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PRESS RELEASE

The Commission's policy on exclusive dealing agreements -
first case of exemption from the Treaty's ban on cartels

The Commission of the European Economic Community has for the first time adopted a decision declaring the Treaty's ban on cartels (Article 85) inapplicable.

The decision concerns an agreement under which the firm of Diepenbroek & Riegers N.V. ("DRU") of Ulft, Netherlands, which produces amongst other things household equipment made of enamelled iron, has granted Etablissements Blondel S.A. of Paris sole selling rights for these products in France. Neither Blondel nor other purchasers are forbidden to export DRU's products. Rival imports to France are neither excluded by the agreement with Blondel nor by agreements between the producer and dealers in other Member States.

The Commission found that the agreement has as its object the restriction of competition, in the sense of Article 85(1). In addition, it holds that the agreement is also likely to affect trade between the Member States, since it lays down conditions governing imports of the products concerned into France from the Netherlands. Nevertheless the Commission is of the opinion that exclusive dealing improves the distribution of goods. It also considers that consumers are given an equitable share in the benefits resulting from such improvement, for French consumers can obtain the products manufactured in the Netherlands more quickly and easily through the firm that has sole selling rights, and the fact that it is still possible to obtain imports (i.e. rival imports) without going through the latter firm means that there cannot be any significant difference between the price of DRU goods in the Netherlands and in France.

As the agreement which gave rise to the Commission's decision was notified in time in accordance with the provisions of Regulation No. 17, exemption from the ban will be retrospective. Exemption was granted for an initial period of five years, as the Commission believes that the situation which influenced its decision will not change within that time.

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This decision follows a number of Commission decisions concerning exclusive dealing arrangements. These define the circumstances in which the provisions of Article 85 are applicable to such agreements. The best known in this connection is the Grundig-Consten case, in which the Commission issued a decision prohibiting the agreement in September 1964. (See the official gazette of the European Communities, No. 161, 20 October 1964.) A decisive factor in this case was that, in addition to sole selling rights, the firm of Consten was granted absolute territorial protection by means of export bans and other measures intended to create a monopoly in imports of Grundig products into France. In contrast to this, the agreement that is the object of the new decision contains no such absolute territorial protection. Purchasers in France thus remain free to obtain DRU products by other means than through the firm that has been granted sole selling rights in France.

The Commission's decision is of fundamental importance for two reasons. In the first place, it has been confirmed by means of a decision that exclusive dealing contracts without absolute territorial protection can also be restrictions of competition in the sense of Article 85(1). This has always been the view of the Commission.

Secondly, the decision has confirmed what the Commission had already declared at the time of its Grundig-Consten decision, namely that an exclusive dealing system may be authorized provided that it does not afford absolute territorial protection.

Thus the exclusive dealing system in itself is not impugned. The Commission's decision is, rather, directed at certain forms of the system only, and particularly against any hermetic sealing-off of domestic markets which would make it possible for the differences between price levels in the several Member States to be maintained even after completion of the common market.

The recent Council Regulation No. 19/65/CEE (official gazette of the European Communities, No. 36, 6 March 1965) empowered the Commission to grant block exemptions from the ban of Article 85 for exclusive dealing contracts of the type with which the new decision is concerned. According to this regulation, the Commission shall grant block exemptions only when it has acquired sufficient experience by means of decisions on individual cases and when it has determined what groups of agreements can be regarded as fulfilling the conditions of Article 85(3). The new decision is a further step towards such block exemption.