II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 May 1988

relating to a proceeding under Article 85 of the EEC Treaty

(IV/32.075 - Bayer/BP Chemicals)

(Only the English and German texts are authentic)

(88/330/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 application for negative clearance and the notification for exemption, submitted under Articles 2 and 4 of Regulation No 17 on 3 October 1986 by Bayer AG, Leverkusen, BP Chemicals International Limited, London, and Erdölchemie GmbH, Köln, concerning the agreements between them signed on 10 November 1987,

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

After consultation with the Advisory Committee for Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

A. Subject of the Decision

(1) This Decision relates to the agreements between Bayer AG (Bayer), BP Chemicals International Limited (BPCL) and Erdölchemie GmbH (EC) concerning the polyethylene sector, under which, *inter alia,* technical cooperation is established between BPCL and EC and BPCL is appointed as distributor for EC's production, and which entered into force on 1 March 1988.

B. The undertakings

(2) Bayer is a German group dealing in chemicals and pharmaceuticals. Its turnover in 1986 was DM 40,7 billion (approximately 19,2 billion ECU). Bayer is active in the thermoplastic sector through its shares in EC (50 % of the ownership and 100 % of the dealership, prior to the present agreements) and its production of ABS (acrylonitrile-butadienestyrene), which was 20 % of the Western European market in 1986, making it the principal producer on the market.

(3) BPCL is a British wholly-owned subsidiary of the British Petroleum Company plc (BP). BPCL's turnover in 1986 was £1,7 billion (approximately 2,5 billion ECU). BPCL is a major LdPE/LLdPE manufacturer, also producing other thermoplastics, including polystyrene (6 to 7 %) of 1986 EEC capacity), polypropylene (3 %), and high-density polyethylene (8 %). BPCL has three LdPE plants in Europe, at Grangemouth, (capacity 100 000 tonnes in 1985), Wilton, (70 000 tonnes in 1985) and Antwerp, (120 000 tonnes in 1985) and one LLdPE plant in France, Lavera, (capacity 20 000 tonnes in 1985).

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 253, 23. 9. 1987, p. 5.

(4) EC is a German company jointly owned by Deutsche BP AG, a subsidiary of BP, and Bayer AG, established in 1957 and based in Cologne. Its turnover in 1986 was DM 2,2 billion (approximately 1 billion ECU). EC's production involves the cracking of naphtha and its derivatives (e.g.: polyethylene, propylene, butadiene, cracked gasoline) and synthetic gas production. EC has a cracker unit in Dormagen (Cologne) with a capacity of 380 000 tonnes; another cracker unit (350 000 tonnes) has been on stand-by since 1985. EC has two LdPE plants in Cologne-Worringen with a total capacity of 300 000 tonnes. All EC's products are currently distributed by Bayer AG; LdPE is traded under Bayer's registered trademark 'Baylon'.

C. The products

(5) The product concerned by the agreements is polyethylene, a thermoplastic produced either from ethylene, a monomer derived from naphtha cracking, or from ethane and oil-gas cracking. In Western Europe naphtha constitutes the basic raw material; ethane is used more in the Middle Eastern countries. Polyethylene is traded as low-density polyethylene (LdPE), linear low density polyethylene (LLdPE) and high-density polyethylene (HdPE). LdPE and LLdPE, which are more specifically considered in the agreements, are mainly (67 %) used for low-cost flexible-film packaging (including garbage sacks, agricultural film for mulching/greenhouses, fertilizer bags and shrink-wrapping). Of the remaining market, the most important (6 % in 1986) is extrusion coating (coated board for making drink and milk cartons); the other applications are cables, pipes and profiles, toys and household items.

(6) LLdPE is superior in performance to LdPE and offers cost savings to manufacturers of low-density resin. Rapid market growth (20 % per year until 1990) is envisaged for LLdPE, but it will be at the expense of LdPE: the traditional LdPE market is being increasingly penetrated by LLdPE, to the production of which LdPE plants can now - using the latest available technology - be converted.

