II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 July 1988

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.593 — British Dental Trade Association — BDTA)

(Only the English text is authentic)

(88/477/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 3, 4, 6, 8 and 15 (1) (b) thereof,

Having regard to the notifications made by the British Dental Trade Association on 7 March 1975 and on 17 December 1985 concerning the association's exhibition policy, reference being made to the Articles of Association and Guidance to Members [2],

Having regard to the Commission Decision of 29 April 1987 to initiate proceedings in this case,

Having given the association concerned the opportunity to make known its views on the objections raised by the Commission, pursuant to Article 19 (1) and (2) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963, on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 [3],

Having published a summary of the British Dental Trade Association (BDTA) Exhibition Policy Rules and Regulations [4] pursuant to Article 19 (3) of Regulation No 17,

After consultation with the Advisory Committee on Restrictive Practices and Monopolies,

Whereas :

I. THE FACTS

(1) This decision concerns and is confined to the Exhibition Policy, Rules and Regulations of the British Dental Trade Association, both past and present, and, in relation to the former, the policy applied by the association against certain undertakings from Member States other than the United Kingdom.

The BDTA

(2) The British Dental Trade Association (hereinafter referred to as the BDTA), formerly the Association of Dental Manufacturers and Traders in the United Kingdom, is an unincorporated members' association founded in London in 1923.

About 83 undertakings are currently members of the BDTA. Together they represent about 75 % of the total United Kingdom dental product market.

(3) The objectives, organization and rules of the BDTA, including membership rules, are set in its articles of association, which are binding upon members. A code of practice established thereunder, governing the conduct of members, is also binding upon them.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] As this was known in 1975, subsequently retermed code of practice in the 1985 notification.
[3] OJ No 127, 20. 8. 1963, p. 2268/63.
[4] OJ No C 209, 6. 8. 1987, p. 4.

(4) Membership of the BDTA is available to undertakings engaged in the United Kingdom in the business of manufacturing and/or supplying products specially prepared for use by and to dentists, dental laboratories and other authorized end users (collectively termed 'authorized purchasers') in the practice of dentistry. Members are classified as dental dealers, trade distributors, manufacturers or specialists, as defined by the BDTA. Affiliated membership is also available [1].

(5) General management of the BDTA and the election of members is vested in the council which is the main decision-making body of the BDTA and whose powers include 'the doing of all such things as it may deem necessary or expedient to promote the objects of the association'. Various committees are appointed by the council — including a membership committee and exhibition committee, which carry out the specific tasks delegated to them by the council.

BDTA Exhibitions

(6) Amongst the objectives of the BDTA listed in its articles of association is the taking part in the organization of dental exhibitions. The BDTA has long organized both international exhibitions, held until recently every three years and generally referred to as 'triennial' or 'international' exhibitions, and regional exhibitions, held generally in the intervening years and referred to since 1980 as 'dental showcases'.

While the BDTA exhibitions are not the only exhibitions of dental products and equipment taking place in the United Kingdom they are large and prestigious events which have taken place regularly over a long period of time and are widely considered as major United Kingdom exhibitions by the dental trade. Other, more minor promotional events in this sector include supporting trade shows, which are ancillary to events such as seminars or demonstrations, and road shows, which are organized by one or more companies targeted at a particular catchment area.

In carrying out this activity the BDTA has evolved an Exhibition Policy, Rules and Regulations which, in their various formats over the years, have been applied to each exhibition organised.

Investigations of the BDTA's Exhibition Policy

First investigation

(7) In 1975 an investigation of the BDTA's then current exhibition policy was initiated by the Commission following a complaint. This complaint was submitted by the Italian dental association UNIDI and concerned the BDTA's refusal to admit that association and some of its members to the 1975 BDTA triennial exhibition. On 7 March 1975 the BDTA notified its decision not to open that exhibition to undertakings which were not members of the association, and also its current Articles of Association and Guidance for Members.

