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INFORMATION MEMOArticle 85: Block exemption of
certain classes of agreement

The regulation authorizing the Commission to grant block exemption to certain classes of agreement, which was adopted by the Council on February 2, 1965, on the basis of a Commission proposal, represents a further important step on the road to a common European system of competition. It is the first regulation laying down details of the procedure for applying Article 85(3) of the Treaty to specific classes of restrictive agreement. Article 85(3) sets out the conditions which must be fulfilled before the ban on agreements laid down in Article 85(1) can be declared inapplicable to restrictive agreements between enterprises: such agreements must contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress, while allowing consumers an equitable share in the resultant benefits; they must neither impose on the enterprises concerned restrictions not indispensable to the attainment of these objectives, nor may they enable the enterprises to eliminate competition in respect of a substantial proportion of the goods concerned.

The new regulation empowers the Commission to issue such exemption declarations not only in specific concrete cases but also in the form of block exemptions granted through special regulations. The new procedure may be used both for bilateral exclusive dealing agreements and for licensing contracts, provided always that such agreements or contracts fulfil the four conditions of Article 85(3). Agreements belonging to these classes - the classes are to be specified in a Commission regulation - will, once a regulation granting exemption to the relevant class has been adopted, no longer be subject to compulsory notification. The enterprises may, however, at their discretion apply for individual clearance under Regulation No. 17.

Because of the need to take account of the economic interests of the enterprises affected by a measure of block exemption, the Council regulation authorizing the Commission to take such action lays down that the essential content of any exemption regulation the Commission intends to adopt must be made public beforehand.

This gives enterprises an opportunity to make their comments to the Commission. Where individual agreements have effects incompatible with the four conditions of Article 85(3) the Commission has power under the new regulation to withdraw the benefit of block exemption for these agreements by means of an individual decision, or to make their legality subject to compliance with specified conditions or stipulations. Block exemption granted for a given period may be altered or withdrawn where the situation has changed to a material extent after such exemption was granted.

The European Parliament and the Economic and Social Committee gave general approval to the Commission's original proposal of February 26, 1964. The Commission had put forward a more comprehensive version under which it would have been given power to grant block exemption to other restrictive agreements between enterprises, provided such agreements fulfilled the exemption requirements of the Treaty. But even in the form in which it has now been adopted by the Council of Ministers the regulation, confined to exclusive dealing and licensing agreements, will make a notable contribution to "simplifying administrative control to the greatest possible extent" as required by the Treaty, and particularly to solving the problem posed by the need to rule on a large number of notifications of exclusive dealing agreements.

The regulation will also help to fill in further detail in the Treaty rules on competition. It confirms the Commission's practice as reflected in decisions, which has been to avoid any systematic refusal of exemption in the case of "pure" exclusive dealing agreements. Taken with the decisions on specific cases already issued or due to be issued in the near future, the block exemptions granted under the new regulation will help to bring out more clearly the line of demarcation between restrictions on competition which are permissible and those which are not.
