COMMISSION DECISION

of 16 December 1994

relating to a proceeding under Article 85 of the EC Treaty

(IV/33.863 — Asahi/Saint-Gobain)

(Only the English and French texts are authentic)

(Text with EEA relevance)

(94/896/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, in particular Articles 2, 4, 6 and 8 thereof,

Having regard to the notification made on 3 January 1991 by Saint-Gobain Vitrage International, Courbevoie, France and Asahi Glass Company Ltd, Tokyo, Japan pursuant to Article 4 of Regulation No 17, concerning the Joint Venture Agreement entered into on 30 March 1990 and amended on 7 December 1992, as well as the Licence and Technical Assistance Agreement and the Licence Agreements,

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

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

Whereas:

I. THE FACTS

A. The proceeding

(1) By letter dated 3 January 1991, Saint-Gobain Vitrage International (hereinafter referred to as 'SG') and Asahi Glass Company Ltd (hereinafter referred to as 'AG') notified a number of agreements made between them whereby they set up a joint venture company (hereinafter referred to as 'the JVC') for the joint research and development of bi-layer products, bi-layer technology and bi-layer film, the construction of pilot plants and the joint production of bi-layer film.

The Joint Venture Agreement provides for the exclusive transfer of bi-layer technology owned by SG and AG to the JVC, which is the object of a separate agreement namely the Licence and Technical Assistance Agreement, and provides for the JVC being the exclusive worldwide licensor of bi-layer technology.

B. The undertakings

(2) SG is part of the Saint-Gobain Group, a diversified group of companies established in France and organized into seven divisions, including flat glass, industrial ceramics, insulation and construction materials. The 1990 turnover of the Saint-Gobain Group was FF 69 billion with the flat glass division accounting for FF 12,724 billion.

AG is part of the Asahi Glass Group, a company established in Japan with over 29 overseas subsidiaries and affiliates, including Glaverbel, Maasglas and Splintex in Europe. It is a major international supplier of glass-related products, chemicals and ceramics. In 1990 its world-wide turnover was US$ 8 177 million. Sales of glass and related products amounted to around US$ 3 298 million in 1989.

C. The product

(3) The agreements are aimed at research and development in a relatively new field — bi-layer technology and products derived therefrom.

Bi-layer products are products characterized by a glass/plastic construction resulting from laminating a piece of mineral glass with one or more plastic films among which at least one film has mechanical energy absorption and at least one film is polyurethane. The intended applications of bi-layer products are in safety glazing for (a) ground transportation vehicles (windshields, side windows, rear windows), and (b) architectural applications.

Bi-layer film: means any plastic film used in bi-layer products.

Bi-layer technology: means all patents covering, and know-how used in connection with, any and all aspects of the design, production, manufacture and use of bi-layer products, including the following:

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 111, 21. 4. 1993, p. 6.

(a) the design, definition, composition and specification of bi-layer products;

(b) the related evaluation procedure;

(c) the design, definition, composition, specification, production and manufacture of all components of bi-layer products, except the piece of mineral glass referred to in the definition of bi-layer products, provided that bi-layer technology shall include treatments for and adaptations of such pieces of mineral glass as are specific to the design, definition, composition, specification, production or manufacture of bi-layer products;

(d) the processes for manufacturing bi-layer products, including laminating and finishing;

(e) the processes and techniques related to the applications and use of bi-layer products.

(4) The parties will initially be aiming their bi-layer product at the automobile industry, primarily for use as a safety glass in windshields and also possibly for side and rear windows. The potential customers, therefore, for the new product are car/vehicle manufacturers.

At present the safety glass most commonly used in car/vehicle manufacture is tempered and/or laminated glass, the laminated variety tending more to be used for the front windshield, and tempered glass for side and rear windows. The main concerns of motor manufacturers in their choice of a safety glass product are (not necessarily in order of priority) design flexibility, weight saving, cost and safety. The advantages of using a urethane based bi-layer product in the manufacture of windshields, rather than conventional laminated glass, are considered to be:

— better safety performance (greater resistance to impact),

— better surface performance (greater stain and scratch resistance),

— lower optical distortion,

— weight savings (a bi-layer windshield could save up to 2,5 kg per square meter),

— design flexibility.