(8) In the course of this investigation the Commission informed the BDTA that the association's decision not to admit non-members to this exhibition restricted competition in the common market, specifically because undertakings situated in the Community but not represented within the BDTA were denied admission to BDTA exhibitions and were therefore discriminated against. The restriction of competition was considered by the Commission to be more serious by reason of the severity and strictness of application of the conditions of admission to the BDTA. Moreover although the BDTA's notification only referred to the triennial exhibitions which it organized the Commission also informed the president of the BDTA that, in the case of local or national exhibitions, any restriction on the admission of non-national undertakings would also risk breaching the competition rules [2].

(9) Following discussions with the Commission the BDTA amended its exhibition policy in May 1976 so as to enable not only members of the association to participate in its future three-yearly exhibitions but also manufacturers or trade distributors from other EEC countries which were not represented within the United Kingdom by a member of the BDTA. The Commission, having first waited until after the next BDTA triennial held in 1978 so as to ensure that the terms upon which these non-BDTA members participated were not discriminatory, subsequently informed the BDTA by letter in April 1979 that it did not intend to pursue the case further and that the file would therefore be closed. The BDTA was warned however that the file might be reopened at any time in the future should the

[1] This is normally appropriate for undertakings providing an ancillary service, such as finance, rather than the supply of products for use by the dental profession.

[2] Eumaprint (Third Report on Competition Policy, May 1974, p. 51-52).

Commission receive a complaint or if other circumstances should be brought to its attention which could justify such action.

Second investigation

(10) On 3 July 1985 the Commission received another complaint [1] concerning the BDTA's exhibition policy which led it to commence a second investigation of this policy, covering the period subsequent to the 1978 triennial. On 17 December 1985 the BDTA notified its then current Exhibition Policy, Rules and Regulations, reference being made to the then current articles of association and code of practice.

(11) In the course of its second investigation the Commission obtained information leading it to conclude that undertakings other than members of the BDTA and, in particular, non-United Kindgom undertakings from other Member States which were not represented in the United Kingdom by a member of the association, had once again been discriminated against. More specifically, the Commission discovered the following:

BDTA policy with regard to specific exhibitions

Triennial/international exhibitions

1. 13th British Dental Trade Association Exhibition

(12) Admission to participate in this exhibition, the next triennial after the 1978 exhibition, held in London in September 1981, was restricted to members of the BDTA. This decision was taken on the basis of limited floor space at the location selected. In view of this fact it was decided that the exhibition should be termed a 'national' and not an 'international' or 'major' exhibition. Nevertheless, it was agreed that the six month 'closed period' [2] rule applicable to triennial/international rather than regional exhibitions should apply. Moreover the decision to restrict admission to members was taken despite the fact that one council member had earlier warned the others that it would be difficult in practice to exclude EEC manufacturers from future exhibitions, and as regards the 1981 exhibition in particular, that it would present considerable problems if non-United Kingdom based EEC companies could not participate.

2. 14th London Triennial Exhibition of the British Dental Trade Association

(13) At this exhibition, held in September 1984, the participation rules resulted in less favourable conditions for non-members and, in particular, non-United Kingdom undertakings from other Member States, as compared with members of the association and were stricter than the 1978 exhibition rules in at least the following respects:

(i) only members of the association were automatically admitted to this exhibition. In addition participation was open to other EEC manufacturers, but only at the specific invitation of the BDTA [3]; and

(ii) these undertakings were required to be represented in the United Kingdom by a BDTA member.

Moreover in practice:

(i) only those non-United Kingdom undertakings which had earlier expressed an interest in participating in the exhibition or had participated in a previous BDTA exhibition were invited to attend, and received application forms;

(ii) invitations and application forms for these undertakings were sent out only *after* members of the BDTA had been informed of the exhibition, had been sent application forms and had been given the opportunity to book their places. This practice conformed with the policy agreed by the council of the BDTA that European companies who were members of the appropriate national trade association would be permitted to attend, but that the needs of the membership would be required to be satisfied first, and non-United Kingdom undertakings could participate only if space remained available. In addition, no space was specifically allocated for these undertakings, as had been the case in 1978. Instead they were to be allocated stands on the basis of what space remained available after the BDTA members' stands had been allocated;

(iii) non-United Kingdom undertakings which were sent letters of invitation were given less than two weeks for their replies to be received by the BDTA;

(iv) in the event, the council of the BDTA determined in April 1984 that manufacturers from the EEC who were already represented in the United Kingdom should not be permitted to exhibit.

