

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 December 1978

relating to a proceeding under Article 85 of the EEC Treaty (IV/93 — EMO)

(79/37/EEC)

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 Regulation No 17 of 6 February
1962⁽¹⁾, and in particular Articles 6 and 8 thereof,

Having regard to Commission Decision 69/90/EEC⁽²⁾
pursuant to Article 85 (3) following the notification
submitted on 20 September 1962, as required by
Article 2 of Regulation No 17, by the European
Committee for Cooperation of the Machine Tool
Industries (CECIMO), Brussels, concerning decisions
to organize European machine tool exhibitions
(EEMOs), subsequently restyled EMOs (expositions de
la machine-outil), notably those concerning the partici-
pation of exhibitors,

Having regard to the applications for renewal of the
Commission Decision submitted on 1 July 1975 and
2 April 1976 by CECIMO's Secretary-General,

Having published CECIMO's basic rules on participa-
tion in these exhibitions in *Official Journal of the
European Communities* No C 66 of 15 March 1978,
pursuant to Article 19 (3) of Regulation No 17,

Having regard to the opinion of the Advisory
Committee on Restrictive Practices and Dominant
Positions delivered pursuant to Article 10 of Regula-
tion No 17 on 26 September 1978,

Whereas :

A. The facts

1. CECIMO, a *de facto* association established in
1950, consists of the following national trade associa-
tions of machine tool manufacturers :

Fachverband der Maschinen- und Stahlbauindustrie
Österreichs, Vienna, Austria ;

Syndicat des constructeurs belges de machines-outils
pour le travail des métaux (Sycomom), Brussels,
Belgium ;

Verein Schweizerischer Maschinen-Industrieller
(VSM), Zurich, Switzerland ;

Verein Deutscher Werkzeugmaschinenfabriken e.V.
(VDW), Frankfurt-on-Main, Federal Republic of
Germany ;

Foreningen af Danske Værktøjsmaskinfabrikanter,
Copenhagen, Denmark ;

Asociación Española de Fabricantes de Máquinas-
Herramientas, San Sebastián, Spain ;

Syndicat des constructeurs français de machines-outils
(SCFMO), Neuilly-sur-Seine, France ;

The Machine Tool Trades Association (MTTA), Metal-
working Machine Tool Manufacturer Section, London,
United Kingdom ;

Unione Costruttori Italiani Macchine Utensili
(UCIMU), Milan, Italy ;

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No L 69, 20. 3. 1969, p. 13.

Mekaniske Verksteders Landsforening, Oslo, Norway ;

Vereniging voor Metaal- en Electrotechnische Industrie (FME), Groep Gereedschapswerktuigen, The Hague, Netherlands ;

Centro de Cooperação dos Industriais de Maquinas-Ferramentas (Cimaf), Oporto, Portugal ;

Föreningen Svenska Verktygmaskintillverkare, Stockholm, Sweden.

2. Most machine tool manufacturers belong to the national associations in their respective countries. The associations must inform CECIMO of their rules on eligibility for membership ; CECIMO membership is open exclusively to manufacturers of machine tools for the working of metal.

3. Decisions on acceptance or refusal of new CECIMO members are taken by a central committee.

4. CECIMO's aims, laid down when it was established, may be summarized as follows :

- (i) joint studies on systems and steps to be taken with a view to developing opportunities for machine tool investment in all member countries ;
- (ii) creating the facilities required to make such studies well known ;
- (iii) joint organization of international trade events, the most important being the exhibition, so that each manufacturer's efforts can be more effective and less burdensome ;
- (iv) in conjunction with national associations, streamlining the organization of fairs and exhibitions in each country so that, if possible, there will be only one such event to provide a source of information on machine tools for national customers.

5. Both the 1962 notification by CECIMO and the applications for renewal of the exemption given under Article 85 (3) by the Commission Decision of 13 March 1969 concern (iii) and (iv).

6. Up to 1971, CECIMO has sponsored 12 European Machine Tool Exhibitions (EEMOs). That year CECIMO decided to upgrade its hitherto European exhibitions, making them completely international by opening them up to manufacturers of machine tools and allied equipment everywhere in the world. The initials of the exhibitions were consequently changed to EMO (Exposition de la Machine-Outil). The same initials are used whatever the language of the country organizing the exhibition.

7. The rules governing EMOs are basically as follows :

- (a) EMOs are organized by CECIMO every other year in Paris, Hanover and Milan in rotation and the physical arrangements are entrusted to the member association established in the country in which the exhibition is being held ;
- (b) the equipment displayed at EMOs consists of machine tools for metal-working, currently defined by CECIMO as follows :

'A metal-working machine tool is a power-driven machine, not portable by hand, powered by an external source of energy, designed specifically for the working of metal either by cutting, forming, physico-chemical processing or a combination of these techniques.'