D. The market

(7) The relevant geographical market for LdPE and LLdPE is the whole Community, as the products in question are safely and easily transportable. In 1987 there were 14 producers (the available figures consider LdPE and LLdPE together); as for production capacity, BPCL is joint number three with a share of 8,5 % of EEC capacity and EC has a share of 6,5 % of EEC capacity. The largest LL/LdPE producer in the Community has a share of 13 % and there are five other manufacturers (including BPCL) with a share of between 8,5 % and 11 %.

(8) The LdPE industry began its major growth in the early 1960s. Western European production reached over-capacity during the 70s; like the rest of the petrochemical industry, the LdPE sector was adversely affected by the first and second oil price shocks: as a result, capacity utilization fell to 74 % in 1978 and to 65 % in 1982. Capacity utilization of LdPE in Western Europe started growing in 1983 (76 %; 85 % in 1986); it is expected to decline in the near future (until 1990). One factor influencing this decline is the increase in imports from third countries, due to the absence of barriers to entry in the common market and to the low cost of raw materials.

The LLdPE market is growing at the expense of the LdPE market because West European producers are increasingly turning their attention to special grades of LLdPE for film and moulding applications which exploit the superior toughness and stress crack resistance of narrow molecular weight spread linear resins. In 1986/87 the following producers installed, or are about to install, LLdPE capacity in the Community: Atochem, Alcudia, BP, CdF (Copenor: 60 % CdF, 40 % Qatar), Dow, DSM and Énichem. The consumption of LLdPE in Western Europe increased from 320 000 tonnes to 440 000 tonnes in 1985; continuous growth of about 20 % per year is expected with a demand of more than 1 million tonnes by 1990.

(9) As mentioned above, the transportation of LL/LdPE does not present any particular difficulties. Consequently there is a considerable inter-state trade in the products in the common market. Even with excess capacity, imports from other Member States supply a significant part of each Member State's market.

(10) All of today's technologies convert ethylene into LdPE by causing a reaction at very high pressure in the presence of oxygen as an initiator. Approximately 20 % of the ethylene passing through the ractor is converted to LdPE, the unreacted ethylene being recycled for re-use with fresh ethylene. After this processing, LdPE is pelletized for shipment to customers, either bagged or in bulk.

The processing system currently used by EC in its LdPE plants has high costs (electricity, additives) because of limitations in the special autoclave reactors and the complexity of the process. BPCL's updated processes should reduce these costs. BPCL's technology also allows the starting of LLdPE production (according to the agreements, BPCL and Bayer are to set up an LLdPE plant) in order to modernize EC's production and extend its product range.

E. The agreement

(11) The purposes of the agreements are to appoint BPCL as distributor of EC's products in place of Bayer and to grant to EC BPCL's latest-generation process technology for polyethylene (LdPE and LLdPE). Of the five agreements, the so-called 'principal agreement' is between BPCL and Bayer; the others, between BPCL and EC, repeat and extend some provisions of the 'principal agreement'. They may be summarized as follows:

(a) Principal agreement 'Grundsätze über Polyethylen der EC Erdölchemie GmbH'.

According to this agreement, BPCL takes over, in the capacity of dealer, the resale to third parties of the polyethylene produced at EC. BPCL undertakes to acquire a minimum quantity, or alternatively, to take from EC, at a market price defined in the agreement, the quantity of ethylene corresponding to the quantity of polyethylene which was not purchased. BPCL guarantees that it will resell a specified minimum quantity of EC's polyethylene in the Western European market; EC is, therefore, obliged to make available to BPCL such a quantity of polyethylene; if EC is prevented, on technical or economic grounds, from making that quantity available, special arrangements apply.

The other clauses deal with the procedure for establishing the purchase price for the polyethylene obtained by BPCL from EC; they provide both for product development and technical cooperation establishing 'permanent exchange of technical information between BPCL and EC' and specify the duration of the agreement, i.e. for as long as EC produces polyethylene at Cologne-Worringen.

