COMMISSION DECISION

of 21 December 1994

relating to a proceeding pursuant to Article 85 of the EC Treaty and Article 53 of the EEA Agreement

(IV/34.252 — Philips-Osram)

(Only the Dutch and German texts are authentic)

(Text with EEA relevance)

(94/986/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

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 2, 6, and 8 thereof,

Having regard to the application for negative clearance and the notification for exemption submitted, pursuant to Articles 2 and 4 of Regulation No 17, on 3 March 1992,

Having regard to the request made by the parties on 15 February 1994, to extend the application and notification to Article 53 of the EEA Agreement,

Having regard to the summary of the application and notification [2] published pursuant to Article 19 (3) of Regulation No 17 and to Article 3 of Protocol 21 of the EEA Agreement,

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

Whereas:

I. THE FACTS

A. Introduction

(1) On 3 March 1992, Philips International BV and Osram GmbH (hereinafter referred to as 'Osram') notified to the Commission a declaration of intent aimed at the conclusion between them of a joint venture agreement regarding the manufacture and sale of certain lead glass tubing (and components thereof) for incandescent and fluorescent lamps. The joint venture company to be so created will regroup and enhance the existing European activities of the parent companies in the lead glass tubing field and is expected to supply lead glass tubing products to its parent companies and to independent lamp manufacturers not having sufficient own internal production of lead glass.

(2) The joint venture company will be based in the current facilities of Philips Lighting Holding BV located in Lommel (Belgium). The three furnaces installed there will be fully dedicated to the production of lead glass for lamps, and new production lines will be installed. At the same time, Philips' current production lines of lead glass for television sets and for soda lime glass tubes in Lommel will be transferred to other Philips facilities.

The Lommel factory is equipped with the necessary equipment to reduce the emission problems inherent in the manufacture of lead glass (lead, nitrogen oxide and antimony emissions) consisting of electrostatic filters and complex and expensive equipment for the selective conversion of hazardous gaseous components.

(3) In addition, Osram has closed its existing facilities located in Berlin which had reached the end of their economic life, and which were not equipped with the abovementioned equipment to reduce polluting emissions.

(4) The parent companies currently operate two other joint ventures in the lighting field: one, also located in Lommel — Emgo — produces bulbs for incandescent lamps and the other, located in Argentina, produces glass. It should be noted that Emgo has been in operation for the last 25 years.

B. The parties

(5) *Philips Lighting Holding BV* (hereinafter referred to as 'Philips') is the holding company of the Philips Lighting group within the Philips group of companies.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 22, 26. 1. 1994, p. 4, and OJ No C 267, 24. 9. 1994, p. 3.

Philips Electronic NV, the ultimate parent company of the Philips group of companies, is one of the major electronics companies in the world. Its activities include lighting, consumer electronics, electronic components, communications systems, semi-conductors, personal care products, medical systems and small domestic appliances. Total turnover of Philips Electronic NV in 1991 was Fl 57 billion, of which lighting products accounted for 7,4 billion.

Philips has subsidiaries in all Member States involved in the manufacture and/or sale of lighting products.

As regards lead glass products, Philips currently produces lead glass tubing products for lamps in five factories all over the world. Lommel, the production facility to be transferred to the joint venture, is the only one located in Europe and is by far Philips' biggest lead glass production centre. According to Philips, its facilities located outside Europe (in the USA, Colombia, India and Pakistan) are, for reasons of production capacity, only aimed at local lamp manufacturing operations.

(6) *Osram* is a hundred percent subsidiary of the conglomerate company Siemens AG. Osram is engaged in the development, manufacture and sale of lamps and their consisting parts and materials. In 1990/91 the world-wide turnover of the Osram group was DM 2,971 billion.

In February 1993, Osram bought from GTE of the USA, the latter's lighting operations, GTE Sylvania International, which was renamed Osram Sylvania Inc. The deal did not include Sylvania's activities in Europe, which now constitute a separate company named Edil.

Osram has closed all of its lead glass tubing manufacturing facilities in Berlin. In addition it has sold, as of May 1994, its shares in the United Kingdom company GB Glass Lighting, formerly a joint venture company with GE-Thorn Lighting, which produces lead glass tubing and bulb products.