D. The market

(5) Any development of a new technology at first requires the selection of a specific R&D track, depending on the existing level of knowledge as well as an assessment of the probability of success of the various lines which are theoretically possible.

At the heart of the research and development is the task of finding the most appropriate film. The line which SG and AG decided to follow is defined in the Joint Venture Agreement and is characterized by the use of a certain type of polyurethane film.

Chemical manufacturers such as Du Pont and Monsanto are expected to be working on the development of film for bi-layer products. Furthermore, some leading automotive original equipment manufacturers and glass manufacturers are apparently involved in the development of bi-layer windshields.

The development of plastic panes (i.e. without glass) is ongoing and these plastic glazings present advantages which are comparable to those resulting from the bi-layer technology.

(6) Laminated glass is used in the automobile industry and for architectural purposes as safety glass. Both parties are significantly active in the various markets for safety glass. As bi-layer products are primarily aimed at the automotive safety glass market where the conditions of competition are significantly different from those prevailing in the architectural glass market, it is considered to be the relevant market for the purpose of the present examination.

In Europe, the main producers of automotive safety glass are by order of importance SG, Pilkington and Glaverbel. World-wide the main producers of automotive safety glass are AG, SG, Pilkington, Ford glass, Societá Italiana Vetro (hereinafter referred to as 'SIV'), PPG and Nippon Sheet Glass.

	Market share 1990	Market share 1993	Market share 1994
European Market:			
Saint-Gobain	[. . .]	[. . .]	[. . .]
Pilkington			Pilkington-Gp (1)
	[. . .]	[. . .]	[. . .]
SIV	[. . .]	[. . .]	[. . .]
PPG	[. . .]	[. . .]	[. . .]
Glaverbel-Splintex (Asahi)	[. . .]	[. . .]	[. . .]
Guardian		[. . .]	[. . .]
Soliver		[. . .]	[. . .]
World-wide:		1992	
Asahi Glass	[. . .]	[. . .]	
Saint-Gobain	[. . .]	[. . .]	
Pilkington	[. . .]	[. . .]	
SIV	[. . .]	[. . .]	
Ford Glass	[. . .]	[. . .]	
PPG	[. . .]	[. . .]	
Nippon Sheet Glass	[. . .]	[. . .]	
Guardian		[. . .]	
Others		[. . .]	

(1) Pilkington acquired a 50 % stake in SIV in 1993.

Source: [. . .] Blanks between square brackets indicate figures deleted as business secrets pursuant to Article 21 (2) of Regulation No 17.

(7) The evolution of the market for safety glass is directly related to the evolution in the production of motor vehicles and the surface of safety glass needed for the production of cars (which may change over time with the designs of cars).

In 1990, 13 million cars were manufactured in Europe. If each car incorporates on average four square metres of safety glass, the size of the potential market is about 52 million square metres — with a value of about US$ 1 040 million, the average cost per car of safety glass being taken as US$ 80.

It is not easy to predict the eventual development of the market nor can it be said whether bi-layer glass will replace conventional safety glass. In the near future, it will most probably be offered alongside conventional glass and then only for new car models. The final product could be sold throughout the Community and indeed world-wide.

Taking into account the customer side on the safety glass market which is constituted by car, bus and truck manufacturers, and also manufacturers of railway carriages, the geographic market of reference is at least Community-wide. Vehicle manufacturers frequently purchase automotive glass from suppliers located in different Member States and the higher value added in automotive glass means that transport costs are a relatively low percentage of product cost.