In return for the agreement relating to the distribution, BPCL and Bayer also agree to build, at Cologne-Worringen, a new LLdPE plant (of which the capacity *per annum* is known to the Commission) using the latest BPCL technology; a specific undertaking in that sense has also been given to the Commission. Consequently, a 'Technology Licence Agreement' is under negotiation between the parties, a draft of the text of which has been submitted to the Commission. The new plant will be run by EC and the starting up of its activity is envisaged for early 1991. The parties, although there is no express clause in the agreement, are also committed, on the basis of current perceptions of future demand trends, to closing down the older of EC's two present LdPE plants, after the starting up of the new LLdPE unit and following an examination of the polyethylene market situation at that time.

(b) Polyethylene supply contract between EC and BPCL.

This agreement provides again for BPCL's obligation to purchase every year a minimum quantity. Furthermore, certain rules are established for governing the marketing of EC polyethylene by BPCL.

(c) Agreement for the supply of ethylene between EC and BPCL.

This agreement sets out the provisions for the implementation of certain clauses of the principal agreement.

(d) Agreement on technical services and product development for polyethylene between EC and BPCL.

According to this agreement BPCL will, as regards polyethylene, continue to handle its own technical services in its laboratories on its own account. BPCL is responsible (using its own personnel and equipment) for product classification and for a number of technical tasks described in the agreement. EC is responsible for quality control of the product.

EC and BPCL, acting in agreement, are to take decisions concerning the inclusion or deletion of the production programme, special formulations and product specifications. Any inventions made by BPCL employees in the framework of the agreement are to belong to EC; EC is prepared to grant BPCL a non-exclusive licence in respect of such inventions.

(e) Cooperation agreement on polyethylene between EC and BPCL.

This agreement provides for an exchange of technical information between BPCL and EC in the field of polyethylene, including confidential information, with an obligation of secrecy.

F. Economic and structural impact of the agreement

(12) The agreements between Bayer, BPCL and EC reflect the individual strategies adopted by the three companies to reorganize and rationalize their respective petrochemical businesses, particularly in the polyethylene sector, in order to modernize, regain competitiveness and progressively reduce losses. BPCL is now in the second round of restructuring, having already rationalized capacity through the swap deal with ICI, which was approved by the Commission (3).

(13) The impact of the agreements on the market environment should be examined at both production and distribution level:

(a) At production level there is an impact on the structure of facilities due, in particular, to the undertaking to construct a new LLdPE plant and commitment to close the older of EC's two present LdPE units. Further effects at production level derive from the arrangements for the exchange of technical information and on technical cooperation between BPCL and EC. As a consequence, EC will be able to introduce BPCL's latest technology in its existing LdPE plants and will obtain from BPCL all existing and future technical information. As mentioned above, EC will set up the new LLdPE unit using BPCL's know-how.

(b) As far as distribution is concerned, prior to the agreements in question, Bayer had (since 1957) always distributed the whole of EC's production on the LdPE market. Its sales are mainly concentrated in Germany, its second and third markets being Italy and France. Moreover, BPCL is already present on the LdPE market, selling its own LdPE production, with sales mainly concentrated in the United Kingdom, its second and third markets being Germany and France.

As a result of the agreement, on the one hand, Bayer (keeping 50 % of the ownership of EC) ceases to act as an independent distributor on the LdPE market. On the other hand, BPCL distributes the production of both EC's and BPCL's units, thus increasing its market share and becoming the principal undertaking on the Community market.

(c) The global consequence of the agreements is a division of labour between the parties leading to *de facto* specialization. Bayer will concentrate more on fine chemicals and BPCL on basic chemicals, particularly on certain thermoplastic products (e.g. polyethylene).

