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REGULATION (EEC) No 1133/68 OF THE COMMISSION

of 26 July 1968

amending Commission Regulation No 27 of 3 May 1962 [1]

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation No 17[2] of 6 February 1962, and in particular Article 24 thereof;

Whereas under Article 24 of Regulation No 17 the Commission has power to adopt implementing provisions concerning the form, content and other details of applications pursuant to Articles 2 and 3 and of notifications pursuant to Articles 4 and 5;

Whereas Regulation No 27 adopted by the Commission pursuant to Article 24 of Regulation No 17 lays down, in particular, in Article 4 (1) and (2) thereof that Form A must be used for applications for negative clearance under Article 2 of Regulation No 17 and Form B for notifications under Articles 4 or 5 of Regulation No 17, with a view to exemption pursuant to Article 85 (3) of the Treaty;

Whereas it is advisable, in view of the general preference of undertakings to have the two alternatives open to them, to provide for the use of a single form for applications for negative clearance and for notification in order to simplify the procedure for all parties to an agreement and for the competent departments;

Whereas negative clearance and exemption pursuant to Article 85 (3) of the Treaty have different consequences and whereas the single form must leave it open to undertakings to apply either for negative clearance or for a declaration of non-applicability;

HAS ADOPTED THIS REGULATION:

Sole Article

Article 4 of Regulation 27 shall be amended to read as follows:

'Content of applications and notifications

1. Applications under Article 2 of Regulation No 17 relating to the applicability of Article 85 (1) of the Treaty and notifications under Article 4 or Article 5 (2) of Regulation No 17 shall be submitted on Form A/B as shown in the Annex to this Regulation.

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[1] OJ No 35, 10.5.1962, p. 118/62.
[2] OJ No 13, 21.2.1962, p. 204/62.

2. Applications and notifications shall contain the information asked for in Form A/B.

3. Several participating undertakings may submit an application or notification on a single form.

4. Applications under Article 2 of Regulation No 17 relating to the applicability of Article 86 of the Treaty shall contain a full statement of the facts, specifying, in particular, the practice concerned and the position of the undertaking or undertakings within the common market or a substantial part thereof in regard to products or services to which the practice relates.'

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 July 1968.

For the Commission

The President

Jean REY

This form and the supporting documents should be forwarded in seven copies together with proof in duplicate of the representative's authority to act.

If the space opposite each question is insufficient, please use extra pages, specifying to which item on the form they relate.

FORM A/B

TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

Directorate General for Competition
170, rue de la Loi, Brussels 4

A. Application for negative clearance pursuant to Article 2 of Council Regulation No 17 of 6 February 1962 relating to implementation of Article 85 (1) of the Treaty

B. Notification of an agreement, decision or concerted practice under Articles 4 and 5 of Council Regulation No 17 of 6 February 1962.

I. *Information regarding parties*

1. Name, forenames and address of person submitting the application or notification. If such person is acting as representative, state also the name and address of the undertaking or association of undertakings represented and the name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives.

   Proof of representative's authority to act must be supplied.

   If the application or notification is submitted by a number of persons or on behalf of a number of undertakings, the information must be given in respect of each person or undertaking.

2. Name and address of the undertakings which are parties to the agreement, decision or concerted practice and name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives (unless this information has been given under I (1)).

   If the undertakings which are parties to the agreement are not all associated in submitting the application or notification, state what steps have been taken to inform the other undertakings.

   This information is not necessary in respect of standard contracts (see Section II 1 (b) below).

3. If a firm or joint agency has been formed in pursuance of the agreement, state the name and address of such firm or agency and the names, forenames and addresses of its legal or other representatives.

4. If a firm or joint agency is responsible for operating the agreement, state the name and address of such firm or agency and the names, forenames and addresses of its legal or other representatives.

   Attach a copy of the statutes.

5. In the case of a decision of an association of undertakings, state the name and address of the association and the names, forenames and addresses of its legal representatives.

   Attach a copy of the statutes.