[1] This complaint was submitted by a company from the United Kingdom which, having been refused admission to membership of the BDTA, was also prevented from participating at BDTA exhibitions. In July 1986 this company was admitted as a member of the association and subsequently withdrew its complaint.

[2] That is, the period of time within which undertakings exhibiting at BDTA exhibitions were not permitted to participate in competing exhibition style events.

[3] In addition these manufacturers were required to be members of their national dental manufacturing or trade association which was in turn a member of FIDE (Fédération Internationale Dentaire de l'Europe).

As a result of this policy and practice, a number of companies were in fact sent letters by the BDTA informing them that demand for space had exceeded supply and that their applications were rejected.

Dental showcases

(14) In accordance with the terms of the exhibition policy document distributed to all BDTA members in April 1980 (as subsequently updated), in the Internationale years in which no triennial exhibition took place the BDTA organized smaller regional exhibitions known as dental showcases. These exhibitions were held as follows:

1982 — Birmingham, November
1983 — London, April
Harrogate, November/December
1985 — Birmingham, October

Participation at these exhibitions was in principle restricted to members of the BDTA, with the exception of a few companies specifically invited by the association. Moreover invitations were extended only to undertakings whose products did not compete with those of BDTA members. Non-United Kingdom undertakings from other Member States which were not represented within the BDTA were not eligible to participate, and applicants were refused admission.

General policy of the BDTA in the organization of exhibitions

(15) In February 1985 a document updating and codifying the BDTA exhibition policy was distributed to all members in the form of a general circular (No 341). Clause 3 of this document categorized admissible exhibitors to BDTA exhibitions (drawing no distinction between international exhibitions and dental showcases) as follows:

Members and affiliate members of the BDTA at the date of the exhibition or *by special invitation* of the Association and *under such terms as the Association may impose*:

1. professional associations in dentistry;
2. publishers of dental books and/or periodicals;
3. any other organization, association, firm or group thereof, which in the opinion of the Association would contribute to the attraction of the particular exhibition.

(16) In addition by letter to the Commission, dated 16 December 1985, the BDTA confirmed that in general terms its general exhibition policy was as follows:

(i) priority was given to BDTA members wishing to exhibit, whether at dental showcases or at international exhibitions. Companies from outside the United Kingdom were not usually invited to exhibitions other than triennial/international exhibitions;

(ii) there was a tendency only to admit non-members which did not deal in products which would compete with those of an exhibitor member;

(iii) non-United Kingdom companies from outside the United Kingdom were encouraged to have some local presence e.g. through a local distributor or subsidiary.

The BDTA also confirmed that some applicants for space at exhibitions had been denied their requests for a number of reasons, including those outlined above. Other applications refused were duplications by overseas companies which already distributed their products through a local distributor in the United Kingdom.

(17) It follows from the above that from 1981 the BDTA applied different conditions to undertakings which were not members of the Association and, with regard to non-United Kingdom undertakings from other Member States which were not represented in the United Kingdom by a member of the association, it applied a policy which was more restrictive than it had earlier undertaken to the Commission to apply, and on the basis of which the Commission had terminated the first case against it.

This fact was expressly admitted by the BDTA itself in a letter sent to the Commission in April 1986. The Association, however, expressed its immediate intention to amend its policy in order to comply with the requirements of EEC law.

Current BDTA Exhibition Policy Rules and Regulations

(18) Following discussions with the Commission a number of amendments were made to the BDTA's Exhibition Policy, Rules and Regulations, the revised text of which was adopted by the council of the BDTA on 16 December 1986.