(14) The agreements in question and the subsequent rationalization and industrial operations affect the market environment in the Community. Their relevance to competition and trade between Member States is mainly in the LdPE/LLdPE sector. The situation resulting from the arrangements has been examined both in relation to the wider EEC market and to the national markets where the impact is greatest. The figures available to the Commission show that, in 1987, a substantial proportion of the common market was supplied by competitors of BPCL and Bayer/EC; moreover, the market position of competitors is significant in those Member States where the parties own production facilities.

G. Comments of interested parties

(15) No comments opposing the present agreements were received from interested third parties in response to the Commission's Notice pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

(16) The agreements between Bayer, BPCL and EC fall within Article 85 (1) since they restrict competition and affect trade between Member States. They cannot therefore be given negative clearance as the parties request in their primary application. They can, however, be exempted under Article 85 (3).

A. Article 85 (1)

(17) Bayer, BPCL and EC are undertakings within the meaning of Article 85 (1), and the arrangements between them constitute agreements and concerted practices falling within the scope of that article.

(a) *Object and effect of restricting competition*

(18) The agreements between Bayer, BPCL and EC must be analysed as a whole with particular consideration of their economic and industrial consequences. In the circumstances of the case, the agreements must be regarded as having the object and effect of restricting competition within the common market for the following reasons.

(19) Previous to the agreements, BPCL already had its own production and distribution activities in the polyethylene sector, whereas Bayer's only business was its participation in EC, which corresponded to a 50/50 joint control at the production level, and its presence on the Community market as sole distributor of EC's products.

According to the parties' declarations and to the results of the Commission's enquiry, there was actual competition both at production and distribu-

(3) OJ No L 212, 8. 8. 1984, p. 1.

tion level between BPCL and EC and between BPCL and Bayer, respectively, notwithstanding the fact that BP controls 100 % of BPCL and owns (through its subsidiary Deutsche BP) 50 % of EC.

(20) The agreements do not provide for any transfer of assets between the parties; the agreements provide that EC shall appoint another polyethylene producer and seller, BPCL, as distributor of EC's polyethylene production; consequently, BPCL and EC remain actual competitors at production level. However, such an appointment eliminates Bayer from the Community polyethylene market, as actual competitor at distribution level.

Agreements between competitor producers for joint selling by their very nature restrict competition.

(21) The agreements provide for cooperation between the parties in the technological field; in particular, BPCL licenses its advanced technology to EC. The consequence at the industrial level will be the construction of a new LLdPE plant and the commitment to reduce LdPE capacity, by closing down the older of EC's two present LdPE units.

Agreements between competitors designed to control or limit production capacity or investments have a direct effect on competition.

(22) The continual cooperation between BPCL and EC in the technological field is an integral and basic part of the whole arrangement and is necessary for its effective operation.

Continual cooperation between competitors at the R&D level is bound to have a direct impact on competition between them.

(23) BPCL and Bayer remain potential competitors at the distribution level. For a group as large as Bayer, with its expertise in trading polyethylene and its 50 % participation in EC, it would be comparatively easy and cheap to re-enter the polyethylene market if, for example, EC should decide to re-appoint Bayer as its distributor. Consequently, Bayer's position cannot be compared to that of any other firm desiring to enter the polyethylene market for the first time without strong experience as a distributor and close financial links with EC.

(b) *Effect on trade between Member States*

(24) The agreements between Bayer, BPCL and EC concern products in which there is substantial trade within the EEC. The products are easily and safely transportable; both BPCL and Bayer exported them to other Member States and significant quantities are imported by competitors from other Member States into the countries in which their production units are located. In addition, a certain volume of imports from third countries enters the common market.

Therefore, the agreements have an effect on intra-Community trade, as they bring about a substantial change in the whole structure of competition.

B. **Article 85 (3)**

(25) The agreements between Bayer, BPCL and EC meet the conditions for exemption laid down in Article 85 (3). They contribute to improving the production and distribution of goods and to promoting technical and economic progress, while allowing customers a fair share of the resulting benefit. They neither impose restrictions which are not indispensable to the attainment of these objectives on the undertakings concerned, nor do they afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(26) The exemption is essentially justified because the agreements allow the parties to rationalize and modernize EC's polyethylene business, which is a part of an industry needing serious restructuring in the whole Community, more quickly and radically than would have been possible individually. The agreements thus produce benefits, notably through the industrial investments envisaged, which outweigh the abovementioned restrictions on competition.