C. The market

Product market

(7) The product market for the joint venture is the free market for the manufacture and sale of lead glass for incandescent and fluorescent lamps; that is, the market where lamp manufacturers not having their own in-house lead glass production get their supplies. Lead glass is an intermediate product used in the manufacture of lamps. Typically, it constitutes a mere 2 % of the sales price of a fluorescent lamp and 3 % of the sales price of an incandescent lamp. Lead glass has other uses, and it seems technologically possible, at least to some extent, that facilities for the production of lead glass for television cathode ray tubes may also be able to produce lead glass for lamps. However, doing so seems to be uneconomic given, in particular, the scale of the production required.

Geographic market

(8) In assessing the relevant geographic market the following facts [1] have to be taken into account:

— lead glass is cheaply and easily transportable, it has a relatively high value to volume ratio with transport costs typically representing no more than 2 to 3 % of total cost price of lead glass, and does not deteriorate in quality over time like some other types of glass, which allows it to be stockpiled,

— on the demand side, these characteristics mean that lamp manufacturers are able to take advantage of particular market conditions world-wide with the result that continuity of supply is of lesser importance than might otherwise be the case and that price increases and variations in the relevant exchange rate are factors of great importance. In addition most lamp manufacturers maintain important buffer stocks because of the relatively low capital investment required, and for reasons of efficiency in transport,

— on the supply side, both Philips (from Lommel) and Osram (from Berlin, until its closing in September 1992) supply lead glass to third-party customers in the EEA (and outside it, mainly in North Africa and Asia). This is also the case for GB Glass (United Kingdom), Telux Spezialglas (Germany), and for GE (USA). The latter supplies lead glass to its own factories and to third-party customers in the EEA from the USA and Hungary (Tungsram). Finally, Slovenské Zadovy Technickeho Skla (Slovakia) and Toshiba (Japan) are also supplying lead glass in the EEA. In addition, Osram is now supplying substantial amounts of lead glass in the EEA from its subsidiary Osram Sylvania Inc. in the USA (mainly to former customers of GTE Sylvania International, and in particular to [. . .] [2]. Imports into the free

[1] For details about what follows, see recitals 9 and 10.

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

market in the EEA account for 28 % (1) of the needs of independent lamp manufacturers (not including in this calculation imports from Osram Sylvania (2)).

European lamp manufacturers without access to in-house sources of lead glass obtain the lead glass they need, not only from existing suppliers in the EEA (Philips, Telux Spezialglas and/or GB Glass), but also increasingly from suppliers in the USA (in particular GE and even Osram Sylvania) and from central and eastern European suppliers (such as Slovenské Zadovy Technickeho Skla).

In conclusion, given the absence of significant barriers of trade of lead glass and the very small transport costs, the relevant geographic market to be considered covers at least the Community and the EEA. The issue whether the relevant geographic market is actually world-wide can be left open because the conclusions of the assessment do not change even when the narrowest geographic market (i.e. the EEA) is considered.

Market structure

(9) World production of lead glass in 1990 amounted to about 100 000 tonnes, and has been stable since then. European production is about 30 000 tonnes, worth about ECU 33 million at current market prices. Of that amount, Philips produced [...] tonnes in Lommel and Osram [...] tonnes in Berlin. In this respect Philips and Osram accounted for around 66 % of the European production of lead glass. The other most important manufacturers in Europe are Tungsram of Hungary, part of the GE group (3), [...] tonnes in 1993, GB Glass, [...] tonnes in 1993, Telux Spezialglas, [...] tonnes in 1991, and Slovenské Zadovy Technickeho Skla. All manufacturers listed here have spare production capacity available.

(10) Apart from GB Glass, Telux Spezialglas, and Slovenské Zadovy Technickeho Skla, leadglass manufacturers are also major manufacturers of lamps (this is the case of Philips, Osram and GE/Tungsram). In this respect, lead glass is manufactured by these manufacturers of lamps, primarily to meet their in-house needs. However, due to the fact that the lead glass furnaces are normally in production 24 hours a day, and are only stopped for major overhauls, surplus quantities are virtually inevitable in practice. These surpluses, together with the production of lead glass manufacturers that do not manufacture lamps, are sold in the free market to small and medium-sized manufacturers of normal or specialized lamps (4) that do not have internal production of lead glass.

The size of the free market has been estimated at around 4 500 tonnes a year in the EEA. Suppliers to this market are by order of importance Philips, which sells around [... to ...] tonnes a year to third customers in the EEA (5), GB Glass, [...] tonnes sold to third parties in1993, (plus a further [...] tonnes sold to GE), GE/Tungsram [...] tonnes in 1993, Telux Spezialglas [... to ...] tonnes a year since 1991 and Slovenské Zadovy Technickeho Skla [...] tonnes in 1992. Prior to 1993, Sylvania of the USA was also an independent supplier of lead glass in Europe, selling well over 1 000 tonnes a year. As for Osram's Berlin facilities prior to 1992, on average [...] tonnes a year were sold to third-party customers. However only a minor part of that amount, in fact less than [...] tonnes, were actually sold to EEA customers (6). To those producers (7) it is possible to add, as future suppliers, the companies Krosno (8) (Poland) and Tesla (Czech Republic).