(19) The main provisions of the new Exhibition Policy, Rules and Regulations are as follows:

— participation as exhibitors is open to members of the BDTA and non-members who are United Kingdom or other EEC manufacturers, distributors or suppliers of dental products and equipment and, by invitation of the organisers, to professional associations in dentistry, publishers of dental books and/or periodicals, and any other organization, association, firm or group thereof, which in the opinion of the Association would contribute to the attraction of the particular exhibition;

— the exhibition fee may carry a discount of up to 25 % (exclusive of VAT) for members of the BDTA as opposed to non-members;

— for a period of four months prior to, concurrent with and one month following any BDTA exhibition no exhibitor shall organize, cause to be organized or take part in any competing exhibition-style event (defined as an alternative exhibition or event equivalent to an exhibition which competes with the BDTA's exhibitions). This restriction applies to the whole of the United Kingdom in the case of international exhibitions and in the case of dental showcases, to a restricted zone determined by the BDTA, which area will comprise the dental population intended to be covered by the exhibition in question. In addition exhibitors are not permitted to promote exhibition-style events for a period of four months prior to and concurrent with the exhibition. However in the case of dental showcases such promotion is permitted outside the restricted zone, provided it is appropriate to the nature and size of the event and does not include press advertising;

BDTA exhibitions are no longer strictly organized on a triennial basis. The frequency of each exhibition is instead determined by the BDTA from year to year. However in years in which an international exhibition takes place no other BDTA exhibition will be organized for the same year. In addition no more than one dental showcase a year will normally take place in the region of the United Kingdom covered by any such exhibition;

— Admissible exhibits are:

(i) products manufactured specifically for or used in the practice of dentistry which comply with relevant international, community and national manufacturing and health legislation, and products manufactured for dental care purposes. Exhibitors having a display stand may exhibit or demonstrate their products on the stand of another exhibitor. Exhibitors who are suppliers of services only may complement their stand with an unaccompanied display of dental products, provided that those products are admissible exhibits and are also on display on the stand of another exhibitor;

(ii) products, publications or services which are applicable to dentistry;

(iii) products which are not specifically applicable to dentistry but which the exhibitor wishes to sell or display may be allowed if these are listed, notified and approved by the BDTA 14 days prior to the exhibition [1];

— infringement of the Association's Exhibitions Policy, Rules and Regulations renders exhibitors liable for the removal of offending exhibits, the closure of their stand, and endangers their participation in the next BDTA exhibition;

— where action of the organizers or Association is considered unjust, including the denial of an application to participate, those concerned have the right to lodge a written appeal (within 14 days) to an appeal body, acting on behalf of the BDTA. Unsuccessful applicants will be informed of the reasons for rejecting their applications to participate. The appeal body will normally consist of five persons, three of whom will be independent of the BDTA. Reasons for the rejection of an appeal will be notified to unsuccessful appellants [2].

(20) The publication in the *Official Journal of the European Communities*, pursuant to Article 19 (3) of Regulation No 17 did not elicit any observations from third parties.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(21) 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.

The BDTA, the members of which are undertakings in the dental product and equipment industry, is an association of undertakings within the meaning of Article 85. The decisions taken by the council of the BDTA adopting the Exhibition Policy, Rules and Regulations (in their various forms over the years) constitute decisions of an association of undertakings within the meaning of Article 85. Any measure or decision taken by the BDTA in implementation of the Exhibition Policy, Rules and Regulations also constitutes a decision of an association of undertakings.

[1] Under the previous exhibition policy the crieria relating to admissible exhibits in certain respects discriminated in favour of members of the BDTA.

[2] Under the previous exhibition policy no reasons were required for rejecting applications for admission to BDTA exhibitions. No person independent of the BDTA was included in the appeal body.

Current BDTA Exhibition Policy, Rules and Regulations

(22) The Exhibition Policy, Rules and Regulations in their present form have as their object or effect the restriction or distortion of competition within the common market in the following ways :

1. competition between manufacturers, distributors and suppliers of dental products and equipment which participate in BDTA exhibitions is restricted or distorted in that, for a period of four months prior to, concurrent with and one month following any such exhibition (i.e. the 'closed period'), they may not participate in any competing exhibition style event (1) within the United Kingdom (in the case of international exhibitions) or (in the case of dental showcases), a specific part thereof. As a result the opportunity for these undertakings to promote their products at other exhibitions is limited.