Improvement in production and distribution, promotion of technical and economic progress

(27) Through the strict technical cooperation provided by the agreements, EC will be able to introduce in its plants BPCL's latest-generation technology in the field of polyethylene. This will allow major progress in rationalizing EC's production activities, improving technical efficiency and product quality in an industrial sector which is particularly threatened by imports from outside the Community.

(28) Bilateral arrangements leading to radical restructuring in sectors suffering from structural crisis are in line with current Commission policy, especially in the petrochemical sector. In this respect, the agreements provide in particular for EC's access to BPCL's specific know-how in the sector of LLdPE, thus allowing EC to enter that market through the construction of a net unit; the result will be the modernization and extension of EC's product range. Therefore, such an industrial investment which enables EC to enter the market of a product that is superior in performance (i.e. LLdPE), leads, within the meaning of Article 85 (3), to essential improvements in production.

(29) Furthermore, given the current perception of future demand trends, it will allow the closure of the older of the two LdPE plants currently owned by EC. The closure of an obsolete LdPE plant will reduce the overcapacity which, since the end of the 1970s, has characterized this sector in the Community as a whole.

(30) The agreements also provide for BPCL's appointment as the new distributor of EC's polyethylene production. This change virtually integrates EC's polyethylene business into BPCL's organization, allowing EC to have access to a larger sales network which performs particularly well and is dedicated to polyethylene as one of its primary strategic products.

(31) This will also allow, in the framework of global restructuring, a reallocation of production between BPCL's and EC's facilities, with respect to the natural markets for the different types and grades of polyethylene. Furthermore, the new distribution structure will facilitate decisions on plant rationalization in order to concentrate production on the most modern plants, which will be utilized at a higher level of their nameplate capacity.

Advantage for customers

(32) The agreements between Bayer, BPCL and EC allow customers, who are mainly in the downstream polyethylene processing industry, a fair share of the resulting benefits, provided that workable competition is maintained, as is the case here.

(33) More specifically, the technical cooperation agreements will grant EC's customers a wider range of products, including in particular LLdPE, which is more modern and gives superior performance; this would not have been possible without the arrangements. The agreement on distribution strengthens this rationalization and ensures customers a continued supply of the products and adherence to the specifications required.

(34) Customers will also benefit, in the medium to long term, from the cost savings achieved at the production level because of the abovementioned reallocations of production and the higher utilization of capacities. Higher plant loadings are particularly important in the polyethylene business, as for the other thermoplastics, where high fixed production costs have a direct impact on unit costs. By allowing fixed costs to be spread over a larger output in this way, unit costs will be reduced.

Indispensability of the restrictions

(35) The agreements between Bayer, BPCL and EC, with the restrictions of competition that they entail, are indispensable to the attainment of the abovementioned benefits. The restructuring and rationalization which the agreements make possible could not be achieved so quickly and to the same extent if left entirely to market forces without cooperation between the parties.

(36) As for the indispensability of the technical cooperation agreements, it should be noted that these arrangements are the basis of the whole industrial operation and are essential for obtaining and reinforcing the expected benefits of the rationalization. EC is not capable of carrying out individually the necessary investments for its restructuring and modernization, a fundamental step of which consists in the construction of the new LLdPE plant.

(37) The appointment of BPCL as distributor of EC's polyethylene represents the essential condition for the effective operation of EC's units on the basis of BPCL's technology, the reason being the need for very close cooperation between distribution activities and technical service and research and development activities. Polyethylene of each main type is sold in different grades; every customer has its own needs and it is frequently necessary for a manufacturer to produce a special grade for an individual customer. Therefore, the information about clients' needs received by the sales forces in the market, if transmitted quickly and effectively to the R&D centres, facilitates further developments in both technology and products.