E. The notified agreements

(8) SG and AG have agreed to cooperate in the further development of bi-layer products and technology for commercial use and to promote the production, marketing and distribution of such bi-layer products. To this end the two parties have agreed to share their past and future research and development of bi-layer technology and to establish a JVC. The parties have licensed to the JVC on an exclusive basis all bi-layer technology possessed by them. The JVC will either own or be the exclusive licensee of bi-layer technology acquired or jointly developed by AG or SG, or firms controlled by them, under the research and development programme. If SG or AG or firms under their control develop or acquire bi-layer technology outside the scope of this programme, rights to such bi-layer technology will be retained by each individual partner, or its subsidiaries as the case may be, but will be licensed exclusively to the JVC to the extent that such bi-layer technology has applications for designing, producing, manufacturing or using bi-layer products. New bi-layer technology developed by AG or SG after this programme will be licensed exclusively to the JVC with the exception, however, the major innovations. The JVC is the world-wide licensor of such technology both to AG/SG and to interested third parties.

(a) *The Joint Venture Agreement*

(9) This agreement set up the JVC, incorporated under the laws of the Netherlands and jointly owned, managed and controlled by SG and AG. The Joint Venture Agreement (hereinafter referred to as 'the JV Agreement') sets out the objectives of the JVC, namely:

— to promote collaboration between SG and AG in the development of bi-layer products and bi-layer technology,

— to receive exclusive licences from SG and AG of all bi-layer technology owned or used by them and to hold all rights to bi-layer technology developed or acquired by the parties,

— to serve as exclusive world-wide licensor and transferor of bi-layer technology to all persons, including SG and AG.

The JVC will not conduct any research or development itself, rather it will be the medium through which the two parties will coordinate their respective activities in research and development; neither will it manufacture or sell bi-layer products. The joint research and development involves the construction and operation of pilot plants to continue the development technology used to produce and to manufacture bi-layer film.

(10) The cooperation will consist of two stages, namely (i) joint research and development and (ii) joint industrial exploitation of the results of the joint research and development.

The first stage consists of a joint research and development programme and the construction by the JVC of two pilot plants which will produce bi-layer film. The first pilot plant is intended for R&D and pre-marketing purposes and will be established in Japan. The second plant will be set up when a market of substantial size can be positively envisaged and will in all likelihood be located in Europe. A final decision as to the location of this second plant will depend on the development of the market.

The second stage will start as from the commencement of commercial production of bi-layer products within the common market which should normally correspond to the date when the second JVC plant becomes operational.

(11) The JV Agreement states that nothing will prevent or restrict SG and AG from engaging in competition with each other in connection with the manufacture, marketing or sale of bi-layer products; however, it restricts the parties from constructing another plant for the production of bi-layer film prior to the construction of the first and second pilot plants and from expanding existing capacity without the prior consent of the other shareholder.

(12) The parties amended the JV Agreement on 7 December 1992 so that it will expire at the end

of a five-year period beginning with the date on which the second JVC's pilot plants begins commercial production, and at the latest on 7 December 2005, whichever is sooner, and that the JVC will be dissolved at the same time. Upon the dissolution of the JVC, the parties will take all necessary measures to assure access for each of them to the technology possessed by the JVC and they will determine independently how related intellectual property righs or know-how are to be exploited in the future.

(b) *Related agreements*

(13) Licence and Technical Assistance Agreement

By virtue of the Licence and Technical Assistance Agreement, SG/AG (as Licensor) grants to the JVC (as Licensee) an exclusive non-transferable right to use and sublicense all their respective licensed patents and know-how ('the licensed technology') for all applications that involve designing, producing, manufacturing or using bi-layer products. The licensors are precluded from using the licensed technology for these applications except pursuant to a Licence Agreement granted to each of them by the JVC. These licensors, however, retain the right to use the licensed technology for all other applications.

(14) Licence Agreements

The Licence Agreements are made between the JVC (as Licensor) on the one hand, and SG/AG or a third party (as Licensee(s)) on the other hand. The licensor grants to a licensee a non-exclusive, non-transferable right to design, manufacture, use and sell bi-layer products and to use the licensed technology. The licensee may not use the licensed technology for applications other than for bi-layer products.