   Competition is not restricted however by the reduction in the admission fee accorded to members of the BDTA as opposed to non-members. A reduction or discount of up to 25 % is justified in the present case in view of the costs and financial risks involved in organizing the exhibitions, which are borne by the members of the Association. In view of these facts the discount does not discriminate against exhibitors who are not members of the BDTA ;

2. competition between organizers of exhibitions of dental products and equipment is restricted or distorted in that other organizers are prevented during the abovementioned 'closed period' from securing the participation of would-be exhibitors who might also wish to exhibit at BDTA exhibitions. As a result their opportunity to organize a successful exhibition is limited. This restriction is accentuated by the fact that exhibitors at BDTA exhibitions are not permitted to promote exhibition style events for four months prior to and concurrent with any such exhibition (with the limited exception in the case of dental showcases).

(23) These restrictions of competition are liable to affect trade between Member States as follows :

1. undertakings which may participate at BDTA exhibitions include manufacturers, distributors and suppliers of dental products and equipment which are produced in Member States other than the United Kingdom. Since participation at BDTA exhibitions deprives these undertakings of the opportunity to participate in other events organized within the abovementioned 'closed period' the result may be that only a limited or incomplete range of dental products from other Member States can be displayed at these exhibitions ;

2. organizers of competing exhibition-style events taking place within the abovementioned 'closed period' are prevented from securing the display of dental products and equipment manufactured in other Member States ; this obstacle to trade in services by organizers of exhibitions in principle affects undertakings from all Member States wishing to organize exhibitions of dental products in the United Kingdom.

(24) Accordingly Article 85 (1) is applicable to the current Exhibition Policy, Rules and Regulations in so far as the abovementioned 'closed period' rule is included therein.

Previous BDTA Exhibition Policy, Rules and Regulations

(25) The same or similar restrictions of competition to those described in paragraphs 23 and 24 above were also applied by the BDTA prior to its adoption of the current Exhibition Policy, Rules and Regulations. However the previous Exhibition Policy, Rules and Regulations also contained a number of additional restrictions.

(26) In particular, the BDTA policy and practice on participation to exhibitions organized from 1981 onwards had the object and/or effect of restricting competition in the common market because non-United Kingdom undertakings from other Member States which were not represented in the United Kingdom by a BDTA member, which would otherwise have been eligible to participate at these exhibitions, were excluded from doing so or their opportunity to participate was limited by comparison with members of the Association itself. As a result of such discrimination these undertakings were on a number of occasions actually or potentially deprived of an important opportunity to promote their dental products and equipment in the United Kingdom. Despite the fact that other exhibitions or promotional events may have been organized on occasions within this period the loss of opportunity to exhibit at the BDTA exhibitions, which were established and prestigious events, organized on a regular basis, was in itself significant.

(1) That is, any exhibition or event equivalent to an exhibition which competes with the BDTA's exhibitions.

(27) In practice these undertakings were excluded from all exhibitions organized by the BDTA from 1981 onwards, including both triennial/international exhibitions and dental showcases.

A number of undertakings were refused admission to its exhibitions as a result of the policy the BDTA applied, as admitted by the Association itself.

(28) The abovementioned restriction on competition affected trade between Member States because non-United Kingdom undertakings from other Member States were deprived of the equal opportunity, on the same terms as members of the BDTA, to promote in the United Kingdom products and equipment produced and distributed by them in other Member States. Amongst such undertakings were those whose products were not yet available on the United Kingdom market, the exhibition(s) providing an opportunity for these undertakings to test the potential of that market.

(29) Accordingly Article 85 (1) is applicable to the Exhibition Policy, Rules and Regulations of the BDTA, as adopted and applied to individual exhibitions organized prior to the adoption of the current terms.

B. Article 85 (3)

(30) 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;

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

(31) The Commission has, on a number of occasions [1], confirmed that its policy on fairs and exhibitions is to accept agreements or arrangements — such as the BDTA Exhibition Policy, Rules and Regulations — where they achieve rationalization and cost-savings and also present advantages to consumers which objectively outweigh the restrictive elements involved.

