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REGULATION (EEC) No 2779/72 OF THE COMMISSION

of 21 December 1972

on the application of Article 85 (3) of the Treaty to categories of specialisation agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 87 and 155 thereof;

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971[1] on application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices;

Having regard to the Opinions of the Advisory Committee on Restrictive Practices and Monopolies delivered pursuant to Article 6 of Regulation (EEC) No 2821/71;

Whereas under Regulation (EEC) No 2821/71 the Commission has power to apply Article 85 (3) of the Treaty by regulation to certain categories of agreements, decisions and concerted practices relating to specialisation, including agreements necessary for achieving it, which fall within Article 85 (1);

Whereas, since the adoption of such a Regulation would not conflict with the application of Regulation No 17, the right of undertakings to apply in individual cases to the Commission for a declaration under Article 85 (3) of the Treaty would not thereby be affected;

Whereas agreements for the specialisation of production may fall within the prohibition contained in Article 85 (1);

Whereas agreements for the specialisation of production lead in general to an improvement in the production or distribution of goods, because the undertakings can concentrate on the manufacture of certain products, thus operate on a more rational basis and offer these products at more favourable prices; whereas it is to be anticipated that, with effective competition, consumers will receive a fair share of the profit resulting therefrom;

Whereas this Regulation must determine what restrictions on competition may be included in a specialisation agreement; whereas the restrictions on competition provided for in this Regulation are, in general, indispensable for the purpose of ensuring that the desired benefits accrue to undertakings and consumers; whereas it may be left to the contracting parties to decide which of these provisions they include in their agreements;

Whereas in order to ensure that competition is not eliminated in respect of a substantial part of the goods in question, this Regulation applies only if the share of the market held by the participating undertakings and the size of the undertakings themselves do not exceed a specified limit;

Whereas this Regulation should also apply to specialisation agreements made prior to its entry into force;

HAS ADOPTED THIS REGULATION:

Article 1

Pursuant to Article 85 (3) it is hereby declared that, subject as provided in this Regulation, until 31 December 1977 Article 85 (1) of the Treaty shall not apply to agreements whereby, with the object of specialisation, undertakings mutually bind themselves for the duration of the agreements not to manufacture certain products or cause them to be manufactured by other undertakings, and to leave it to the other contracting parties to manufacture such products or cause them to be manufactured by other undertakings.

Article 2

1. Apart from the obligation referred to in Article 1, no other restriction on competition

[1] OJ No L 285, 29.12.1971, p. 46.

shall be imposed on the contracting parties save the following:

(a) the obligation not to conclude with other undertakings specialisation agreements relating to identical products or to products considered by consumers to be similar by reason of their characteristics, price or use, except with the consent of the other contracting parties;

(b) the obligation to supply the other contracting parties with the products which are the subject of specialisation, and in so doing to observe minimum standards of quality;

(c) the obligation to purchase products which are the subject of specialisation solely from the other contracting parties, except where more favourable terms of purchase are available elsewhere and the other contracting parties are not prepared to offer the same terms;

(d) the obligation to grant to the other contracting parties the exclusive right to distribute the products which are the subject of specialisation so long as those parties do not—in particular by the exercise of industrial property rights or of other rights and measures—limit the opportunities, for intermediaries or consumers, of purchasing the products to which the agreement relates from other dealers within the common market.

2. Article 1 shall apply notwithstanding that the following obligations are imposed:

(a) the obligation to maintain minimum stocks of the products which are the subject of specialisation and of replacement parts for them;

(b) the obligation to provide after-sale and guarantee services for the products which are the subject of specialisation.

Article 3

1. Article 1 shall apply only:

(a) if the products which are the subject of specialisation represent in any member country not more than 10 per cent of the volume of business done in identical products or in products considered by consumers to be similar by reason of their characteristics, price or use; and

(b) if the aggregate annual turnover of the participating undertakings does not exceed 150 million units of account.

2. For purposes of applying paragraph 1 the unit of account shall be that adopted in drawing up the budget of the Community in accordance with Articles 207 and 209 of the Treaty.

3. Article 1 of this Regulation shall continue to apply notwithstanding that in any two consecutive financial years the share of the market or the turnover is greater than as specified in paragraph 1, provided the excess is not more than 10%.

Article 4

The aggregate turnover within the meaning of Article 3 (1) (b) shall be calculated by adding together the turnover achieved during the last financial year in respect of all products and services:

1. by the undertakings which are parties to the agreement;

2. by undertakings in respect of which the undertakings which are parties to the agreement hold:
   - — at least 25% of the capital or of the working capital whether directly or indirectly; or
   - — at least half the voting rights; or
   - — the power to appoint at least half the members of the supervisory board, board of management or bodies legally representing the undertaking; or
   - — the right to manage the affairs of the undertaking;

3. by undertaking which hold in an undertaking which is a party to the agreement:
   - — at least 25% of the capital or of the working capital whether directly or indirectly; or
   - — at least half the voting rights; or
   - — the power to appoint at least half the members of the supervisory board, board of management or bodies legally representing the undertaking; or
   - — the right to manage the affairs of the undertaking.

In calculating aggregate turnover no account shall be taken of dealings between the undertakings which are parties to the agreement.

Article 5

The Commission shall examine whether Article 7 of Regulation (EEC) No 2821/71 applies in any specific case, in particular where there is reason to believe that rationalisation is not yielding significant results or that consumers are not receiving a fair share of the resulting profit.

Article 6

The non-applicability of Article 85 (1) provided for in Article 1 of this Regulation shall have retroactive effect from the time when the conditions requisite for the application of this Regulation were satisfied. In the case of agreements which, prior to 18 January 1972, were compulsorily notifiable, the time aforesaid shall not be earlier than the day of notification.

Article 7

Articles 1 to 6 of this Regulation shall apply by analogy to decisions by associations of undertakings and to concerted practices.

Article 8

This Regulation shall enter into force on 1 January 1973.

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

Done at Brussels, 21 December 1972.

For the Commission

The President

S. L. MANSHOLT