(11) The use of lead is at the origin of serious environmental problems that are now solved by installing expensive filters and other pieces of equipment in factories. However, there is a growing pressure, as a result in particular of increasingly strict environmental laws, for the development of new types of lead-free substitutes for lead glass. In this respect, one of the aims of the joint venture is to conduct R&D in that area. Several other lamp or glass manufacturers are also working in that area. These are, at least, GE (USA), Corning Glass (USA), Owens Illinois (USA), Schott (USA), Asahi Glass Co. (Japan) and Nippon Electric Glass (Japan).

(12) As indicated earlier, lead glass is an intermediate product in the manufacture of lamps. The lamp market for basic incandescent and fluorescent lamps is a mature market. New compact-

(1) This figure has been obtained by adding quantities sold, given in recital 10, corresponding to GE/Tungsram and Slovenské Zadovy Technickeho Skla.

(2) Osram Sylvania's maximum production capacity is [...] tonnes of which [...] correspond to own consumption. [...] are sold to third-party customers and the rest, some [...] tonnes are kept in reserve. In 1993 imports to third party customers in the EEA amounted to some [...] tonnes.

(3) GE produces in the United States an additional [...] tonnes and has still some [...] tonnes more as reserve production capacity.

(4) The most important ones that the Commission has identified are Edil (Switzerland), Lindner (Germany), Lumalampan (Sweden), File (Italy), Imperia (Italy), Falma (Switzerland), Alba (Germany), Guy Daric (France), Portalux (Germany) and VCH (United Kingdom). Their requirements for lead glass range from slightly over 1 000 to a few dozen tonnes.

(5) And slightly more than [...] tonnes a year to customers outside the EEA.

(6) The main part was sold in Algeria and Turkey.

(7) The Commission has also found evidence of very small quantities of lead glass imported from Toshiba of Japan.

(8) According to the parties, Krosno is already supplying in the EEA. However, the Commission has not been able to confirm this.

fluorescent and halogen lamps have been introduced on the market as substitute products for those traditional ones. In addition, imports of cheap incandescent lamps from Hungary, Slovakia, China, India and some other countries are increasing (in many instances such lamps are sold by large retail chains under their own brands). As a result, it is unlikely that the parties' own in-house demand for lead glass will increase dramatically in the years to come. In addition, third-party demand for lead glass, particularly from European lamp producers, has not grown for the last few years, so that it is considered unlikely that a situation of shortage in supply will arise that could be to the detriment of third parties.

D. The notified declaration of intent

(13) The parties have notified a declaration of intent including the guiding principles of their relationship and of the operation of the joint venture company. Such principles are binding and will be implemented immediately after the approval by the Commission of the notified joint venture. However, the position that the Commission is adopting is limited to the proposed joint venture as notified.

(14) The main provisions of the declaration of intent are the following:

— the joint venture company will be created for an initial period of 30 years, which will be extended for an indefinite period of time, unless terminated by either party by giving five years' prior written notice to the other party,

— participation and control in respect of the joint venture will be shared equally between shareholders. In this respect, major decisions will require unanimous voting,

— the board of directors of the joint venture is to consist of four members, of which two shall be nominated by each parent company. The day-to-day management of the company will be entrusted to a management team of two members nominated by the parties,

— Philips and Osram shall source at least 80 % of their European requirements for lead glass from the joint venture. The production of the joint venture exceeding parent's requirements will be made available to third-party customers in Europe and elsewhere,

— in case of shortage in capacity and supply, the joint venture is to give preference in supplying lead glass to the parent companies in proportion to their respective off-take. In this respect, the parties have submitted that the structural surplus capacity of the joint venture will be 4 000 tonnes bigger than the existing surplus capacity of Philips and Osram combined,

— the products of the joint venture will be sold to the parents at equal billing prices including transport costs from the factory in Lommel to the various lamp factories of the parties in Europe,

— both parent companies undertake not to compete with the joint venture in Europe in respect of the manufacture or sale of products competing with lead glass,

— the joint venture will be using Philips' existing technology. In consideration of such use, the joint venture will pay Philips a given royalty based on its net sales of lead glass.