6. If the undertakings are established or have their seat outside the territory of the common market (Article 227 (1) and (2) of the Treaty). state the name and address of a representative or branch established in the territory of the common market.

II. *Information regarding contents of agreement, decision or concerted practice;*

1. If the contents were reduced to writing, attach a copy of the full text unless (a), (b) or (c) below provides otherwise.

   (a) Is there only an outline agreement or outline decision?

   If so, attach also copy of the full text of the individual agreements and implementing provisions.

   (b) Is there a standard contract, i.e., a contract which the undertaking submitting the notification regularly concludes with particular persons or groups of persons (e.g., a contract restricting the freedom of action of one of the contracting parties in respect of resale prices or terms of business for goods supplied by the other contracting party)?

   If so, only the text of the standard contract need be attached.

   (c) If there is a licensing agreement of the type covered by Article 4 (2) (2 b) of Regulation No 17, it is not necessary to submit those clauses of the contract which only describe a technical manufacturing process and have no connection with the restriction of competition; in such cases, however, an indication of the parts omitted from the text must be given.

2. If the contents were not, or were only partially, reduced to writing, state the contents in the space opposite.

3. In all cases give the following additional information:

   (a) Date of agreement, decision or concerted practice.

   (b) Date when it came into force and, where applicable, proposed period of validity.

   (c) Subject: exact description of the goods or services involved.

   (d) Aims of the agreement, decision or concerted practice.

   (e) Terms of odherence, termination or withdrawal.

   (f) Sanctions which may be taken against participating undertakings (penalty clause, expulsion, withholding of supplies, etc.).

III. *Means of achieving the aims of the agreement, decision or concerted practice:*

1. State whether and how far the agreement, decision or concerted practice relates to:

— adherence to certain buying or selling prices, discounts or other trading conditions

— restriction or control of production, technical development or investment

— sharing of markets or sources of supply

— restrictions on freedom to purchase from, or resell to, third parties (exclusive contracts)

— application of different terms for supply of equivalent goods or services

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2. Is the agreement, decision or concerted practice concerned with supply of goods or services

(a) within one Member State only?

(b) between a Member State and third States?

(c) between Member States?

IV. *If you consider Article 85 (1) to be inapplicable and are notifying the agreement, decision or concerted practice as a precaution only:*

(a) Please attach a statement of the relevant facts and reasons as to why you consider Article 85 (1) to be inapplicable, e.g., that the agreement, decision or concerted practice

1. does not have the object or effect of preventing, restricting or distorting competition; or

2. is not one which may affect trade between Member States.

(b) Are you asking for a negative clearance pursuant to Article 2 of Regulation No 17?

V. *Are you notifying the agreement, decision or concerted practice, even if only as a precaution, in order to obtain a declaration of applicability under Article 85 (3)?*

If so, explain to what extent

1. the agreement, decision or concerted practice contributes towards

   — improving production or distribution, or

   — promoting technical or economic progress;

2. a proper share of the benefits arising from such improvement or progress accrues to the consumers;

3. the agreement, decision or concerted practice is essential for realising the aims set out under 1 above; and

4. the agreement, decision or concerted practice does not eliminate competition in respect of a substantial part of the goods concerned.

VI. *State whether you intend to produce further supporting arguments and, if so, on which points.*

The undersigned declare that the information given above and in the ..... annexes attached hereto is correct. They are aware of the provisions of Article 15 (1) (a) of Regulation No 17.

..... (date) .....

Signatures:

....

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....

EUROPEAN COMMUNITIES
COMMISSION

Directorate General for Competition

Brussels, (date) .....
170, rue de la Loi

To

Acknowledgement of receipt

(This form will be returned to the address inserted above if completed in a single copy by the person lodging it).

Your application for negative clearance dated.....

Your notification dated .....

concerning:

(a) Parties:

1 .....

2 ..... and others

(There is no need to name the other undertakings party to the arrangement)

(b) Subject .....

.....

.....

(brief description of the restriction on competition)

was received on .....

and registered under No IV .....

Please quote the above number in all correspondence.