This definition does not cover :

- bench grinders and polishers,
- watchmakers' lathes, diameter not exceeding 100 mm,
- machine tools which on account of their design are not suitable for metal working,
- machine tools operated by hand or foot,
- all bench machine tools, i.e. machine tools which can be removed from their bases,
- machine tools which on account of their design are suitable only for manufacturing wrist watches or jewellery,
- machine tools which on account of their design are suitable only for servicing brake-drums, brake-discs, valve seats and cylinders for motor-vehicles,
- universal punching and shearing machines and reinforcing-bar cutters.

The above list applies to the third EMO to be held in Milan in 1979. It could be extended to take account of technical developments in the industry. Compared with the situation at the time of the previous decision, this list has been extended : the last four types of machine tool were previously covered by the definition and hence by the prohibition in Rule I/7 (see (c) (i)).

- (c) machine tool manufacturers exhibiting at EMOs must handle at least two of the three operations — design, manufacture and sale — on the exhibited equipment ; they must also satisfy the following conditions :

- (i) if they exhibit machine tools at an EMO, they must undertake to refrain from directly or indirectly exhibiting machine tools in any other fair, exhibition or show organized the same year in any country where the national machine tool manufacturers' association is a member of CECIMO ('indirect' exhibition means exhibition by agents, representatives, dealers, retailers or any other intermediary); however, the choice between participation at EMO and participation in any other event is entirely free, even for manufacturers who are members of a national association belonging to CECIMO (Rule I/7).

The following are not considered as fairs, exhibitions or shows: display by a manufacturer on his premises, or those of his subsidiaries, of machines he has manufactured; display by a distributor, representative or dealer, on his premises or premises he uses, of machines he sells. Moreover, CECIMO may, on request, authorize participation in an exhibition organized not for sales purposes but exclusively for:

- (a) a historical display or a display of regional production;
- (b) scientific or educational purposes (for example, conferences, universities);
- (c) the public interest (defence, safety at work, ergonomics, environmental protection).

The number and types of machines will depend on the nature of the event;

- (ii) any manufacturer bound by a licensing or technical cooperation agreement may exhibit the machine tools that form part of the subject-matter of such agreement at EMOs. However, if in the same year one or another party exhibits one or more of the machines forming the subject-matter of the agreements at another fair, exhibition or show organized by a CECIMO member country, the other party is also excluded in respect of all or that part of his production which is covered by the licensing or technical cooperation agreement;
- (iii) where multinational companies or companies that are interconnected in the same group and are financially dependent on each other participate in an EMO, the above rule applies to all the constituent parts of the multinational company or to all the group companies, as the case may be;
- (iv) if machine tools designed and/or produced by a manufacturer exhibiting at an EMO are also

sold under another trademark or under a name other than that used by the exhibitor at the EMO, the obligation at (i) above applies to the manufacturer exhibiting at the EMO as regards all the trademarks and names under which the machine tools he produces and/or designs are sold;

- (d) non-compliance with the rules results in automatic exclusion from an EMO or, if the infringement was committed after an EMO was held, exclusion from the following EMO. The deposit paid on application for admission is also forfeit;

- (e) a manufacturer who takes part in an EMO may, during the same year, place machine tools of his manufacture at the disposal of exhibitors at other fairs, exhibitions or shows held in a member country of CECIMO, provided that:

- (i) such machine tools may be used solely to demonstrate machine tool implements, accessories or fittings;
- (ii) all trademarks or identifying marks must be removed or concealed;
- (iii) no commercial activities (advertising, distribution of catalogues, offers, etc.) may be carried on in respect of such machines;
- (iv) the presence of such machine tools at the abovementioned events must be authorized beforehand by the CECIMO General Commissariat.

The General Commissariat is empowered to carry out checks to ensure, among other things, that the loan and display of such machines comply fully with the EMO rules;

- (f) the General Commissariat authorizes admission to EMOs. In the event of objections, it submits the application for admission to CECIMO.

At the latest five months before the opening of an EMO, exhibitors receive confirmation of admission. Admission lapses if the terms on which it was granted are no longer respected, notably if all conditions set out in the Rules are not fulfilled, if the exhibitor did not comply with the Rules during a previous EMO, if his solvency is in doubt or if his participation is likely to endanger the rules of fair competition.

Rights connected with admission to the exhibition are not transferable.