E. Third Party observations

(15) Following the two publications pursuant to Article 19 (3) of Regulation No 17 made to cover Article 85 of the EC Treaty and Article 53 of the EEA Agreement respectively, no comments were received from third parties.

II. LEGAL ASSESSMENT

A. Articles 85 (1) of the EC Treaty and 53 (1) of the EEA Agreement

1. *The joint venture*

(16) The joint venture falls within the scope of Article 85 (1) of the EC Treaty and Article 53 (1) of the EEA Agreement. Osram has the financial, technical and research capabilities to set up a new facility to produce lead glass in the EEA. In this respect, the creation of the joint venture eliminates at least potential competition from Osram as an independent producer of lead glass in the EEA. As a result, lamp manufacturers, in particular those that do not have their own in-house production of lead glass, will see their freedom to choose among alternative lead glass suppliers at competitive prices reduced. These restrictive effects are particularly important as there are only a few manufacturers of lead glass in the EEA, and in view of the high market share of the parents in the lead glass market.

(17) The Commission has assessed whether the joint venture could give the parties the possibility of foreclosing access of those independent manufacturers to supplies of lead glass. The conclusion of the Commission is that this is not the case, in particular for the following reasons: the overcapacity prevailing not only in the EEA but also in other areas, such as the USA, the characteristics of the product, that make it easily transportable, the small importance of transport

costs and the existence of several alternative actual and potential suppliers within and outside the EEA.

(18) The joint venture will also have some limited spillover effects as regards the lamp market, where the parties are by far the leading European suppliers of lamps with two-thirds of the market and are in direct competition in all segments of it. The joint venture results in a limited standardization of manufacturing costs. The parties will have identical unit costs for lead glass components which account for 2 to 3 % of the costs of a lamp (incandescent and fluorescent). In addition, the parties are already manufacturing bulbs in common for incandescent lamps (which make about 7,5 to 8 % of the costs of an incandescent lamp). This standardization of costs is somewhat reinforced by the freight pool system which shares equally between the parents the overall transport costs per kilogram, which accounts for 2 % of the cost price of lead glass [1]. However, given the very small importance of lead glass on the manufacturing costs of lamps, such standardization is not considered relevant enough as to constitute a restriction of competition. Such consideration is reinforced by the fact that there is no suggestion that the creation of the joint venture will have any significant impact on conditions of competition on the market for lamps, where the parties continue to compete directly with each other. There is no indication either that competition in the lamp market will be decreasing given the growing pressure in the EEA from lamps imported from outside the EEA, and, in particular, the direct presence in the EEA of GE — encompassing Tungsram and Thorn — which is the largest producer world-wide and which controls around 20 % of the EEA market and of Edil (the former Sylvania Europe, now an independent company having gained a significant market share — around 10 % — in the EEA) together with a large number of medium and small manufacturers.

2. *Contractual provisions*

(19) The declaration of intent includes a number of provisions that also restrict competition:

(a) the non-compete provision, that will apply during the entire term of the agreement;

(b) the obligation on the parent companies to source most of their lead glass needs in Europe from the joint venture;

(c) the preference to be given to the parent companies (in proportion to their respective off-take) in case of shortage in capacity and supply.

[1] The freight pool system actually translates into a slight cost disadvantage for Philips and a slight cost advantage for Osram in terms of % tonnes/price.

(20) All restrictions mentioned in recital 19 are ancillary to the creation and successful operation of the joint venture. In this respect, they are considered to be subsumed under the joint venture and, consequently, they will not be assessed pursuant to Article 85 (1) of the EC Treaty and Article 53 (1) of the EEA Agreement separately from the joint venture itself.

— The non-compete provision is the expression of the lasting commitment of each parent company towards the other and the joint venture. In addition, it is limited to activities in Europe. So, for instance, Osram Sylvania is not only prevented from selling in the EEA to existing or new customers, but is in fact selling there.

— The obligation on the parent companies to source most of their needs for lead glass in Europe from the joint venture guarantees an effective and economical production load of the joint venture, particularly important in view of the fact that furnaces are producing lead glass 24 hours per day. Such use of the production capacity of the joint venture will secure certainty over the costs, quality and continuity of lead glass supplies to its parents and to third customers. In addition, given that a bigger use of the production capacity will help to reduce the per-unit production costs of the leadglass, this commitment is in the interest of the parent companies, as they will be supplied on cost price basis.