Only an example of the Licence Agreement granted by the JVC to SG or AG was provided in the notification made on 3 January 1991.

II. LEGAL ASSESSMENT

Article 85 (1)

Article 85 (1) of the EC Treaty prohibits as incompatible with the common market all agreements and concerted practices between undertakings 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.

Agreements between undertakings which do not fulfil the market share conditions laid down in Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85 (3) of the Treaty to categories of research and development agreements [1] may however, in appropriate cases, benefit from an individual exemption, for the purpose of which the conditions of competition on the relevant product market and the specificity of the manufacture of high technology products are in particular taken into account.

A. *Agreement between undertakings*

(15) SG and AG are undertakings within the meaning of Article 85 (1) and the JV Agreement, the Licence and Technical Assistance Agreement and the Licence Agreements are agreements within the meaning of Article 85 (1).

B. *Restrictions on competition*

(16) Both parties are strongly positioned in the glass industry in general and in the automotive safety glass market in particular. Both compete in this market within the Community and world-wide.

As regards the products concerned by the research and development the parties contend that they are not competitors because (i) SG largely concentrated its research efforts in Europe, while AG limited itself to the Japanese market, and (ii) neither could enter independently the market of the other, this being particularly true of AG because of the patents SG possesses in Europe.

The Commission does not share this view. First, the parties are two major competitors in the relevant market, i.e. the market for automotive safety glass at which the research and development aims primarily. Secondly, as regards the notified research and development cooperation, it is considered that the parties could carry out the projects individually. AG and SG each have their own experimental pilot facility for the production of bi-layer film and an experimental assembly line for bi-layer products. Samples have been remitted by both AG and SG to their respective potential clients for preliminary technical evaluation even if substantial research and development is still necessary in order to make commercial sales of bi-layer product possible.

Bi-layer products, and in particular those aimed at the automobile safety glass sector, do not take the form of a homogeneous product. There are many ways of laminating the glass to the plastic and the process of film manufacturing and of glass assembly can vary enormously. Bi-layer film can come in many different forms and a polyurethane film is only one such technology. Given the research and development resources of both AG

[1] OJ No L 53, 22. 2. 1985, p. 5.

and SG, the Commission considers that either party could have developed independently its own form of plastic film or process for assembly.

(17) Essentially both parties continue to work separately in research and development in the products in question but the joint research and development work is carried out within the framework of a programme defining annual goals and specific tasks and programmes through the medium of the JVC, allowing each partner to be kept informed of any developments made by the other, and permitting joint decisions in relation to the research and development. Neither party can independently construct a plant to produce, or to expand existing capacity for, bi-layer film prior to the construction of the second JVC pilot plant.

(18) The collaboration between the parties has as its object research and development up to the stage of industrial application, and exploitation of the results.

Whereas the first pilot plant is intended to be used for research and development purposes, the second plant will be set up when a market of substantial size can be positively envisaged and will in all likelihood be located in Europe.

(19) The collaboration between the parties also includes provisions regarding industrial property rights and confidential technical knowledge. Pursuant to the Licence and Technical Assistance Agreement, SG and AG licensed to the JVC on an exclusive basis all bi-layer technology possessed by them at the moment of its conclusion in the field of designing, producing, manufacturing or using of bi-layer products.

All rights to bi-layer technology developed or acquired by AG and SG during the joint research and development period, either within the framework of the research and development programme or outside it, to the extent that such bi-layer technology has applications for designing, producing, manufacturing or using bi-layer, will be owned by the JVC, each allowing the other to have knowledge of any developments it acquires.

Rights accruing to SG and AG after the research and development period will be retained by each AG and SG, as the case may be, and licensed to the JVC on an exclusive basis. Both parties will, therefore, be able to combine their knowledge and expertise in the improvement of bi-layer technology, during the period of the JV Agreement. Although the intellectual property rights to development are owned by each developing participant, the owner may not make free use of them as the JVC is the world-wide licensor of such technology both to AG/SG and to interested third parties, not only during the research and development period, but also during the production stage covered by the JV Agreement.

