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IP (66) 87 rev.PRESS RELEASECommission publishes a draft regulation on group exemption for exclusive dealing agreements

The EEC Commission has published in the official gazette of the European Communities the draft of a regulation on the group exemption of exclusive dealing agreements. All interested parties may express their views on the draft by 31 October 1966.

Under the regulation envisaged a large portion of the roughly 32.000 exclusive dealing agreements notified to the Commission will be automatically exempted from the cartel prohibition in the EEC Treaty. Numerous other exclusive dealing agreements which at present do not fulfil the conditions for exemption will be rewritten in a form which will qualify for group clearance. Once the regulation has been issued, contracts falling under the group exemption will no longer need to be notified. Many enterprises will therefore conclude their future contracts in such a way as to conform with the requirements for block exemption.

The exemption is to apply to bilateral exclusive dealing agreements and concerted practices covering, for a specific concession area in the Common Market, either an undertaking to deliver exclusively to or purchase exclusively from one or more of the parties to the agreement, or mutual delivery and purchasing obligations. In addition, these exclusive dealing agreements may contain the following undertakings affecting competition: a prohibition on the sale of competing articles or on prospecting for customers outside the exclusive sales territory and an obligation to use particular trade marks or a particular presentation. More far-reaching limitations on competition, such as export prohibitions, agreements with equivalent effect concerning the use of trade marks or resale price maintenance will not qualify for group exemption.

Moreover, agreements will qualify for exemption only if the merchandise covered by the agreement is in effective competition with like goods in the area concerned, if the sale by other manufacturers of like goods at the trading level of the exclusive dealer is not made substantially more difficult, if manufacturers of competing goods do not transfer sales operations between themselves, if the exclusive dealer does not exclude groups of customers from supply without legitimate reasons, if it is not made difficult for dealers and users to obtain the articles covered by the agreement elsewhere in the Common Market or if the exclusive dealer's possibilities of supplying customers outside the area covered by the agreement, are not restricted.

The draft now published takes into account the decisions so far issued by the Commission and the judgments of the Court of Justice in cases 56/65 (*Société Technique Minière v. Maschinenbau Ulm*), 56 and 58/64 (*Grundig and Consten v. Commission*) and 32/65 (*Italian Government v. Council and Commission*), which dealt with questions of exclusive sales arrangements.

The Commission bases its draft on the following considerations: in the present situation exclusive dealing agreements in international trade improve the distribution of goods, because the entrepreneur can concentrate his sales operations, is not obliged to maintain business connections with numerous traders and, by dealing with only one, can more easily overcome difficulties which stem from linguistic, legal or other differences. Appointing an exclusive dealer makes it easier to promote an article and in general leads to intensive cultivation of the market and regularity of supply, backed up by a more rational distribution. In addition, the appointment of a single dealer who, on behalf of the manufacturer, meets expenditure for sales promotion, the introduction of new products, after-sales service and warehousing, offers an opportunity to many small and medium-sized enterprises to compete on the market.

As a rule such exclusive dealing agreements also reserve to users an equitable share in the benefits resulting therefrom, because the more efficient distribution of goods is a direct advantage to them and their economic or supply situation is improved by it, as they can for example obtain products manufactured abroad more swiftly and conveniently. Moreover it is to be expected that, provided there is effective competition, a reduction in costs through exclusive sales arrangements will lead to some reduction in prices to the consumer.

The group exemption system is to apply until 31 December 1971, i.e. for about five years. After the expiry on 31 October 1966 of the time-limit for comments on the draft, the Commission will again refer to the Consultative Committee on cartels and monopolies before deciding on the final wording of the regulation, which is therefore unlikely to be issued before the end of the year.

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