II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION
**of 20 December 1988**
**relating to a proceeding under Article 85 of the EEC Treaty**
**(IV/0.093, EMO)**

(89/96/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

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 Commission Decision 79/37/EEC [2], renewing Commission Decision 69/90/EEC [3], adopted pursuant to Article 85 (3) following the notification submitted on 20 September 1962, as required by Article 2 of Regulation No 17, by the European Committee for Cooperation of the Machine Tool Industries (Cecimo), Brussels, concerning decisions to organize machine tool exhibitions EMOs (expositions de la machine-outil), notably those concerning the participation of exhibitors,

Having regard to the application for renewal of the Commission Decision submitted on 16 April 1986 by Cecimo's Secretary-General,

Having published Cecimo's basic rules on participation in these exhibitions in the *Official Journal of the European Communities* [4], pursuant to Article 19 (3) of Regulation No 17,

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

Whereas :

### I. The facts

(1) Cecimo, a *de facto* association established in 1950, consists of the following national trade associations of machine tool manufacturers :

— Fachverband der Maschinen- und Stahlbauindustrie Österreichs, Vienna, Austria,

— Syndicat des Constructeurs Belges de Machines-Outils pour le Travail des Métaux (Sycomom), Brussels, Belgium,

— Verein Schweizerischer Maschinen-Industrieller (VSM), Zurich, Switzerland,

— Verein Deutscher Werkzeugmaschinenfabriken eV (VDW), Frankfurt/Main, Federal Republic of Germany,

— Foreningen af Danske Værkstøjsmaskinfabrikanter, Copenhagen, Denmark,

— Asociación Española de Fabricantes de Máquinas-Herramientas, San Sebastian, Spain,

— Syndicat de la machine-outil, de l'assemblage et de la production associée (Symap), Nueilly-sur-Seine, France,

— The Machine Tool Trades Association (MTTA), Metalworking Machine Tool Manufacturers' Section, London, United Kingdom,

— Unione Costruttori Italiani Macchine Utensili (Ucimu), Milano, Italy,

— Vereniging voor de Metaal- en de Elektrotechnische Industrie (FME), Groep Gereedschapswerktuigen, The Hague, Netherlands,

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No L 11, 17. 1. 1979, p. 16.
[3] OJ No L 69, 20. 3. 1969, p. 13.
[4] OJ No C 250, 24. 9. 1988, p. 3.

— Centro de Cooperação dos Industriais de Máquinas-Ferramentas (Cimaf), Oporto, Portugal,

— Föreningen Svenska Verktygmaskintillverkare, Stockholm, Sweden.

(2) Most machine tool manufacturers belong to the national associations in their respective countries. The associations must inform Cecimo of their rules on eligibility for membership; Cecimo membership is open exclusively to manufacturers of machine tools for the working of metal.

(3) Decisions on acceptance or refusal of new Cecimo members are taken by a central committee.

(4) Cecimo's aims, laid down when it was established, may be summarized as follows:

(i) joint studies on systems and steps to be taken with a view to developing opportunities for machine tool investment in all countries with members;

(ii) creating the facilities required to make such studies well known;

(iii) joint organization of international trade events, the most important being the exhibition, so that each manufacturer's efforts can be more effective and less burdensome;

(iv) in conjunction with national associations, streamlining the organization of fairs and exhibitions in each country so that, if possible, there will be only one such event to provide a source of information on machine tools for national customers.

(5) Both the 1962 notification by Cecimo and the applications for renewal of the exemptions given under Article 85 (3) by Commission Decisions 69/90/EEC and 79/37/EEC concern (iii) and (iv).

(6) Up to 1971, Cecimo sponsored 12 European Machine Tool Exhibitions (EEMOs). That year Cecimo decided to upgrade its hitherto European exhibitions, making them completely international by opening them up to manufacturers of machine tools and allied equipment everywhere in the world. The initials of the exhibitions were consequently changed to EMO (Expositions de la Machine-Outil). The same initials are used whatever the language of the country organizing the exhibition.

(7) On 16 April 1986 Cecimo, which wished to continue to apply without any major amendments the rules exempted by Decision 79/37/EEC, applied for a renewal of the exemption for a period of 10 years.

(8) The rules governing EMO are basically as follows:

(a) EMOs are organized by Cecimo every other year in Paris, Hanover and Milan in rotation and the physical arrangements are entrusted to the member association established in the country in which the exhibition is being held;

(b) the equipment displayed at EMO consists of machine tools for metal-working;

(c) machine-tool manufacturers exhibiting at EMOs must handle at least two of three operations — design, manufacture and sale — on the exhibited equipment; they must also satisfy the following conditions:

(i) if they exhibit machine tools at an EMO, they must undertake to refrain from directly or indirectly exhibiting machine tools in any other fair, exhibition or show organized the same year in one of the countries with Cecimo members (indirect exhibition means exhibition by agents, representatives, dealers, retailers or any other intermediary);

(ii) any manufacturer bound by a licensing or technical cooperation agreement may exhibit the machine tools that form the subject-matter of such agreement at EMOs. However, if in the same year one or other party exhibits one or more of the machines forming the subject-matter of the agreement at another fair, exhibition or show organized by a country with Cecimo members, the other party is also excluded in respect of all that part of his production which is covered by the licensing or technical cooperation agreement;

(iii) where multinational companies, or companies that are interconnected in the same group and are financially dependent on each other, participate in an EMO, the above rule applies to all the constituent parts of the multinational company or to all the group companies, as the case may be;

(iv) if machine tools designed and/or produced by a manufacturer exhibiting at an EMO are also sold under another trade mark or under a name other than that used by the exhibitor at the EMO, the provisions of (i) above apply to the manufacturer exhibiting

at the EMO as regards all trade marks and names under which the machine tools he produces and/or designs are sold;

(iv) these restrictions apply not only to machine tools exhibited by representatives, retailers or any other intermediaries in such shows, fairs or exhibitions, but also to mock-ups constituting a faithful reproduction of machine tools presented there;

(d) non-compliance with these rules results in automatic exclusion from that year's EMO and forfeiture of the deposit if the infringement was committed between 1 January and 30 June. If the infringement was committed between 1 July and 31 December, non-compliance with these rules results in exclusion from the following EMO;

(e) a manufacturer who takes part in an EMO may during the same year place machine tools of his manufacture at the disposal of exhibitors at other fairs, exhibitions or shows held in a Cecimo member country if such machine tools are used solely to demonstrate precision tools or particular accessories, have been produced for at least two years and have already been presented at previous exhibitions or fairs.

If such is the case, the manufacturer must comply with the following conditions:

(i) all trade marks or identifying marks must be removed or concealed;

(ii) no commercial activities (such as advertising, distribution of catalogues, etc.) may be carried on in respect of such machines;

(iii) the presence of such machines at the abovementioned events must be authorized beforehand — and at any rate before the inauguration of the events — by the Commissariat-General which may refuse authorization if the granting thereof could be used directly of indirectly to bypass the rules;

(iv) only manufacturers exhibiting at an EMO may apply for such authorization, using a form provided to applicants either by their national association (in the case of exhibitors from countries which are members of Cecimo) or by the Commissariat-General (in the case of exhibitors from countries which are not members of Cecimo).

The exhibitor must complete the form and return it to the issuing body.

Authorization is granted by returning the form approved by the Commissariat-General to the exhibitors.

No more than one authorization per event will be granted, up to a total of three events;

(f) the Secretariat-General, the Commissariat-General and the national associations in their respective countries are empowered to carry out checks to ensure that manufacturers taking part in an EMO comply with the undertakings they have entered into.

Exhibitors at an EMO may report any infringements of Article 1 (7) they come across, provided that their complaint is accompanied by evidence allowing their allegations to be adequately checked;

(g) admission is granted by the Commissariat-General, which, in the event of objections, refers the application to Cecimo.

Exhibitors receive confirmation of their admission. This lapses if the conditions on which it was granted are no longer complied with and in particular if all the conditions provided for in the exhibition rules are not fulfilled, if the exhibitor has not complied with such requirements in connection with a previous EMO, if his solvency is in doubt or if, through his participation, the laws and regulations governing protection against unfair competition may be infringed. The rights deriving from admission may not be transferred to a third party.

If an exhibitor is excluded from an EMO (Article 1 (7)) or if his admission to the EMO or his participation in a particular event or fair is refused (Article 1 (7) (a), footnote 1), the Cecimo Secretariat-General will inform him by registered letter, specifying the reasons for its decision.

The exhibitor may appeal against such a decision within 14 days of being informed of it. He may either appeal to the arbitration committee (Article V (26)) or refer the matter to the court of first instance having jurisdiction at the place where the EMO's administrative headquarters are situated.

Claims for damages relating to disputes concerning admission are subject to the same procedures;

(h) stands are allocated by the Commissariat-General. The Commissariat-General reserves the right to alter its initial allocation and to allocate an exhibitor another stand in another location or to alter its dimensions if circumstances so require. Sub-letting or transfer free of charge of all or part of a stand to a third party is not authorized.

(9) At the five exhibitions (Milan 1979, Hanover 1981, Paris 1983, Hanover 1985 and Milan 1987) organized during the 10-year period of validity of Decision 79/37/EEC, a number of exclusion decisions were taken by Cecimo for infringement of the rules. None of the exclusions resulted in an appeal either to a court or to the arbitration committee by the firms excluded.

## II. Comments from third parties

(10) Following the publication of the notice pursuant to Article 19 (3) of Regulation No 17, no comments were received from third parties.

## III. Article 85 (1)

(11) For the same reasons as those previously outlined in Decision 79/37/EEC, to which reference should be made, the following provisions of the EMO rules, which constitute a decision by an association of undertakings, fall within the ban laid down in Article 85 (1) of the Treaty :

(a) the undertaking by machine tool manufacturers, having displayed their machines at the EMO, to take part neither directly nor indirectly — except in certain circumstances and with special authorization from Cecimo — in any other fair, exhibition or show organized that same year in one of the countries whose national machine tool manufacturers' association belongs to Cecimo ;

(b) exclusion from the EMO of any manufacturer who is a party to a licensing agreement concerning machine tool manufacture, where the other party has taken part during the year in other exhibitions of such machines, even in his name alone, in one of the Cecimo member countries ;

(c) exclusion from the EMO of all firms in one same group or multinational company where one firm alone has displayed, during the year when the EMO is held, machine tools or other exhibitions in a Cecimo member country ;

(d) exclusion from the EMO of any manufacturer whose machine tools have been displayed at other fairs, exhibitions or shows by agents, re-sellers or any other intermediary, whether as originals or as models which constitute faithful reproductions ;

(e) the agreement to be given by the Cecimo General Secretariat that machine tools displayed at an EMO may be made available to exhibitors at fairs, exhibitions or shows in Cecimo member countries, to demonstrate tooling or accessories, with the obligation, in all cases, to remove the manufacturer's trademark. Such authorizations are restricted to one per event and may be given in respect of a maximum of three events.

## IV. Article 85 (3)

(12) As already indicated above, Cecimo wishes to continue to apply the rules exempted in 1978, with certain amendments. Even if by one of these amendments the restrictions, intended for machines exhibited by representatives, dealers or any other intermediary in such a fair, exhibition or show, are extended to models which constitute faithful reproductions of the machine tools presented there, the essence of the regulation is not in question. In effect, the extension of the restrictive scope of the provision does not foreclose the application of Article 85 (3). Since such amendments do not concern the substance of the rules, but are purely matters of drafting, Decision 79/37/EEC may be renewed pursuant to Article 8 (2) of Regulation No 17 : the conditions of Article 85 (3) continue to be satisfied for the same reasons as those set out in the said Decision, since, despite the amendments, Cecimo's decisions on the rules remain :

— a rationalization of participation in fairs and exhibitions, which is particularly important in a business sector in which such participation is particularly costly,

— a concentration of the bulk of world machine tool production which encourages manufacturers to tailor their ranges in the best way possible to the very varied demand for machine tools and to do a considerable amount of business, expending a minimum on promotion,

— while leaving manufacturers and distributors free to exhibit wherever they wish and, in EMO years, able to obtain authorization from Cecimo,

albeit only once per event and in respect of a maximum of three events, to exhibit some of their machines elsewhere also,

— besides by the concentration of the bulk of world machine tool production, interested users can avoid excessive travelling and instead make a single trip to see all the machine tools they are interested in, possibly even buying them thanks to direct contacts with exhibitors. Moreover, small and medium-sized businesses not attending the EMO may see the machine tools of special interest to them at other fairs.

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

(13) The application for renewal of Decision 79/37/EEC was submitted by Cecimo before 31 December 1988, the date the Decision expires. Pursuant to Article 6 (1) of Regulation No 17, the Commission Decision may take effect from 1 January 1989.

(14) When fixing the duration of validity of the Decision, pursuant to Article 8 (1) of Regulation No 17, the Commission must take account of the type of business in question and, notably, the fact that EMOs are held every two years. Therefore, a 10-year period was fixed. At the present time, given the positive results of the application of the EMO rules since Decision 69/90/EEC, a period of validity of 15 years is more appropriate.

(15) Pursuant to Article 8 (1) of Regulation No 17, obligations were to be attached to the Decision, enabling the Commission to monitor the application of Rule I/7 by Cecimo. Cecimo should continue to be obliged immediately to notify all documents or other information on cases of refusal of admission or exclusion of a manufacturer from the EMO or a refusal to authorize a manufacturer to exhibit directly or indirectly some of his machines elsewhere during an EMO year. Moreover, Cecimo and all national associations of machine tool manufacturers in the Community belonging to Cecimo must inform the Commission about all exhibitions and fairs which may be arranged or sponsored, in the years when the EMO is not held, by a national association of machine tool manufacturers in the Community who is a member of Cecimo and in particular submit in due time before they are applied all rules and regulations governing access to or exclusion from that exhibition or fair,

HAS ADOPTED THIS DECISION:

*Article 1*

It is hereby declared, pursuant to Article 85 (3) of the EEC Treaty, that the provisions of Article 85 (1) are not applicable to the EMO rules relating to exhibitors' participation in other fairs or events held in Member States of the Community.

*Article 2*

The following obligations are attached to the declaration set out in Article 1:

(a) Cecimo shall immediately inform the Commission of any case of refusal to admit or exclusion of a machine tool manufacturer from an EMO or any case of refusal to authorize the manufacturer to exhibit some of his machine tools elsewhere during a year when an EMO is held. It shall keep the Commission informed of developments in such cases and decisions taken by Cecimo or by the arbitration bodies;

(b) Cecimo and all national associations of machine tool manufacturers in the Community belonging to Cecimo shall furthermore inform the Commission of all exhibitions or fairs arranged or sponsored by them in years when an EMO is not held and in due time, before such exhibition or fair takes place, submit all rules and regulations governing access to or exclusion from that exhibition or fair.

*Article 3*

This Decision shall take effect on 1 January 1989 and shall remain applicable until 31 December 2003.

*Article 4*

This Decision is addressed to the European Committee for Cooperation of Machine Tool Industries (Cecimo), Brussels, and the following national associations of machine tool manufacturers currently belonging to Cecimo:

— Fachverband der Maschinen- und Stahlbauindustrie Österreichs, Vienna, Austria,

— Syndicat des Constructeurs Belges de Machines-Outils pour le Travail des Métaux (Sycomom), Brussels, Belgium,

— Verein Schweizerischer Maschinen-Industrieller (VSM), Zurich, Switzerland,

— Verein Deutscher Werkzeugmaschinenfabriken eV (VDW), Frankfurt/Main, Federal Republic of Germany,

— Foreningen af Danske Vaerktøjsmaskinfabrikanter, Copenhagen, Denmark

— Asociación Española de Fabricantes de Máquinas-Herramientas, San Sebastian, Spain,

— Syndicat de la machine-outil, de l'assemblage et de la production associée (Symap), Neuilly-sur-Seine, France,
— The Machine Tool Trades Association (MTTA), Metalworking Machine Tool Manufactûrers' Section, London, United Kingdom,
— Unione Costruttori Italiani Macchine Utensili (Ucimu), Milano, Italy,
— Mekaniske Verksteders Landsforening, Oslo, Norway,
— Vereniging voor de Metaal- en de Elektrotechnische Industrie (FME), Groep Gereedschapswerktuigen The Hague, Netherlands,
— Centro de Cooperação dos Industriais de Máquinas-Ferramientas (Cimaf), Oporto, Portugal,
— Föreningen Svenska Verktygmaskintillverkare, Stockholm, Sweden.

Done at Brussels, 20 December 1988.

*For the Commission*

Peter SUTHERLAND

*Member of the Commission*