— As regards the preference to be given to parent companies, even if it could have a potentially restrictive effect, were the current overcapacity situation in the market for lead glass in the EEA to turn into a situation of scarcity, it can be accepted as ancillary because the joint venture is created to be the in-house production unit in the EEA for the two parent companies, which are investing money in it. Any in-house lead glass production unit gives priority to the demand of the lamp manufacturer to which it belongs and only sells on the free market the surplus production not consumed by the parent company. It has already been said that such surplus production is unavoidable given that furnaces normally operate 24 hours a day and results in a lower cost of production the bigger the use of the capacity. In this respect, the capacity of the new unit will be bigger than the previous combined capacity of the two parents in the EEA and Philips and Osram have declared that they will be continuosly interested in the joint venture supplying lead glass to third parties to the greatest extent possible. In addition, they have also declared that in emergency cases (e.g. breakdown of the furnace) the joint venture will honour existing purchasing agreements of parents and third

parties alike, in proportion to their off-take prior to the emergency.

(21) Ancillary provisions are usually accepted for a limited period of time. In the present case, those provisions will be accepted as ancillary for the entire duration of the exemption granted by this Decision to the joint venture.

B. Effect on trade between Member States and between Member States and EFTA countries

(22) The joint venture will appreciably affect trade in lead glass between Member States and between the Member States and EFTA countries, because it refers to the common manufacture of a product which will be sold throughout the EEA and which is very important, as intermediate input, for independent producers of lamps.

C. Conclusion in respect of Article 85 (1) of the Treaty and Article 53 (1) of the EEA Agreement

(23) In conclusion it is considered that the creation of the joint venture falls within Article 85 (1) of the Treaty and under Article 53 (1) of the EEA Agreement. The restrictive effect on competition and on trade between Member States and between Member States and EFTA countries is considered to be appreciable, given in particular the strong position of the parent companies on the relevant market.

D. Articles 85 (3) of the EC Treaty and 53 (3) of the EEA Agreement

(24) The notified declaration of intent, in so far as its falls within Article 85 (1) of the EC Treaty and Article 53 (1) of the EEA Agreement, satisfies the conditions for exemption laid down in Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement.

Improving production or distribution

(25) The joint venture achieves rationalization of production by allowing Osram to eliminate its obsolete facilities in Berlin and allowing Philips to relocate certain non-lead glass production from Lommel to other glass factories in the Philips' group. The joint venture will offer greater flexibility in quantities and types of product [1] and a lower risk of breakdown, and will have a production capacity substantially higher than that resulting from the combination of the production capacity of the facilities of the parent companies in the EEA for the production of lead glass prior to the creation of the present joint venture. The joint venture will result in lower total energy usage and a better prospect of realizing energy reduction and waste emission programmes.

In addition, the parties will concentrate their R&D activities in Philips' laboratories, achieving savings and economies of scale and a concentration of effort to tackle properly the common challenge of developing lead-free materials.

(26) The parties have provided figures showing yearly lead glass savings at Fl [...] million (ECU [...] million), for Philips and DM [...] million (ECU [...] million) for Osram, with R&D savings of DM [...] (ECU [...] million) for Osram. Such savings are due, in particular, to extended production range, rationalization, decreased overhead costs, flexible furnace utilization, reduced energy and environmental costs, and shared R&D on substitutes for lead glass. The relative importance of these figures is only fully appreciated when it is considered that the market price of lead glass is around Fl 2,5 (ECU 1,16) per kilogram; savings will thus be equivalent to nearly 1 800 tonnes of lead glass per year at market prices, which is about 10 % of the parties' total annual production before the establishment of the joint venture and about 7 % of its maximum production capacity (26 000 tonnes a year). This amount, for instance, largely exceeds yearly lead glass requirements of the biggest independent lamp manufacturer in the EEA.

Consumers

(27) The use of cleaner facilities will result in less air pollution, and consequently in direct and indirect benefits for consumers from reduced negative externalities. This positive effect will be substantially reinforced when R&D in the field produces lead-free materials.

In addition, the cost advantages resulting from the improvements mentioned above will be passed on to consumers in the form of downward pressure on lamp prices, which have been falling steadily due, in particular, to the development of new types of more modern lamps and to competition from the central and eastern European countries.

[1] In this respect, the joint venture will be equipped with three furnaces and seven production lines, whereas Philips presently has one furnace and four production lines devoted to lead glass for lamps at Lommel and Osram had one furnace and two production lines in Berlin.