(20) Upon the dissolution of the JVC, the parties will take all necessary measures and, in particular, enter into cross-licenses allowing each party the right to continue to use on a royalty-free basis all bi-layer technology, with the exception of major innovations, possessed by the JVC, by the other party, or jointly owned at the time of dissolution.

(21) Each has relinquished any possibility of individual initiative and of thereby gaining a competitive advantage over the other, and this for at least 10 years and at the most until 7 December 2005, even if the end product (a bi-layer safety glass) is to be freely and competitively manufactured, marketed and sold in any country and in any quantity by both parties separately. In the case of successful research and development, the new bi-layer product would have important commercial effects.

(22) The JV Agreement provides for both joint research and development and joint exploitation of the results and the parties jointly determine how the product developed is to be manufactured and how related intellectual property rights and know-how are to be exploited. Taking into account the strong position of the parties on the relevant market, the agreement, therefore, has the effect of restricting competition within the meaning of Article 85 (1).

C. *Effect on trade between Member States*

(23) The common research and development is being undertaken by two companies of size and importance who are active both within the Community and world-wide. The final product, which will only be manufactured, marketed and sold as a result of the successful outcome of the collaboration both in research and development and in the production of bi-layer film, is one which can be commercialized by both parties throughout the Community and indeed world-wide. It is also aimed at an end user which is present and of great economic importance throughout the Community and world-wide. Should consumers ultimately give preference to bi-layer products, trade in safety glass could shift significantly in favour of the two participants in the cooperation. The end product will therefore be the subject of trade between Member States (and beyond).

Therefore the restrictions covered in recitals 16 to 22 are likely appreciably to affect trade between Member States.

Article 85 (3)

Under Article 85 (3) the provisions of Article 85 (1) of the EC Treaty may be declared

inapplicable in the case of agreements between undertakings which contribute 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 do 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.

A. *Improvement in the production of goods and promotion of technical progress*

(24) There is a demand from the side of the automotive glazing industry for safety glazing products which are more flexible in shape and lighter in weight than existing multi-layer products. Multi-layer products have already been introduced into the market as they are safer than laminated glass but, for several reasons, including their lesser flexibility in shape, their higher price and heavier weight, they have largely not been accepted by the market as a substitute for laminated glass.

As stated in recital 4 the polyurethane-based bi-layer product has significant advantages over conventional laminated glass in the manufacture of windshields. It could improve optical quality, reduce weight, provide greater opportunity for facilitating complex designs and could possibly be adapted to other additional purposes (e.g. anti-condensation). This product could have a significant impact on the design, safety and price of cars and other motor vehicles.

(25) AG is a leading manufacturer both in the Japanese automotive safety glass and in the Japanese chemical markets. All development activities of AG concerning bi-layer technology and products before the creation of the JVC have been done in Japan. AG possesses 10 years of development experience in the current urethane-type bi-layer film and operates a pilot plant located in Japan which is a test scale facility, owned and operated by AG prior to the creation of the JVC, and employs a continuous production process. It is thus contributing to the JVC particularly its technical capabilities in the development of urethane-type bi-layer film, which include formulation and continuous production process.

It is thus expected that the cooperation in developing urethane-based bi-layer product will contribute to improving the production of goods and to promoting technical progress.

B. *Share of consumers in the benefit resulting from the agreements*

(26) The benefits to the car industry have already been set out in recital 4 in terms of technical factors and cost efficiency.

Research has aleady been done with a view to covering laminated safety glass with a plastic layer in order to improve the safety of automotive glass. The aim of this research has been to prevent parts of the screen being projected towards the interior of the car in the event of the impact of an object on the exterior of the windscreen and to offer an anti-lacerative characteristic where a passenger is projected against the windscreen. The greater impact resistance of bi-layer glass could reduce personal injuries in the event of collision. Improved optical quality would contribute generally to driver safety. The lighter weight would reduce costs and help fuel efficiency.