Current Exhibition Policy, Rules and Regulations

(32) The abovementioned advantages of rationalization and cost-savings are achieved by the current BDTA Exhibition Policy, Rules and Regulations because the 'closed period' rule encourages the concentration of exhibitors at fewer exhibitions, and hence the widest range of dental products and equipment at each such exhibition. This creates an additional incentive for competition between exhibitors while maximizing the promotional value of each exhibition. It may also reduce the distribution costs of exhibitors since, in marketing their products, they need participate in fewer exhibitions and only those which attract the largest number of customers.

It may be concluded therefore that the Exhibition Policy, Rules and Regulations contribute to improving the distribution of dental products and equipment in the United Kingdom and to promoting economic progress.

(33) A fair share of this improvement in distribution and promotion of economic progress accrues to consumers, that is, the dental profession in the United Kingdom. The concentration of exhibitions enables consumers to be fully informed as to what products are available on the market without having to travel to numerous exhibitions. In addition, they may also benefit from any resulting reduction in distribution costs.

(34) The imposition of a 'closed period' rule by the BDTA may be regarded as indispensable to the attainment of the benefits achieved as a result of the concentration of exhibitions. The period itself is reasonable and does not exceed that which is necessary to achieve this objective.

(35) The Exhibition Policy, Rules and Regulations of the BDTA does not eliminate competition between manufacturers, distributors and suppliers of dental products and equipment in the United Kingdom or between organizers of exhibitions at which dental products and equipment is, or can be, displayed. Undertakings are free to choose whether or not to participate at exhibitions organized by the BDTA. Moreover, while exhibitions constitute one important means of promoting goods and services,

[1] Commission Decisions in cases: EMO (OJ No L 69, 20. 3. 1969, p. 13), renewed on 7 December 1978 (OJ No L 11, 17. 1. 1979, p. 16); Cematex (OJ No L 227, 8. 10. 1971, p. 26), renewed on 24 May 1983 (OJ No L 140, 31. 5. 1983, p. 27); UNIDI (OJ No L 228, 29. 8. 1975, p. 17), renewed on 23 November 1984 (OJ No L 322, 11. 12. 1984, p. 10); BPICA (OJ No L 299, 23. 11. 1977, p. 18), renewed on 30 April 1982 (OJ No L 156, 7. 6. 1982, p. 16); SMM & T (OJ No L 376, 31. 12. 1983, p. 1); VIFKA (OJ No L 291, 15. 10. 1986, p. 46); Internationale Dentalschau (OJ No L 293, 16. 10. 1987, p. 58).

they are not the sole means by which the interest of the dental profession can be attracted. All other promotional media remain at the disposal of manufacturers etc. In addition their dealers can make direct contact with the majority of potential customers. As a result a considerable degree of competition between manufacturers, distributors and dealers is retained.

In addition competition between organizers of exhibitions is only moderately affected by the Exhibition Policy, Rules and Regulations. Organizers remain free to arrange competing-style events in the United Kingdom for seven months out of any year in which an international BDTA exhibition is organized and, in the years in which dental showcases are organized, the geographical restriction is confined to a part of the United Kingdom. They may also organize such events within the 'closed period' if they consider that a sufficient number of exhibitors will be attracted away from exhibitions organised by the BDTA.

(36) Since all the requirements of Article 85 (3) are therefore satisfied and in particular all forms of discrimination as between members of the BDTA and non-members have been eliminated it is possible to grant an exemption to the current Exhibition Policy, Rules and Regulations of the BDTA.

Previous Exhibition Policy, Rules and Regulations

(37) Apart from those agreements falling within the scope of Article 4 (2) of Regulation No 17 agreements falling within the prohibition contained in Article 85 (1) may be capable of exemption under Article 85 (3) only if they have first been notified to the Commission.

(38) The Exhibition Policy, Rules and Regulations of the BDTA, as adopted and applied to exhibitions organized between 1981 and 1985, do not qualify for exemption to the exent that they constitute further amendments to the notification made initially by the BDTA in 1975 as accepted in 1979 by the Commission (in the form applied in the 1978 triennial), which amendments have not themselves been notified to the Commission. Since no such notification was received by the Commission until December 1985, which followed the initiation of the Commission's investigation of the BDTA, the restrictions of competition in issue in this case, which do constitute amendments to the terms accepted by the Commission, are not exemptable under Article 85 (3).