Elimination of competition

(38) The agreements between Bayer, BPCL and EC do not afford the parties the possibility of eliminating competition in a substantial part of the market for the products in question.

(39) As shown above, partly because of low transport costs, there is a substantial trade in polyethylene within the Community and within Western Europe, markets characterized by insignificant barriers to the entry of either new producers or importers. Although the common market is not perfectly integrated, the whole Community, taking account of the impact of imports, corresponds to the definition of the relevant geographical market.

(40) In this respect, the impact of the agreements must be analysed particularly at the level of distribution of the products. As a consequence of the acquisition of the distributorship of EC's production, BPCL becomes the principal seller of polyethylene in the EEC. Therefore in terms of structure, conduct and performance, the anti-competitive impact of the agreements could be significant. However, a workable competition structure is still maintained both in the whole common market and in the national markets of Member States (subject to the verification of the existence of possible restrictions consequent upon concerted actions among undertakings at a multilateral level).

(41) The continuation of workable competition is especially guaranteed by the presence of a significant number of strong competitors among European manufacturers and, insofar as the Community is an open market, by the increase in imports from third countries. Moreover, whilst BPCL will be able to offer an extensive grade range, many other producers supply comparable ranges of polyethylene and/or other substitutable thermoplastic products for the same end users. As to Member State national markets, BPCL's market share after the agreements will significantly increase only in Germany; however, on this market the aggregation of the previously separate market shares of BPCL and Bayer (as seller of EC's production) makes only a relatively slight difference to the competitive situation in that country.

Duration of the exemption, conditions and obligations

(42) Article 8. (1) of Regulation No 17 provides that exemptions under Article 85 (3) may be granted only for a specific period and that conditions and obligations may be attached to them.

(43) In view of the specific nature of the agreements between Bayer, BPCL and EC, and the short and medium-term outlook of the polyethylene sector and in view particularly of the need to grant customers the cost-saving benefits which are possible only in the medium to long term, the appropriate duration of the exemption, which serves the objectives listed in Article 85 (3), is considered to be 12 years from the date of the notification of the agreements, that is until 2 October 1998. In fixing such a duration, account has been taken of the fact that the exemption granted by the Commission to the first step of BPCL restructuring (i.e. the abovementioned swap deal with ICI) also expires in 1998.

(44) However, since the construction and starting-up of a new LLdPE plant is of fundamental importance for the exemption provided by this Decision, the duration of the exemption should be subject to the condition that Bayer, BPCL and EC shall fully implement it within the first six months of 1991.

(45) In respect of the closure of the older of EC's two LdPE units the Commission considers that, on the basis of current perceptions of future demand trends, the parties are committed to implementing it. Therefore the duration of the exemption should be subject to the condition that Bayer, BPCL and EC shall close down the older of EC's two LdPE units by the end of 1991, unless the Commission states that the situation of the polyethylene sector objectively justifies, with respect to the requirement of Article 85 (3) and the purposes of this Decision, a postponement of implementation of this second industrial intervention.

(46) To enable the Commission to check that Bayer, BPCL and EC abide by the present Decision and that competition is not unduly or further restricted, the parties shall each be required to submit a report on an individual to basis to the Commission. The report shall deal with the activities concerning the products in question in this Decision and give specific details of the implementation of the industrial interventions and the progress achieved. It shall state, *inter alia*, the production and sales by the parties or by subsidiaries or companies they control, in the common market as a whole and in each Member State, the amount of output consumed internally by each of the parties, giving the name and business activity of the producer and consumer, and full particulars of each company's total output of the products concerned in the Community and in third countries. The report shall also state all variations in the production capacity of Bayer, BPCL and EC in the polyethylene sector, and give details of all changes in the production and distribution of the products in question.