The cooperation between AG and SG will further reduce the R&D costs for bi-layer products and thus also the price of such products to consumers and the entry of such products on the market will thus be accelerated.

C. *Indispensability of the restrictions*

(27) Both AG and SG have since the 1970s invested considerable amounts in their independent development efforts in the field of safety windshields involving a combination of glass and plastic before entering into the agreement. AG has technical know-how and experience in the chemical field useful in the development of bi-layer film. SG has, on the other hand, technical know-how and experience in the assembly of bi-layer products and extensive know-how and experience in evaluation and durability tests for bi-layer products. The parties have reached a comparable level of knowledge and in the field of bi-layer technology this knowledge is largely complementary.

(28) The new product will be a technically advanced and innovative one, the development of which will entail great financial risk for the parties, as its commercial viability is still uncertain. Substantial research and development still has to be done in order to make commercial sales of bi-layer products possible. Given the strength of the demand side (the automotive industry), considerable effort has to be made to minimize costs or, should costs prove to be above those of conventional windshields, to realize substantial advantages in quality and performance that will justify the higher price. The efforts and risks involved, if undertaken independently by the parties, would most certainly not lead to results as rapid, efficient and economic as those envisaged. The cooperation is indispensable as it enables the earlier introduction of the product into the Community, the advantages of which, for the car manufacturers and the security of vehicle users, are set out in recitals 4 and 26.

(29) The non-competition clause, which relates to the production of bi-layer film and not to the final product, and the exclusive licence granted to the JVC are inherent to the creation of the JVC and ensure that neither party will start competing with the JVC. The JV Agreement provides that each party retains the right to use or transfer bi-layer technology for applications that do not involve the designing, producing, manufacturing or using of bi-layer products and that licensing agreements will be granted to third parties on a non-discriminatory basis. It is also specified in the JV Agreement that nothing will prevent SG and AG from engaging in competition with each other in connection with the manufacture, marketing or sale of bi-layer products. In particular, the JV Agreement does not contain any of the restrictions listed in Article 6 of Regulation (EEC) No 418/85.

In view of the above, the Commission is of the opinion that the relevant agreement contains no restrictions on competition which are not indispensable to the attainment of its objectives.

Duration of the cooperation

(30) Previously, the JV Agreement provided for a duration of cooperation of 30 years and that the JVC would be the exclusive licensor of bi-layer technology for the duration of the patents. Although the Commission is prepared to favourably consider R&D joint ventures, even when they do not fulfil the conditions set out in Regulation (EEC) No 418/85, because of the global economic advantages they provide commensurate with the disadvantages for competition, it is not ready to allow such a long period of cooperation for undertakings having such a position on the market involved.

(31) In examining this as a case of individual exemption, and in considering its obligation pursuant to Article 8 (1) of Regulation No 17 to specify the duration of any exemption, the Commission does not see any reason to depart from the period provided for in Regulation (EEC) No 418/85 and, in particular, the five-year exemption period specified in Article 3 (2), in conjunction with Article 3 (1) thereof, on the joint exploitation of the results. The parties have amended their agreement so that the second stage will expire at the end of a period of five years from the date the second JVC plant, which will in all likelihood be set up in Europe, becomes operational. As the second plant will be set up as soon as a market of substantial size can be positively envisaged, which cannot be precisely determined at the present time, it is also provided that this second stage, of a duration of five years, will expire at the latest on 7 December 2005. The JVC will be dissolved at the end of the second stage. Upon the dissolution of the JVC, the parties will take all necessary measures to allow each of them to continue to use all bi-layer technology developed in common. Each of them will then be free to conduct its own independent licensing policy in bi-layer technology.

D. *No elimination of competition*

(32) The JV Agreement states that nothing will prevent or restrict SG and AG from engaging in competition with each other in connection with the manufacture, marketing and sale of bi-layer products. The separate manufacturing, marketing and sale of the final product by the two parties means that end users still have a choice of supplier.