(39) It was the Commission's understanding in the first investigation of the BDTA, based upon information provided to it by the Association, that the only exhibitions organized by the BDTA at the time were the triennial exhibitions. However the principle of non-discrimination required by the Commission in implementation of the EEC competition rules was equally applicable to national or regional exhibitions. This was expressly pointed out to the Association, and had already been set out in the Commission's Third Report on Competition Policy in relation to the Eumaprint case. Thus it follows that the restrictions of competition at issue in this case applied in exhibitions other than the triennials were also not notified to the Commission until December 1985, and are not exemptable under Article 85 (3).

(40) Moreover even if the amendments in question had been notified to the Commission, an exemption would not have been forthcoming for the period in question since the conditions for an exemption under Article 85 (3) were not fulfilled. More particularly, no improvements to the production or distribution of goods or to the promotion of technical or economic progress resulted from the restrictions of competition in question. On the contrary they served only to limit the potential distribution of dental products and equipment within the United Kingdom. In addition no benefits accrued to customers. Instead they were deprived of the opportunity to see displayed a fuller range of dental products and equipment at BDTA exhibitions than might otherwise have been the case.

(41) Furthermore these restrictions were not indispensable to the successful organization of BDTA exhibitions, as evidenced by the fact that in the 1978 exhibition the Commission was assured by the BDTA that no discrimination was practised.

(42) For these reasons therefore an exemption under Article 85 (3) would not have been available, even without the need to consider whether or not the restrictions in question and resulting discrimination against non-members afforded the BDTA the possibility of eliminating competition in respect of a substantial part of the products in question.

(43) In the light of the considerations set out above the Commission concludes there are grounds for finding that the BDTA has infringed Article 85 (1) of the Treaty.

C. Articles 6 and 8 of Regulation No 17

(44). Under Article 8 (1) of Regulation No 17, a Decision applying Article 85 (3) must be issued for a specified period and conditions and obligations may be attached.

(45) The exemption can only be granted from the date on which the amendments requested by the Commission took effect. Therefore, the present exemption can be granted as from 16 December 1986.

(46) In determining the duration of its Decision under Articles 6 and 8 of Regulation No 17, the Commission must take account of the specific characteristics and needs of the dental product and equipment industry as well as the frequency of the events covered by the exhibition rules. It would therefore seem appropriate to grant the exemption for the period from 16 December 1986 until 15 December 1996.

(47) Pursuant to Article 8 (1) of Regulation No 17, obligations may be attached to the Decision enabling the Commission to ensure that the requirements of Article 85 (3) continue to be satisfied during the period of exemption.

(48) The BDTA should therefore be required to inform the Commission immediately of any changes in the current Exhibition Policy, Rules and Regulations and of any alteration in the manner in which they are applied.

In addition, the BDTA should immediately inform the Commission of any refusal to admit applicants to any BDTA exhibition, following the rejection of an appeal by the appeal body. Furthermore, each year, before the end of January, the BDTA should submit to the Commission a calendar of its exhibitions for that year.

D. Article 3 (1) of Regulation No 17

(49) Article 3 (1) of Regulation No 17 provides that where the Commission, upon application or on its own initiative, finds that there is infringement of Article 85 (1), it may by Decision order the undertakings or association of undertakings concerned to bring such infringement to an end.

(50) Where the infringements have already been terminated, the Commission may still make a formal finding that the infringements took place, in order to clarify the legal position, (see Judgement in *Case 7/82 GVL*[1]), to require the undertakings or the association to desist in future from any action having the same object or effect, and to impose fines for the infringements committed.