Until 2 January 1992, each party shall send a report to the Commission every six months, two weeks before the end of the period to which it refers. However, the first report shall cover the period from 3 October 1987 to 2 Janaury 1989. Starting from 3 January 1992, if the exemption is still in force, the reports shall be sent to the Commission every two years, within four weeks before the end of the period to which they refer. A final report shall cover the period from 3 January to 2 October 1998.

(47) The agreements between Bayer, BPCL and EC lead to an increase in BPCL's share of sales of the relevant products in the Community. In view of the dangers which such an increase of market power can represent for the maintenance of free competition within the EEC, the Commission has a duty to monitor closely all developments in these sectors. Therefore, each party individually must be required to inform the Commission in advance of any initiative or further operation in which they or their subsidiaries or associated companies will take part, with reference to the products and sectors envisaged by this Decision or to products of the upstream and/or downstream markets.

(48) To enable the Commission to monitor the exempted agreements as required by Article 8 (2) of Regulation No 17, Bayer, BPCL and EC shall also be required to inform the Commission in advance of any renewals of, or extension in the scope or nature of, or amendments or additions to the agreements.

(49) In addition, the Commission reserves the right to ask the parties to supply any other information it deems necessary to check that competition is not restricted more than this Decision allows.

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3), the provisions of Article 85 (1) of the EEC Treaty are hereby declared inapplicable for the period 3 October 1986 to 2 October 1998 to the agreements between Bayer AG (Bayer), BP Chemicals International Limited (BPCL) and Erdölchemie GmbH (EC), under which, *inter alia,* technical cooperation is established between BPCL and EC, and BPCL is appointed as distributor for EC's production.

Article 2

The exemption declared in Article 1 shall be subject to the following conditions:

1. That Bayer, BPCL and EC fully implement within the first six months of 1991 the construction and the start-up of a new LLdPE plant;

2. That Bayer, BPCL and EC close down, by the end of 1991, the older of the two LdPE units currently run by EC, unless the Commission states that the situation of the polyethylene sector objectively justifies, with respect to the requirement to Article 85 (3) and the purposes of this Decision, a postponement.

Article 3

The declaration of exemption contained in Article 1 shall be subject to the following obligations:

1. Bayer, BPCL and EC shall each submit a report on an individual basis to the Commission during the period of the exemption. Each report shall deal with all the activities concerning the products in question and give details on the implementation of the operations provided for in Article 2 and of the progress achieved. It shall state, in particular, the production and sales by the parties or by subsidiaries or companies they control in the common market as a whole and in each Member State, the amount of output consumed internally by each of the parties, giving the name and business activity of the producer and consumer, and full particulars of each company's total output of the products concerned in the Community and in third countries. The report shall also state all variation as to the production capacity of Bayer, BPCL and EC in the polyethylene sector and give details of all changes in the production and distribution of the products in question.

   Until 2 January 1992, each party shall send a report to the Commission every six months, within two weeks of the end of the period to which it refers. However, the first report shall cover the period from 3 October 1987 to 2 January 1989. Starting from 3 January 1992, if the exemption is still in force, the reports shall be sent to the Commission every two years, within four weeks before the end of the period to which they refer. A final report shall cover the period from 3 January to 2 October 1998.

2. Bayer, BPCL and EC shall each inform the Commission individually in advance of any initiative or further operation in which they or their subsidiaries or associated companies will take part with reference to the products referred to by this Decision or to other products of the upstream and/or downstream markets.

3. Bayer, BPCL and EC shall individually inform the Commission in advance of any renewals, or extensions in the scope or nature of, or amendments or additions to, the agreements referred to in Article 1.

Article 4

This Decision is addressed to the following undertakings :

— Bayer AG,
Bayerwerk,
D-5090 Leverkusen,

— BP Chemicals International Ltd,
Belgrave House,
76, Buckingham Palace Road,
UK-London SW1 OSU,

— Erdölchemie GmbH,
Köln-Worringen,
Postfach 75-20-02,
D-5000 Köln 71.

Done at Brussels, 5 May 1988.

For the Commission
Peter SUTHERLAND
Member of the Commission