Indispensability of restrictions

(28) The joint venture is indispensable for achieving the improvements in terms of rationalization, flexibility, energy and cost savings, pooling of R&D efforts and lower emissions resulting from the declaration of intent.

An alternative to the joint venture would have been for Osram to set up a new facility. However this would have resulted in a disproportionately high and risky investment, in terms of the time required for the new facility to be operational and in terms of the money required not only to set up the factory but also to install the necessary equipment to comply with environmental protection requirements. In this respect, Philips' current facility can be adapted much more quickly and has the environmental protection equipment already installed.

Another alternative would have been for Osram to enter into a long-term supply agreement with Philips (and possibly other suppliers). Osram has, however, explicitly stated that it was not interested in such an arrangement because it would have made Osram very dependent. As to Philips, such an agreement might not have provided sufficient certainty to make on its own the investments now made. This is the more so because of the limited size and the mature character of the market. The improvements resulting from the joint venture might therefore not have been achieved. Such an alternative would, therefore, most likely have resulted in a smaller quantity of lead glass being available for third parties than will be available due to the joint venture, the capacity of which will indeed be bigger than the combined previous capacity of the parent companies in the EEA.

As to the possibility of Osram obtaining supplies from its Sylvania facilities in the USA, it is sufficient to indicate that Osram Sylvania's spare capacity in the United States is not big enough to cover all of Osram's European lead glass needs.

No elimination of competition

(29) As regards the availability of lead glass, lamp manufacturers in Europe in general, and in particular those independent lamp manufacturers that do not have their own internal source of lead glass, have no difficulty ordering lead glass components made to their precise requirements, not only from actual alternative suppliers in the Community (such as GB Glass and Telux Spezialglas) but also from actual and potential alternative suppliers outside it. As already indicated, the former are Tungsram and GE, Slovenské Zadovy Technickeho Skla, Toshiba and even Osram Sylvania, which is not prevented from selling in the Community, and the latter are Krosno and Tesla. All of them have substantial spare production capacity.

In addition, several of these independent lamp manufacturers have stated that they make their lead glass sourcing decisions predominantly according to the conversion rate of the currencies involved.

On this basis, and given the overcapacity situation currently prevailing in respect of lead glass in both the Community and in other areas of the world, and at least the United States, it is concluded that the joint venture does not significantly limit long-term continuity of supply, from a number of alternative sources of supply, to third parties, in particular, to those lamp manufacturers not having their own in-house source of supply.

(30) Finally, were the present joint venture to be successful, as regards the development of lead-free substitutes, the fact that several other lamp or glass manufacturers are active, and even hold patents, in that area ensures that there would be, in the future, several alternative sources of supply.

Conclusion

(31) It is then concluded that all the four conditions for the granting of an individual exemption pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement to the creation of the joint venture are fulfilled.

E. Duration of the exemption

(32) Pursuant to Article 8 of Regulation No 17, a decision in application of Article 85 (3) of the EC Treaty (and pursuant to Protocol 21 of the EEA Agreement in so far as Article 53 (3) of the EEA Agreement is concerned) shall be issued for a specified period. Pursuant to Article 6 of that Regulation, the date from which such a decision takes effect cannot be earlier than the date of notification. In that respect, in the present case the decision should take effect from the date the notification was complete, that is from 3 March 1992, to 2 March 2002 as regards the joint venture created between Philips and Osram. This will allow the Commission to re-evaluate the case at a moment in time when the expected benefits resulting from the joint venture will have had a reasonably long period during which to materialize,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement, the provisions of Article 85 (1) of the EC Treaty and of Article 53 (1) of the EEA Agreement are hereby declared inapplicable for the period 3 March 1992 to 2 March 2002 to the joint venture to be created between Philips Lighting Holding BV and Osram GmbH pursuant to the declaration of intent as notified to the Commission by Philips International BV and Osram GmbH.

Article 2

The non-competition obligation on Philips Lighting Holding BV and Osram GmbH, the obligation to source most of their European requirements for lead glass from the joint venture, and the preference to be given to them are to be considered as ancillary restrictions to the creation of the joint venture for the duration of the exemption granted in Article 1.

Article 3

This Decision is addressed to:

Philips Lighting Holding BV
c/o Philips International BV
Corporate Legal Department
Building VO-1
Groenewoudseweg 1, PO Box 218
NL-5600 MD Eindhoven

Osram GmbH
Rechtsabteilung
Wittelsbacherplatz 2
D-80333 München 2

Done at Brussels, 21 December 1994.

For the Commission
Karel VAN MIERT
Member of the Commission