement that the licensee should use the know-how solely for the purposes of manufacturing the licensed product is not to be regarded as a restriction of competition within the meaning of Article 85 (1) of the Treaty. In the case in point, the definition of the product in the agreement notified covers all the possible uses of the knowledge supplied by the licensor, with the result that there are no specific uses reserved only to the licensor or to other possible licensees. However, even if this were the case, such an obligation would not be restrictive of competition.

(36) The obligation imposed on the licensee to grant to the licensor a non-exclusive and reciprocal licence for any improvement, whether or not patented, made by the licensee to the know-how supplied does not, in this particular instance, constitute a restriction of competition within the meaning of Article 85 (1), since this obligation does not deprive the licensee of the possibility of using the improvement itself or of granting licences for this improvement to third parties, in so far as this does not involve disclosing to such third parties the know-how supplied by the licensor. In addition, in the case in point, it has been agreed that the licensor's right to use the improvements made by the licensee ends at the same time as the licensee's right to use the original know-how, so that neither of the parties is placed in a less favourable position than the other upon expiry of the main licence agreement.

On the basis of these considerations, it is clear that the abovementioned obligation is not covered by the prohibition provided for in Article 85 (1) of the Treaty.

(37) The obligtion on the licensee to purchase from the licensor a pre-mix whose composition is secret and to use it in the manufacture of the product may be deemed not to restrict competition within the meaning of Article 85 (1) of the Treaty. The difficulties which Jus-rol and other manufacturers experienced in developing a system for manufacturing products similar to the licensed product indicate that the ingredients contained in the pre-mix and, in particular, their proportions and the method of preparing them are essential for the correct application of the manufacturing process. Thus Jus-rol and Rich Products took the view that, in order to ensure consistent quality in the licensed product, it would be necessary for Jus-rol to purchase the pre-mix from Rich Products.

(38) The obligation on Jus-rol to pay a royalty throughout the period of the agreement, regardless of the fact that during such period the know-how may come into the public domain, cannot be deemed restrictive of competition. It should be borne in mind here that the term of the agreement is 10 years, but that each party can terminate it on 31 July 1988. If by that date the know-how no longer offered competitive benefits to the licensee, for example because it had become generally accessible to third parties or had been overtaken by new developments in the technology, the licensee could terminate the contract and thus free itself of the obligation to pay royalties. If such is not the case, the licensee will continue to benefit from the know-how and to be subject to the obligation to pay royalties during the remaining period until the expiry of the agreement in 1993, even if in the meantime the entire know-how were to become generally known or obsolete.

In addition, it must be emphasized that the licence does not relate to a specific and easily-identifiable item of know-how, but to a body of complex technical knowledge in several areas (formulas, manufacturing processes, marketing, etc). This body of information is constantly evolving as a result of the amendments and improvements made by Rich Products and subsequently transmitted to Jus-rol. Consequently, it may be concluded that, in view of the particular nature of the know-how in question, the risk of such information being divulged in its entirety before the expiry of the agreement is particularly slight.

Accordingly, the obligation to pay royalties even after the know-how has become public knowledge or obsolete is not caught by the prohibition laid down in Article 85 (1) of the Treaty.

B. Article 85 (3)

(39) Article 85 (3) stipulated that the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement or category of agreements between undertakings which contributes to promoting the production or distribution of goods or to promoting technical or economic progress, while at the same time 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; and

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

(40) The exclusive manufacturing right granted to Jus-rol and the obligation imposed on it not to manufacture outside the United Kingdom are both, in view of the competitive situation on the relevant markets, the source of advantages corresponding to those permitted by Article 85 (3).

(41) The exclusive manufacturing right contributes to promoting economic and technical progress, since it is an incentive to Jus-rol to undertake the necessary investment for exploiting within the United Kingdom substantial and non-disclosed know-how with a view to manufacturing and distributing yeast doughs that allow fresh products to be prepared in a new way and offer numerous advantages to users, notably supermarkets (see point 5 above). The exclusive manufacturing right thus enables a Community undertaking to manufacture a product using a new technique and helps to increase the number of centres producing bakery products.

Restricting the exclusive manufacturing right to the United Kingdom obliges Jus-rol to focus its production and sales efforts in the United Kingdom and to concentrate on improving the quality of the products manufactured and increasing the quantity produced.

(42) The granting to Jus-rol of an exclusive right to manufacture the licensed product within the United Kingdom has many benefits for users, notably supermarkets, both technically and economically. Supermarkets and other shops wishing to sell fresh bread can rationalize their purchases and their sales, avoid as far as possible being left with unsold quantities and store the licensed product for long periods. This will ultimately benefit both such users of the licensed product and final consumers.

(43) The exclusive manufacturing right is essential if the abovementioned results are to be achieved. If the licensee were not certain that it would not encounter competition from other licensees appointed in the same territory or from licensees appointed in other parts of the common market, it might be deterred from accepting the risk of manufacturing and selling the licensed product. Such a result would be damaging to the dissemination of a bakery product and would thus prevent competition from developing between the licensed product and similar products within the Community.

Similarly, it may be concluded that the restriction of the right to manufacture the licensed product to the United Kingdom is necessary if undertakings in other Member States of the Community are to be interested in receiving a licence for the know-how and thus contribute to promoting technical progress in their Member States. If an undertaking could not at least rely on being the sole manufacturer of the product in a given territory, there would be a strong disincentive against its carrying out the initial investment necessary for the production of the new product.

(44) The exclusive manufacturing right will not enable Jus-rol to eliminate competition, since it has to compete with producers in the United Kingdom using similar processes which equally provide the means to manufacture frozen yeast dough (point 8).

C. Article 8 of Regulation No 17

(45) Under the terms of Article 8 (1) of Regulation No 17, exemption is granted for a specified period. The period of 10 years set for the exclusive manufacturing right and for the obligation on the licensee not to manufacture the product outside the licensed territory does not appear excessive since there are many other competing products on the market and since the free movement of the licensed product will be assured, in view of the fact that both Jus-rol and any future co-licensees in other territories will be able to sell the licensed product freely throughout the common market. In addition, in view of the particular characteristics of the market in question and of the licensed technology, a period of 10 years is necessary in order to ensure that the licensee has access to a continuous flow of know-how and can recoup his initial investment without having to fear that the licensor will terminate the agreement prematurely. Lastly, the period of the licensee's undertaking not to manufacture the licensed product in the territory reserved to Rich Products is necessary in order to give Rich Products sufficient time to exploit its know-how to the fullest extent by setting up itself or, as is more probable, by granting other manufacturing licences, in other territories of the common market.

On the basis of these considerations, the Commission considers that it can grant an exemption terminating at the end of the period covered by the agreement notified, i.e. on 31 July 1993,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable to the agreement between the parties specified in Article 3, and notified on 25 April 1984.

Article 2

The exemption shall apply from the day of notification until 31 July 1993.

Article 3

This Decision is addressed to:

— Jus-rol Limited, Tweedside Trading Estate, Berwick-upon-Tweed, United Kingdom,

— Rich Products Corporation, 1150 Niagara Street, Buffalo, New York 14213, United States of America.

Done at Brussels, 22 December 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission