COMMISSION DECISION

of 15 February 1991

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.559 — Sippa)

(Only the French text is authentic)

(91/128/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 EEC 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 submitted on 12 June 1985 by the 'Comité du Salon de la Papeterie' for negative clearance or, alternatively, exemption of the general regulations governing the 'Salon International Professionnel de la Papeterie et de la Bureautique' (Sippa),

Having published a summary of Sippa's regulations [2] in accordance with Article 19 (2) of Regulation No 17,

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

Whereas :

I. THE FACTS

A. Organization of the Salon

(1) The 'Comité du Salon de la Papeterie' is a registered association under the French Law of 1 July 1901 and was set up on 13 March 1972. Under Article 2 of its articles of associations, its purpose is to group together the paper industry, particularly in connection with trade events ('Salon de la Papeterie'). All exhibitors at the Salon who have paid their contribution are members of the Comité as of right.

(2) Every year, at the beginning of February, the Comité organizes the 'Salon International Professionnel de la Papeterie et de la Bureautique' (Sippa) in Paris. The Salon is reserved for the trade and is the largest trade event of its kind in France. At the 1990 Salon, which was held from 1 to 5 February, the exhibition area covered about 45 000 square metres, and there were some 600 exhibitors, including 70 foreign exhibitors among which 50 from other Member States ; some 40 000 articles were exhibited.

(3) Admission request forms are sent automatically in May to all exhibitors at the previous Salon. Applications for the recent Salon were registered at the following rates :

	French exhibitors	Foreign exhibitors	Total
June 1989	113	11	124
July 1989	130	16	146
September 1989	76	3	79
October 1989	94	11	105
November 1989	56	9	65
December 1989	32	16	48
January 1990	31	5	36
	532	71	603

(4) Other paper industry trade fairs are held in France, but they are either sectoral or regional. Of the 300 such fairs, a good many are held in the weeks following the Sippa.

There are also several international paper trade fairs comparable to Sippa, for example in Frankfurt, Germany, or those organized in the Netherlands by Vifka, whose regulations were exempted by Commission Decision 86/499/EEC [3] (but which also cover office equipment).

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 226, 11. 9. 1990, p. 3.
[3] OJ No L 291, 15. 10. 1986, p. 46.

B. **The paper industry in France**

(5) Sippa has submitted a study on the paper sector carried out in 1988 by a firm of consultants.

There are three main categories of consumers:

— households (30 %) and one-man businesses (12 %),

— companies (41 %),

— administrations (17 %).

(6) Some 45 000 firms are involved in the retail trade (gross turnover in 1987: FF 18 300 million) and generally market paper as a sideline. Sales to companies and administrations are generally carried out by suppliers ('suppliers' are firms achieving over 40 % of their paper sales to companies and administrations), of which there are some 1 000 accounting for 43 % of the turnover of the retail trade. Sales to households and one-man businesses involve two forms of distribution:

— large-scale distribution, involving 7 500 firms and 21 % of the total turnover of the retail trade,

— retailers, of which there are 36 000 accounting for 36 % of turnover.

The wholesale trade (gross turnover in 1987: approximately FF 2 000 million) is represented by approximately 100 firms.

(7) Production is carried out by some 500 companies. Total sales of paper products by manufacturers and importers on the French domestic market represented a total gross turnover of FF 12 400 million in 1987. Direct distribution patterns are typical of the market and account for 88 % of sales (against 12 % to wholesalers), broken down as follows: suppliers: 37 %; retailers: 19 %; large-scale distribution: 17 %; direct sales: 15 %. A breakdown of foreign manufacturers' sales by origin shows that the share of imports is in the region of 23 %.

C. **Sippa's general regulations**

(8) Sippa's regulations, in the version notified in 1985, were endorsed in a comfort letter sent on 20 February 1986. However, the comfort letter was revoked, without retroactive effect, on 7 February 1989, the situation in law and in fact having changed in the meantime. The regulations notified in 1985 provided that the principle to be observed was that one and the same product presented in the same way could not be displayed at two different stands. In Decision 87/509/EEC on the Internationale Dentalschau [1], however, the Commission laid down the principle that this rule prohibiting a product from being exhibited twice could be allowed only in exceptional circumstances, where there was a lack of space. In addition, difficulties which Sippa encountered with one exhibitor (who has since lodged a complaint with the Commission) highlighted the need to improve the operation of the arbitration system.

(9) New drafts of the articles of association and regulations submitted by Sippa have been the subject of discussions with the Commission's Directorate-General for Competition and were amended so as to take account of observations made by the Commission's staff. The articles of association of the Comité were amended at the extraordinary general meeting held on 10 April 1990. Sippa's general regulations, which according to the Comité's articles have to be adopted by the Comité's administrative board, apply in their new version from the 1991 Salon.

(10) The main provisions of the new regulations may be summarized as follows:

(a) Applications for admission are processed in chronological order. The following are accepted immediately if they are complete and relate to products included in the nomenclature:

(i) applications submitted direct by manufacturers and/or designers of products marketed under their brand name;

(ii) applications by dealers or sales agents who submit a delegation of authority by the manufacturer of the products concerned;

(iii) applications by dealers or sales agents in respect of new, original products not already shown by a manufacturer or an agent, where the dealer or sales agent does not have any delegation of authority from the manufacturer;

(iv) applications by dealers or sales agents in respect of products already shown by the manufacturer himself or his agent, where the dealer or sales agent has a secondary delegation or authority from the manufacturer. Such secondary delegations are not exclusive and may be multiple.

[1] OJ No L 293, 16. 10. 1987, p. 58.

Applications from other dealers or sales agents not falling within the above categories are held over. A decision is taken on them at least two months before the Salon on the basis of the space available and the registration number of the application. Any decisions refusing admission are notified immediately.

Any stands which subsequently become available through cancellation are allocated on the basis of the order of priority described above,

(b) in contrast to a number of exhibition regulations exempted by the Commission, Sippa's regulations do not lay down any 'prohibition period' during which exhibitors may not take part in other exhibitions of the same kind;

(c) The documents and prices displayed at the stands and the canvassing of visitors must relate only to the products admitted for exhibition;

(d) Any infringement of the rules laid down in the general regulations could result in the exhibitor being excluded from the Salon taking place and the following one. The old regulations were more restrictive since they provided for exclusion from the two Salons and, in the case of a relapse, exclusion for a period of five years;

(e) Any decision taken by the administrative board of the Comité to refuse an exhibitor admission or to exclude an exhibitor may be referred to arbitration, the arrangements for which have been substantially amended. The previous articles of association laid down the composition of the arbitration board, which consisted of five members, only one of whom was designated by the exhibitor. Now, the arbitration procedure is laid down in the general regulations;

Within eight days of the notification of the decision, the applicant refused admission or the exhibitor excluded appoints an arbitrator. The administration board does likewise within the same time limit. The two arbitrators thus appointed, having accepted their appointment as rapidly as possible, jointly appoint a third arbitrator within eight days of having accepted their appointment. If they cannot agree on the third arbitrator, he is appointed by the 'Président du Tribunal de Grande Instance de Paris' acting in summary proceedings. The arbitration decision is given within 15 days of the third arbitrator having accepted his appointment.

D. Comments of third parties

(11) Following the publication of the communication made in accordance with Article 19 (3) of Regulation No 17, the Commission has received the observations of the complainant referred to in recital 8. The complainant contests the clause set out in recital 10 point c which prevents exhibitors from carrying out active commercial promotion in respect of products not exhibited. The observations made by the complainant together with the arguments put forward in its complaint do not alter the Commission's legal evaluation of the clause in question which is set out in recitals 18 (third paragraph), 19 (third paragraph), 20 (third paragraph) and 21.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(12) Article 85 (1) of the Treaty prohibits as incompatible with the common market, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

(13) The Comité du Salon de la Papeterie is an association of undertakings within the meaning of Article 85. The general regulations it has adopted governing the operation of the Sippa constitute a decision by an association of undertakings.

(14) The general regulations of the Sippa comprise the following restrictions of competition:

— firstly, applications for admission are not all dealt with in the same way. Priority is given, in the following order, to manufacturers, the distributors to whom they have delegated authority, distributors without delegation of authority but showing new products not already exhibited, and distributors showing products already exhibited but having a secondary delegation of authority from the manufacturer.

Applications for admission from exhibitors not falling into one of these four categories are held over and may be rejected for lack of space,

— secondly, exhibitors may display documents and prices and canvass visitors only in connection with the products shown on the stand.

(15) Such restrictions of competition are liable to affect trade between Member States since Sippa is, as its name indicates, an international Salon attended by a number of foreign exhibitors (see recital 2).

Exhibitors from other Member States may, like French exhibitors, be refused admission on grounds of lack of space. The limiting of 'active' canvassing solely to products exhibited on the stand is also liable to affect trade between Member States because of the significantly international nature (see recital 11) of the paper industry at the manufacturing, wholesale and retail levels. An exhibitor cannot thus actively canvass at the Salon all the products, including those from other Member States, which he distributes (if he is a distributor) or manufactures (if he is a manufacturer from another Member State).

B. **Article 85 (3)**

(16) Under Article 85 (3), 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) imose 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.

(17) The Commission has stated on a number of occasions, in particular in its decisions in the aforementioned cases of Vifka and Internationale Dentalschau and in Decision 88/877/EEC [1] that its policy with regard to exhibitions or trade fairs is to allow agreements or arrangements which result in rationalization or cost savings and which at the same time contain advantages for consumers, the benefits of which outweigh the restrictive elements.

(18) The provisions of Sippa's regulations concerning the order of registration of applications for admission and the limiting of active canvassing to products exhibited on the stand form part of a whole (Sippa's general regulations), which is aimed at improving the distribution of paper goods and promoting economic progress by informing consumers about as complete a range as possible of products available on the market. Each of the provisions, in itself, satisfies the first condition of Article 85 (3).

On the question of admission, the Commission stated in its 'Internationale Dentalschau' Decision (recital 23):

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

Because active canvassing is limited only to the products exhibited, information for visitors can be concentrated solely on the product on the stand without covering other articles already shown on other stands: the purpose of the Salon is primarily to make a product known and not its various outlets.

(19) The consumer, i.e. the professionals visiting the Sippa, obtain a fair share of the benefit resulting from these restrictions of competition.

By restricting the number of exhibitors on grounds of shortage of space, it becomes possible to avoid accepting every application for admission and thus ensure that the Salon does not occupy an excessively and unnecessarily large area with the same products being displayed several times; it is thus possible to rationalize the costs of organizing the Salon and the exhibitors' general costs which are reflected in the cost of the products being sold.

By concentrating active canvassing solely on the products exhibited, visitors avoid confusing the products exhibited with their different modes of distribution: the Salon enables visitors to learn about the existence of a given article and it is then up to them to choose their preferred channel of distribution.

(20) The provisions relating to the admission of exhibitors and active canvassing do not impose any restrictions which are not indispensable.

[1] OJ No L 233, 23. 8. 1988, p. 15.

In contrast to Sippa's previous regulations which provided that one and the same product presented in the same way could not be displayed at two different stands, this possibility now exists. It is only if there is a lack of available space that an exhibitor may, under conditions defined in the regulations, be refused admission. In addition, the rules concerning arbitration in the event of an application being rejected have been greatly improved and are now as objective and effective as possible.

The restriction which confines active canvassing solely to the products exhibited does not rule out 'passive' canvassing; whilst an exhibitor may not make use of the Salon to canvass actively all the products in his range, he is not prohibited from answering any questions visitors may ask.

(21) The provisions concerning admission and active canvassing do not eliminate competition between exhibitors in respect of a substantial part of the products in question.

The same comments made by the Commission on the question of admission in its 'Internationale Dentalschau' Decision (recital 29) may be made here:

'Participation [in the Sippa] is not the only means by which manufacturers, importers and dealers can present their products and their form of distribution and service [...]. They can participate in other exhibitions and pursue other forms of advertising'.

The active promotion of all the products manufactured or distributed by an exhibitor but not displayed on the stand can equally be pursued in various forms outside the Salon.

C. Articles 6 and 8 of Regulation No 17

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

(23) This Decision should apply from 19 April 1990, the date on which the Commission received the new version of Sippa's general regulations adopted by the Comité du Salon de la Papeterie at its extraordinary general meeting on 10 April 1990.

(24) In view of the fact that the scope of the restrictions of competition contained in Sippa's general regulations is not considerable and in particular that there is no 'prohibition period' during which a Sippa exhibitor may not participate in another trade fair in the sector, exemption can be granted for a period of 10 years.

(25) To enable the Commission to verify whether the conditions for the application of Article 85 (3) continue to be satisfied during the period of exemption, the Comité du Salon de la Papeterie should be required to inform the Commission of any changes in, or additions to, Sippa's general regulations and to inform it immediately of any decision refusing admission or excluding an exhibitor from Sippa. Likewise it should be requested to send a copy of any arbitration award refusing an application for participation or excluding an exhibitor from Sippa,

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 Sippa's general regulations for the period from 19 April 1990 to 18 April 2000.

Article 2

The following obligations shall be attached to this Decision:

1. The Comité du Salon de la Papeterie shall inform the Commission immediately of any changes in or addition to Sippa's general regulations.

2. The Comité du Salon de la Papeterie shall inform the Commission of any decision to refuse an exhibitor admission or to exclude an exhibitor from Sippa and

shall send the Commission immediately a copy of any arbitration award refusing an exhibitor's application for admission or excluding an exhibitor from Sippa.

Article 3

This Decision is addressed to the Comité du Salon de la Papeterie, 14, boulevard Montmartre, F-75009 Paris.

Done at Brussels, 15 February 1991.

For the Commission

Leon BRITTAN

Vice-President