Furthermore, the Commission has ascertained that the market for bi-layer technology and products derived therefrom would not be exclusively reserved to the notifying parties, but opened up to new entrants. The Commission is satisfied that the JV Agreement also provides that licensing agreements will be granted to third parties on a non-discriminatory basis which will allow the opening up of the market to new entrants. This provision is further reinforced by the fact that the clients themselves will ask SG and AG to grant licences to other potential suppliers as explained in recital 34. However as no licensing agreements to third parties have yet been drafted they are not covered by this Decision.

(33) Bi-layer products, and in particular those aimed at the automobile safety glass sector, do not take the form of a homogeneous product. There are many ways of laminating the glass to the plastic. The process of film manufacturing and of glass assembly can vary enormously. Likewise, bi-layer film can come in many different forms. The definition of bi-layer film is any plastic film used in bi-layer products. A polyurethane film is only one such technology. As the products can result from varying processes and the film can take many forms, competition is also expected between producers of bi-layer products aimed at the same end users.

In particular, it is believed that research and development are also being undertaken in fields related to bi-layer products by a number of other large and powerful companies in the chemical sector and that plastic panes, without glass, are also being developed which have advantages comparable to those resulting from the bi-layer technology.

Thus, the Commission considers that the parties are expected to be subjected to competition from competitors in the glass and chemical industries.

(34) The market for bi-layer products in the automobile industry is characterized by the strong bargaining position of the clients and much will depend on the evolution of the car market. The car manufacturers for whom the products are destined may well prefer to continue using traditional

products rather than taking the risk of being dependent on a sole source of supply. No car manufacturer will agree to use a product from one or two manufacturers only and will require the supplier(s) to grant licences to other potential suppliers. It is not easy to predict the eventual development of the market nor can it be said whether bi-layer glass will replace conventional safety glass. The car market is constantly evolving in terms of design trends, customer preference, environmental considerations and government regulation. In the near future, it will most probably be offered alongside conventional glass and only then for new car models.

The Commission is of the opinion that the relevant agreement does not eliminate competition in respect of the products concerned.

Article 8 of Regulation No 17

In accordance with Article 8 (1) of Regulation No 17 a decision in application of Article 85 (3) shall be issued for a specified period and condition and obligations may be attached thereto. In addition, under Article 8 (2) of the said Regulation, the Commission has a duty to ensure that the requirements of Article 85 (3) continue to be satisfied.

(35) The agreements, as notified and amended as to duration and the dissolution of the JVC, qualify for exemption. Accordingly, under Article 6 (1) of Regulation No 17, the exemption will take effect from 7 December 1992, the date on which the two companies amended the JV Agreement, in order to satisfy the tests of Article 85 (3).

(36) The JV Agreement provides that Licensing Agreements will be granted to third parties but as no Licensing Agreements for third parties have yet been drafted, this Decision does not cover these future agreements,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85 (1) of the Treaty establishing the European Community are declared inapplicable pursuant to Article 85 (3), to the Joint Venture Agreement, as amended on 7 December 1992, and to the non-competition clause provided in this agreement, to the Licence and Technical Assistance Agreement between Saint-Gobain Vitrage International and Asahi Glass Company Ltd and to the Licence Agreement between the Joint Venture Company and Saint-Gobain Vitrage International/Asahi Glass Company Ltd, concluded on 30 March 1990 between Saint-Gobain Vitrage International and Asahi Glass Company Ltd.

Article 2

This Decision takes effect from 7 December 1992 and shall expire at the end of a five-year period beginning with the date on which the second Joint Venture Company's pilot plant begins commercial production, or on 7 December 2005, whichever is sooner.

Article 3

This Decision is addressed to:

1. Saint-Gobain Vitrage International,
   18, avenue d'Alsace,
   F-92400 Courbevoie;

2. Asahi Glass Company Ltd,
   1-2 Marunouchi 2-Chome,
   Chiyoda-ku,
   Tokyo 100,
   Japan.

Done at Brussels, 16 December 1994.

For the Commission
Karel VAN MIERT
Member of the Commission