E. Article 15 (2) Regulation No 17

(51) Article 15 (2) (a) of Regulation No 17 provides that the Commission may by decision impose on undertakings or associations of undertakings fines of from 1 000 to 1 000 000 ECU, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceeding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85 of the Treaty. In fixing the amount of the fine, regard must be had to the gravity and duration of the infringement. Under paragraph 5 the fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place after notification to the Commission and before its decision in application of Article 85 (3) of the Treaty, provided they fall within the limits of the activity described in the notification.

(52) The Commission takes the view that the imposition of a fine on the BDTA in relation to its previous Exhibition Policy, Rules and Regulations is justified in the present case for the period from September 1981 until 17 December 1985. No fine is imposed however in respect of acts taking place after 17 December 1985, that is, the date upon which the BDTA notified its then current Exhibition Policy, Rules and Regulations.

(53) The infringement of Article 85 (1) was intentional or at least negligent. As a result of the Commission's first investigation of the BDTA the Association was made clearly aware of the applicability of the EEC competition rules to any discrimination against non-United Kingdom undertakings from other Member States which were not represented by a member of the BDTA itself; indeed the Association amended its rules in order to bring such discrimination to an end. In addition, with regard to the 1981 triennial in particular the council of the BDTA was expressly warned by one of its members of the dangers of discriminating against these undertakings once again. Despite such warnings however the BDTA reverted precisely to its former policy.

(54) In determining the amount of the fine to be imposed on the BDTA the Commission has taken account, in particular, of the following factors:

1. the Commission has developed a clear policy on the application of the competition rules to the organization of exhibitions and the prohibition on discrimination based on nationality is an inherent part of this policy;

2. in the course of the first investigation into its activities the BDTA had been made fully aware that discrimination against non-United Kingdom undertakings from other Member States which were not represented within the Association would constitute an infringement of Article 85. However, the present case shows that the BDTA reverted to its former policy following the termination of that investigation by the Commission. The infringement was therefore to this extent deliberate;

[1] ECR (1983), p. 483.

3. BDTA discriminated against the undertakings in question in the organization of two international exhibitions (1981 and 1984) and at least four regional exhibitions (1982 to 1985), a policy which was terminated only following the Commission's second investigation of the BDTA started in 1985;
4. once the BDTA's infringement was made evident to it again, the BDTA emphasized its intention to comply with the EEC competition rules and to cooperate with the Commission in formulating a policy which would be acceptable under these rules. The Association has now amended its policy to this effect;
5. this is the first exhibition policy case in which a fine is imposed.

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 to the Exhibition Policy, Rules and Regulations adopted by the BDTA on 16 December 1986.

This shall apply from that date to 15 December 1996.

Article 2

The following obligations are attached to the exemption in Article 1:

— the BDTA shall immediately inform the Commission of any changes in the Exhibition Policy, Rules and Regulations and any alteration in the manner in which they are applied,
— the BDTA shall immediately inform the Commission of any refusal to admit would-be exhibitors to any BDTA exhibition, following the rejection of an appeal by the appeal body,
— each year, before the end of January, the BDTA shall submit to the Commission a calendar of its exhibitions for that year.

Article 3

The Exhibition Policy, Rules and Regulations as adopted and applied by the BDTA from 1981 until December 1985 constituted an infringement of Article 85 (1) of the EEC Treaty.

Article 4

A fine of 100 000 ECU is hereby imposed on the BDTA in respect of the infringement set out in Article 3.

This fine shall be paid into:

(a) account No 590 00 204 Commission of the European Communities, Brussels (for payment in ECU); Lloyds Bank LTD, The Manager, Payments Sections, Overseas Centre, Birmingham, PO Box 63, 380 Paradise Street, Birmingham B1 2AB England, or

(b) account No 108 63 41, Commission of the European Communities (for payment in pounds sterling), Lloyds Bank Ltd, Overseas Department, PO Box 19, 6 Eastcheap, London EC3P 3AB, England,

within three months from the date of notification of this Decision. On expiry of that period interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ECU operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, i.e. 9,75 %.

Should payment be made in the national currency of the addressee, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 5

This Decision is addressed to:

The British Dental Trade Association,
Hill House,
Hill Avenue,
Amersham,
Buckinghamshire HP6 5BQ,
United Kingdom.

This Decision is enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 11 July 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission