II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 December 1993

relating to a proceeding under Article 85 of the EC Treaty

(IV/29.420 — Grundig's EC distribution system)

(Only the German text is authentic)

(94/29/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 submitted by Grundig AG on 12 January 1989 for extension of the exemption,

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

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

Whereas :

A. THE FACTS

(1) By Decision 85/404/EEC [3], the Commission exempted until 28 March 1989 the EC dealership agreements for the distribution of consumer electronics products notified by Grundig AG on 29 March 1977. On 12 January 1989, Grundig AG applied for the exemption to be extended.

I. The market

(2) The market for consumer electronics products is one in which there is keen competition, due to the large number of manufacturers with different distribution strategies and to rapid technical development, resulting in constant technical innovation. Since the early 1980s, manufacturers from the Far East in particular have penetrated the European market, resulting not only in fierce price competition and falling prices, but also in a decline in market shares for European manufacturers.

(3) At the same time, at the distribution level, there has been not only an increase in concentration, but also a trend towards new forms of distribution, in particular the 'cash-and-carry' wholesale markets. In contrast to the specialized dealers, the cash-and-carry outlets offer the consumer neither advice nor after-sales service. For this reason, and also because of the advantages of size associated with the wholesale markets, particularly chains of such markets, they charge prices which independent small and medium-sized dealers cannot match. Consequently, many such dealers are squeezed out of the market, which in turn results in further concentration at the distribution level.

(4) This sort of development at the distribution level has certain disadvantages both for consumers and for manufacturers. While consumers may benefit from falling prices, they also lose the advantages

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 181, 17. 7. 1992, p. 3.
[3] OJ No L 233, 30. 8. 1985, p. 1.

associated with specialized dealers, in particular contact with the customer, advice from expert staff and after-sales service, which are becoming increasingly important for many consumers in the face of constant technological innovation. For manufacturers, it is more difficult to build up a dense network of specialized dealers who can provide all the services required in the interests of customers (particularly in rural areas) and at the same time try to optimize sales of the relevant brand.

(5) The extent to which use is made of selective distribution systems for consumer electronics products differs from one Member State to another within the Community. In Germany, they are traditionally more common than in other Member States. Even so, in Germany as in other Member States, many manufacturers sell their products without dealer selection. Where use is made of selective dealerships, the detailed arrangements sometimes differ. Furthermore, several of the distribution systems notified to the Commission are limited to the national territory and do not extend to other Member States. All in all, the number of notified distribution systems has not increased substantially since the original exemption of Grundig's EC distribution system in 1985. Since selective distribution systems entail considerable costs for the manufacturers (administration and supervision, attending to and training dealers, etc.), the incentive for introducing new systems seems to be limited.

II. Grundig's market position and distribution system

(6) Grundig AG, Fürth, Germany ('Grundig') is one of Europe's largest manufacturers of consumer electronics equipment, with a turnover of approximately DM 4,23 billion in the financial year 1991/92. At Community level, its market shares for its top-selling lines (colour televisions and video recorders) amount to some 9,5 and 5,3 % respectively. In some Member States, its shares are significantly higher, amounting to 14,3 % in Germany, 10,9 % in Italy and 17,5 % in Portugal in the case of colour televisions and 9,8 % in Germany, 6,4 % in Italy and 8,9 % in Portugal in the case of video recorders. By comparison, Grundig's most important competitors — Thomson and Sony with regard to colour television sets — have a market share of 15 and 11 % respectively and — with regard to videorecorders — the Matsushita Group has a market share of about 16 %.

(7) Since 1 April 1984, Grundig has been controlled by Philips Electronics, Eindhoven, the Netherlands ('Philips'), which had previously held about 40 % of the shares of Grundig and recently acquired all of the shares. At Community level, Philips has a market share of 17 % for colour televisions and 8,7 % for video recorders (both figures excluding Grundig's market shares). In some Member States, its market shares are higher, amounting to 24,1 % in the Netherlands and 19,5 % in Belgium in the case of colour televisions and 18,5 % in the Netherlands and 11,3 % in Belgium in the case of video recorders. Grundig and Philips so far distribute their products independently of each other via different distribution channels. Unlike Grundig, Philips does not operate a Europe-wide selective distribution system.

(8) Grundig distributes its products through selected specialist wholesalers and retailers, who are supplied direct by Grundig in Germany and by exclusive distributors (in some cases Grundig subsidiaries) in other Member States. All in all, some 29 000 specialist retailers in the Community belong to the distribution network. The distribution network is densest in Germany, with around 16 000 dealers. In Germany and Denmark, Grundig also distributes its products under special agreements with three associations of small and medium-sized specialist retailers who are supplied exclusively by Grundig with certain ranges of equipment. Such agreements are the subject of a separate notification and a separate proceeding, with regard to which investigations have not yet been completed.

(9) The prices of Grundig products, like those of other manufacturers of consumer electronics equipment, vary from one Member State to another. The reasons for this have to do, amongst other things, with differing technical standards, differing distribution costs and differing tax rates. Within one and the same Member State, prices also fluctuate considerably as a result of keen price competition between dealers.

III. Grundig's distribution system

1. *Grundig's EC dealership agreements with retailers*

(10) Under Grundig's EC dealership agreement with retailers, the dealer is admitted to the distribution system if he satisfies the following criteria:

— he must carry on a retail business specializing in the sale of consumer electronics equipment, or have within his business a department specializing in such equipment (e.g. a specialist department within a department-store-type retail business), or other distribution facilities specializing in such equipment, in so far as such facilities are comparable to specialized retail businesses and are widely represented in the relevant distribution country taking account of their importance and sales potential. The

latter clause, introduced at the beginning of 1992, makes it possible for the first time to admit mail-order companies when they have specialized distribution departments comparable to specialist retail businesses. Distribution that does not include demonstration, advice and customer service facilities is not permitted,

— the specialized shop, specialized department or distribution facilities must be generally accessible during normal shop opening hours without any special proof of identity or effort. The appearance of the sales premises, in which a representative selection of Grundig products is to be displayed and demonstrated, must be in keeping with the prestige of the Grundig brand,

— the dealer must have trained sales staff available who possess the requisite technical knowledge to advise customers in a competent manner,

— he must carry the Grundig range as completely as is necessary for the size of the specialized shop or specialized department and must keep adequate stocks of a representative selection of the relevant Grundig range, commensurate with the size of the specialized shop, specialized department or distribution facility,

— he must carry out competently and promptly all after-sales and warranty services, either in his own workshop or in a workshop under permanent contract to him.

(11) Grundig undertakes to supply Grundig equipment only to appointed retailers, to impose a similar requirement on wholesalers supplied by it and to ensure the integrity of the system. Where the criteria are met, dealers are appointed within four weeks of submission of an application to Grundig. If at the end of such period a decision has not been taken on the application, the dealer is deemed to have been appointed. Specialized wholesalers can also appoint dealers. In such cases, Grundig reserves the right to check for itself that the criteria have been met and, where it finds that this is not the case, to terminate without notice the dealership agreement concluded by the specialist wholesaler with the retailer. All appointed dealers are entered on the specialized retailer list. The list is kept by a trustee, who is responsible for answering enquiries as to whether particular dealers are members of the Grundig distribution network.

(12) In view of the fact that the dealership agreement is standard throughout the common market, Grundig has reserved the right to waive individual admission conditions nationally in the light of national circumstances. However, it insists on the requirements that the retailer must have a specialized retail business or comparable form of distribution, run a shop, display and demonstrate a representative selection of Grundig products, employ trained sales staff and provide after-sales and warranty services.

(13) The sales efforts of Grundig retailers should focus on the final consumer. In the common market and countries which, on the basis of a free trade agreement concluded with the Community, guarantee duty-free trade in goods with Member States of the Community, however, resellers may also be supplied provided that they are entered on the Grundig retailer list (see point 10). In such cases, the purchasers, purchase date and serial number of the product supplied must be noted and communicated to Grundig upon request if, for technical reasons, in particular any series defects, or because there are grounds to suspect that there has been a breach of the EC distribution system, it appears necessary to check on the distribution channel.

(14) Retailers are prohibited from advertising or conducting their businesses in such a way as to put their exclusive capacity as retailers in doubt. They are similarly prohibited from making misleading references in advertising, in connection with the sale of Grundig products, to expressions such as 'cash-and-carry prices, self-service prices or take-away prices'.

(15) Grundig reserves the right to check at any time whether the dealership conditions are met and, if such is not the case, to terminate the dealership agreement. Where serious breaches of the dealership agreement have been committed, Grundig may temporarily, and in the case of repeated breaches, indefinitely withhold supplies and terminate the dealership forthwith. In cases of unfair competition, Grundig may withhold supplies only if the infringement is either not denied or has been declared by a court of law. A temporary injunction that has not been appealed against is deemed to be a declaration by a court. Grundig is entitled to give ordinary notice to terminate only in the event of its abandoning the distribution network.

2. *Grundig EC dealership agreement with wholesalers*

(16) Under the Grundig EC dealership agreement with wholesalers, a wholesaler is admitted to the distribution system if he satisfies *inter alia* the following criteria :

— he must carry on a wholesale business specializing in the sale of consumer electronics equipment, or must have within his business a department specializing in the sale of such equipment which is equivalent to such a specialist wholesale business,

— he must employ a technically trained staff and maintain a professional field staff capable of providing expert advice to retailers,

— he must have the necessary facilities and resources to carry and stock as far as possible products from the whole Grundig range and to ensure prompt delivery to his customers.

(17) Grundig undertakes to supply only such wholesalers as satisfy the abovementioned criteria and to ensure the integrity of the system. Depending on circumstances in individual countries, Grundig reserves the right not to insist on individual conditions being met in such countries. This does not apply to the condition that the wholesaler must have a specialized wholesale business and employ trained staff. With regard to admission to the network, termination of the agreement and breaches of the agreement, the rules for retailers apply *mutatis mutandis*.

(18) Specialist wholesalers may, within the common market and in countries that have concluded a free trade agreement with the Community, supply or take supplies from approved resellers only. Final consumers may be supplied only if they carry on a business, purchase the goods for use in that business and furnish objectively verifiable evidence to that effect by signing a special declaration.

IV. Warranty rules

(19) Grundig does not as yet issue a contractual manufacturer's warranty for its equipment to consumers, so that consumers have to rely on their legal warranty rights, which are subject in some cases to differing rules from one Member State to another. In cases where this has posed problems for warranty claims applying in a country other than the country of purchase, the solution in the great majority of cases has been to have the repair carried out at the firm's expense. However, Grundig now intends to introduce a uniform, Europe-wide, contractual, comprehensive warranty and has begun building up an appropriate technical network. At the Commission's instigation Grundig has also undertaken, pending the full introduction of the comprehensive European warranty, to ensure that consumers can claim warranty servicing in the Member State in which they are resident even where they have acquired the relevant appliance in another Member State, and has given appropriate instructions to all its subsidiaries and sole distributors in the various Member States. The scope of the warranty is determined by the warranty rights allowed in the country of purchase.

V. Comments from third parties

(20) In response to publication of a summary of the notified distribution system, the Commission received three submissions from interested parties. The first was from an undertaking which operates a number of self-service wholesale markets under the 'cash and carry' system and objects to wholesalers having to maintain a professional field staff. It believes that this criterion is no longer appropriate to present-day circumstances in the consumer electronics market, since it would lead to the exclusion of modern forms of distribution without being justified by specific product-related aspects. Criticism was also directed at the fact that final consumers can be supplied by wholesalers only if they carry on a business, purchase the goods for use in that business and furnish objectively verifiable evidence to that effect by signing a special declaration. In the opinion of the undertaking concerned, the signing of a special declaration should not be required in cases where the product can, by its nature and characteristics, be used in the customer's business.

(21) The second submission was from a joint purchasing agency for small and medium-sized consumer electronics dealers, which objected to dealers' having to note, in sales to other appointed dealers, the purchase date and serial number of the products supplied and to communicate them to Grundig in justified cases. In its view, this made parallel imports between Member States more difficult, since it was to be feared that Grundig would put pressure on the dealers concerned.

(22) The third submission was from a French undertaking which supplies only final consumers who belong to certain undertakings or public administrations and have to provide proof that they are entitled to use the relevant facilities. Grundig had initially refused to accept the undertaking into the distribution network, since under the criteria for

admission the shop had to be accessible without the need for presentation of any special proof of identity. However, since under French administrative practice and case-law businesses requiring proof of entitlement are regarded as an appropriate form of distribution, Grundig will make use of the scope for waiving certain admission criteria depending on circumstances in individual countries (see point 12 above) and will accept the undertaking into the distribution system.

B. LEGAL ASSESSMENT

I. Article 85 (1)

1. *Clauses in the agreements that do not restrict competition*

(23) The agreements with wholesalers and retailers which form the basis of Grundig's EC distribution system are essentially standard dealership agreements. As such, the majority of the admission criteria which they contain do not fall under Article 85 (1), since they are qualitative and are applied in a non-discriminatory fashion, i.e. all dealers fulfilling the relevant criteria are admitted. This applies specifically to the following clauses :

(24) (a) The requirements regarding the professional qualifications of Grundig dealers, the specialist knowledge of their sales staff, the provision of warranty and after-sales services and the character of sales premises are justified by the product-related requirements of distributing technically sophisticated consumer electronics products. The fast pace of innovation in consumer electronics, the constant development of new products and extensions in the possible uses of existing products mean that expert advice is requested by many customers, with the products being presented by trained sales staff in premises equipped for this purpose. For this reason there is also justification for the requirement that any mail-order companies admitted to the distribution network must have distribution facilities, i.e. premises, that are comparable to specialized retail shops and are comprehensively represented in the relevant distribution country, thus excluding mail-order companies that do not have demonstration, advice and after-sales service facilities. As a result, clients of mail-order companies have the opportunity, if they so wish, to benefit from such service, in the same way as clients of specialized retailers.

(25) (b) Nor can any objection be made on competition policy grounds to the requirement that the specialized shop must in principle be freely accessible during normal shop opening hours. This corresponds to the usual pattern in the retail trade, which is by its function intended to serve the population as a whole, without giving preference to certain groups of customers depending on whether they belong to certain professional groups or sections of the population and without excluding other customers. However, where in individual Member States undertakings that are accessible only to certain groups of customers are a traditional form of distribution that is expressly authorized by national law, Grundig may waive this requirement in such Member States.

(26) (c) There is also objective justification for the requirement that wholesalers must as a rule employ a professional field staff. If the retailer is to be able to fulfil his contractual obligations of providing advice and service to the consumer, he must have appropriate information and backing from the wholesalers. This requires a professional field staff, particularly in order to see to the needs of small retail shops in rural areas. It is irrelevant here that, generally speaking, the traditional specialized wholesale trade has become less important and that specialized retailers nowadays often obtain their goods through other forms of distribution (direct distribution by the manufacturer and joint buying arrangements) that frequently do not involve any product-related advice being provided. It is appropriate, under a selective distribution system, for product-related advice and servicing to be provided at all distribution levels, and this justifies requirements along these lines being imposed on wholesalers.

(27) This is not impaired by the fact that Grundig has reserved the right to waive this criterion in individual Member States depending on national circumstances. Where the wholesale trade in individual Member States is generally confined to a purely distributive function, it would be unreasonable to require the restructuring of arrangements there. However, where the wholesale trade in other Member States does traditionally provide advice and back-up to the specialized retail trade, it is appropriate that the wholesale trade should be required to continue to do so in the interests of a service-orientated distribution system. There is no reason to fear that this will result in the complete elimination of new forms of distribution such as cash-and-carry outlets, since enough other manufacturers distribute their products through such outlets.

(28) (d) The ban on supplying non-approved dealers is intended to ensure that Grundig products are distributed only by professionally qualified dealers who can in particular provide the necessary advice and service, and is therefore unobjectionable from a competition policy point of view.

(29) Supplying approved dealers within the common market is expressly declared to be permissible, thus allowing in particular parallel imports between individual Member States with different price levels. There can be no objection to the requirement that the dealer must in sales to resellers take note of the purchaser, the date of purchase and the serial numbers of the goods supplied and pass on the relevant information to Grundig upon request. This is particularly necessary in order to prevent dealers from breaching the distribution agreements by passing on Grundig products to non-authorized dealers, which would be difficult to avoid without such a possibility of control. Since such information is expressly restricted to cases where checking of distribution appears necessary for technical reasons or because there is a valid suspicion that the EC distribution system has been breached, and since Grundig must report to the Commission annually on cases in which use was made of its right to request information, there is, contrary to the misgivings expressed by third parties, no danger of Grundig's systematically requesting information in order to control and impede parallel imports between authorized dealers.

(30) In previous years, according to its own statements, Grundig did not make use of its right to request information in a single case. It did carry out investigations in a few cases in which Grundig products covered by the distribution system were being sold by non-authorized dealers. However, these matters were cleared up without Grundig having to inspect serial number records in a single instance since the raising of such a possibility was in general sufficient to obtain the relevant information from dealers. There are therefore no grounds for supposing that Grundig might use this clause in order to check resale prices and in particular to maintain different prices in different Member States.

(31) (e) The prohibition on dealers advertising Grundig products at 'cash-and-carry prices, self-service prices or take-away prices' is justified because all dealers are obliged under the dealership agreement to provide certain types of advisory and after-sales services. This means that dealers are not allowed to pursue a marketing policy which does not in general include these services. Yet if a dealer advertises or offers for sale Grundig products at 'take-away prices' or the like, he is encouraging the consumer to waive such services. The contractual prohibition of such marketing practices can thus be subsumed under the qualitative selection criteria. There is no ground to fear that a dealer is consistently abandoning a policy of providing after-sales services, however, where he does not provide such services to a customer at the customer's own request. In such cases there is nothing in the dealership agreement to prevent the dealer from granting the customer a discount for the resultant cost savings.

(32) (f) The basic ban on wholesalers supplying private final consumers and the requirement that, where products are supplied to commercial final consumers, a special declaration must be signed to the effect that the goods will be used for business purposes are also objectively justified, since they serve to underpin the division of functions between wholesaling and retailing and to prevent distortions of competition at the expense of the retail trade. Contrary to the view expressed by third parties, it does not appear appropriate to restrict signature of the special declaration to cases where the products cannot by their nature be used directly in the customer's business, i.e. to non-business-related goods. Even in the case of business-related goods, there is a danger of the goods being obtained for non-business-related, purely private use, e.g. for family members or friends of the person conducting the business, so that monitoring through signature of the special declaration, which is by no means unreasonable for commercial customers, appears objectively justified.

(33) (g) Similarly, the procedure for admission and exclusion of wholesalers and retailers is unobjectionable from a competition policy point of view, since applications for admission are decided on within an appropriate period of four weeks, ordinary notice to terminate may be given only in the event of the entire distribution network being abandoned and notice on important grounds and/or the withholding of supplies may be decided on in the event of infringements of competition only if the allegations are not denied or have been proved in court.

(34) All the above clauses for ensuring selective distribution by professionally trained wholesalers and retailers who are willing and able to provide advisory and after-sales services, are, given the present

market structure and the present competition situation in the consumer electronics sector, not liable to have an appreciable effect on competition betweeen manufacturers or dealers, but are integral parts of a form of distribution that is compatible with Article 85 (1). Since the consumer electronics sector is one which has keen competition between manufacturers, a variety of forms of distribution and lively competition between dealers, it is not possible for Grundig (even taking account of Philips' market shares) significantly to restrict competition at distributive level.

2. *Clauses of the agreements which restrict competition*

(35) However, the agreements do contain a number of clauses which go beyond the imposition of qualitative requirements or associated obligations imposed on dealers and which are therefore caught by Article 85 (1). This applies to the requirement that retailers carry as complete a selection of the relevant Grundig range as is necessary for the size of the specialized shop or specialized department and keep adequate stocks of a representative selection of the relevant range, and the requirement that wholesalers carry and stock as far as possible the whole Grundig range. These requirements go beyond what is necessary for an appropriate distribution of the products and mean that dealers must take sales-promoting measures that restrict their commercial independence. Such requirements consequently constitute restrictions of competition which, in view of the Community-wide application of the Grundig distribution system, are liable to affect trade between Member States and which, in view of Grundig's market shares, are also appreciable.

II. Article 85 (3)

The agreements with specialized wholesalers and retailers underlying Grundig's EC distribution system fulfil the conditions of Article 85 (3).

1. *Improvement in the distribution of goods*

(36) The requirements imposed on wholesalers and retailers together with the qualitative selection criteria for dealing in Grundig products contribute to improving the distribution of goods. The qualitative selection criteria ensure that Grundig products are distributed only by dealers having adequate facilities and staff, which makes the distribution of its products more rational and more efficient. The requirements imposed on dealers regarding stocks and the carrying of the complete Grundig range ensure that Grundig can rely on a comprehensive network of selected dealers who are prepared to make a particular effort to distribute Grundig products, thus promoting sales.

2. *Fair share of the resulting benefit for consumers*

(37) The advantages associated with the distribution system, particularly the provision of advice and an efficient after-sales service and the availability of a wider range and faster delivery from wholesalers and retailers, are of direct benefit to the consumer. In view of the technical innovations constantly taking place, the provision of expert advice and the installation of equipment on site are of particular importance of many consumers, without their having to pay a significantly higher price level as a result or without price competition between dealers being eliminated. Manufacturers' sales brochures, reports in technical journals and consumer magazines and operating instructions are only a partial substitute for a person-to-person talk with the specialist dealer and for the installation of the equipment and advice on how to operate it. Even if consumers are increasingly well informed and technically knowledgeable, many consumers still attach importance to the service carried out by specialized retailers which are guaranteed by the Grundig distribution system. Since in addition a sufficient number of comparable competitive products of different manufacturers are distributed via different distribution channels — in particular via 'Cash and Carry' markets, consumers have a sufficient choice between more service — and more price-oriented ways of distribution. Carrying the full range of products is necessary if comprehensive information and advice are to be provided to the consumer, while the keeping of stocks by wholesalers and retailers ensures that products can be supplied very rapidly.

3. *Indispensability of the restrictions of competition*

(38) The restrictions of competition contained in the Grundig selective distribution system are indispensable to the attainment of the abovementioned advantages. It should be noted that indispensability

does not mean that there must be no other feasible way of distributing the products, but that the restrictions of competition are necessary for the particular marketing strategy adopted by the manufacturer, which is judged to have the beneficial effects referred to in Article 85 (3). This is the case with the sales-promoting requirements in question. Grundig puts considerable investment into its back-up for dealers in the form of training and the provision of informational and advisory material. Such investment, which contributes to improving the distribution of goods and to providing better advice and information for consumers, is economically justified only if the specialized dealer does not confine himself to selling a few products, but endeavours to sell the entire product range. Since the size of the stocks to be kept and of the product range to be demonstrated is geared to the size of the premises, it is ensured that unreasonable demands are not made of small firms in particular in this respect.

4. *No scope for eliminating competition*

(39) The agreements underlying the distribution system and in particular the sales-promoting clause do not afford Grundig the possibility of eliminating competition in respect of a substantial part of consumer electronics equipment. As far as competition with other manufacturers is concerned, the agreements do not have any appreciable effects, since dealers are not prevented by the dealership agreements from distributing other manufacturers' products or promoting their sales. As far as competition between dealers is concerned, the agreements allow competition at both wholesale and retail level amongst Grundig dealers throughout the Community. Dealers are free to set their own prices and can take advantage of the most favourable source of supply since dealers admitted to the distribution system are allowed to supply one another throughout the Community.

(40) Furthermore, since competition in consumer electronics products is intense, Grundig does not (even when its link with Philips is taken into account) have sufficiently large market shares to eliminate competition between dealers. On the contrary, Grundig faces strong competition from Far Eastern manufacturers in particular, and this has led to a decline in its market shares.

(41) Lastly, competition between dealers is not eliminated through a multiplicity of similar distribution systems, since a substantial number of manufacturers market their products without a selective distribution system. Consequently, there is in particular no danger of certain forms of distribution such as discount stores, cash-and-carry wholesalers and retail supermarkets being generally excluded from selling such products.

III. Articles 6 and 8 of Regulation No 17

(42) Since the requirements for exemption continue to be satisfied and since Grundig has submitted a valid application for renewal prior to expiry of the exemption, the exemption can be renewed pursuant to Article 8 (2) of Regulation No 17 with effect from 29 March 1989. In view of the market structure of the trade and Grundig's market share and importance on the relevant market, the extension may be granted for ten years, i.e. until 28 March 1999.

So as to enable the Commission to check that the facts on which its assessment is based have not changed and in particular that Grundig is not applying the admission criteria in a discriminatory manner and abusing the right to inspect records of serial numbers, Grundig must present reports annually on the admission of dealers and the inspection of serial records,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable to:

— the Grundig EC dealership agreement with wholesalers,

and

— the Grundig EC dealership agreement with retailers.

This exemption shall apply from 29 March 1989 to 28 March 1999.

Article 2

Grundig AG shall submit annual reports to the Commission, the first of them by 31 December 1993, setting out all cases in which it has:

— refused to grant a wholesaler or retailer a dealership or has terminated a dealership or cut off supplies to a dealer,

— exercised its right to inspect a dealer's records of serial numbers,

and shall objectively justify such inspection in each individual case.

Article 3

This Decision is addressed to:

Grundig AG,
Kurgartenstraße 37,
D-90762 Fürth.

Done at Brussels, 21 December 1993.

For the Commission
Karel VAN MIERT
Member of the Commission