If an exhibitor is excluded from an EMO, or if his participation in a special event or fair is refused, the CECIMO General Secretariat will announce its decision by registered letter, specifying the reasons for the refusal. The exhibitor may appeal against the decision within 14 days, either by taking his appeal to a board of arbitration, consisting of an assessor appointed by the exhibitor, an assessor appointed by CECIMO and an independent arbitrator, or before the court having jurisdiction at the place where the EMO is held;

- (g) stands are allocated by the national association organizing the exhibition; the same association determines the charges and other conditions governing the letting of stands.

8. Until the first EMO was held in Paris in June 1975, no application for admission was formally turned down and no applicants were formally excluded (although a number of recommendations were addressed by CECIMO to certain exhibitors who infringed Rule I/7). At that exhibition and at the Hanover exhibition in September 1977, a number of exhibitors were excluded by CECIMO for infringement of the rules. As a result, and to provide for a more objective check on the fair application of EMO rules, CECIMO agreed to introduce the above arbitration system (see 7 (f)), which allows firms excluded from the EMO to appeal to a body independent of CECIMO.

9. Alongside the development of specialized events and shows, there is currently a trend towards a greater number of non-specialized local and regional fairs. The Commission accordingly approached CECIMO which agreed to an additional clause reducing the scope of the restrictive Rule I/7 in the case of participation in some of these events (see second and third paragraphs of 7 (c) (i) above).

10. CECIMO estimates that on average the costs for a machine tool manufacturer to exhibit his machine tools at an EMO are only 5 to 10 % higher than the costs of participating with the same machines at other exhibitions of national or regional character.

The majority of machine tool manufacturers in the Community are smaller or medium-sized undertakings. They are, however, strongly export orientated and about 40 % of the EEC production of machine tools are sold outside the Community. Almost half of the visitors at the EMO in 1977 came from outside the EEC.

It is generally estimated that a machine tool manufacturer who has a certain amount of export will have to

exhibit his machine tools at at least four or five national and regional fairs or exhibitions during the EMO-free years in order to remain competitive. The aggregate costs of such participation by far exceed the costs incurred by participating at the EMO where, furthermore, interested customers and competitors from the whole world are present.

11. Following the publication on 15 March 1978 of the notice pursuant to Article 19 (3) of Regulation No 17, certain comments were received from third parties. After having examined these comments, the Commission asked CECIMO to make certain amendments to the EMO rules which has been done.

B. Applicability of Article 85 (1)

12. For the reasons previously outlined in the Decision of 13 March 1969 the following measures taken by CECIMO on the EMO rules constitute a decision by an association or associations of undertakings which has the object and effect of restricting competition within the common market:

- (a) the undertaking, by machine tool manufacturers having displayed their machines at the EMO, to take part neither directly nor indirectly — except in certain circumstances and with special authorization from CECIMO — in any other fair, exhibition or show organized that same year in one of the countries whose national machine tool manufacturers' association belongs to CECIMO;
- (b) exclusion from the EMO of any manufacturer who is a party to a licensing agreement concerning machine tool manufacture, where the other party has taken part during the year in other exhibitions of such machines, even in his name alone, in one of the CECIMO member countries;
- (c) exclusion from the EMO of all firms in one same group or multinational company where one firm alone has displayed, during the year when the EMO is held, machine tools at other exhibitions in a CECIMO member country;
- (d) exclusion from the EMO of any manufacturer whose machine tools have been displayed at other fairs, exhibitions or shows by agents, resellers or any other intermediary;
- (e) the agreement by the CECIMO General Secretariat that machine tools displayed at an EMO may be made available to exhibitors at fairs, exhibitions or shows in CECIMO member countries, to demonstrate tooling or accessories, with the obligation, in all cases, to remove the manufacturer's trademark.

As a result organizers of exhibitions and fairs in Community countries other than those where the EMO is held cannot display the machine tools on show at the EMO at their exhibitions, except in special circumstances and with CECIMO authorization (see 7 (c) (i)). One year in two the EMO rules thus restrict competition between persons providing services, the organizers of exhibitions and fairs.

One year in two the promotional activity of machine tool manufacturers is restricted if they exhibit at the EMO. This also curtails opportunities for manufacturers taking part in the EMO to do business elsewhere that same year by taking part in other fairs and exhibitions.

Competitive activity of machine tool manufacturers' distributors is also restricted. Every other year, if a manufacturer displays his machine tools at the EMO, no distributor of his machine tools may show them at any other event in CECIMO member countries — except in special circumstances and with special CECIMO authorization. Two competing machine tool distributors operating on the same market may as a result be in different competitive positions according to whether their respective manufacturer has directly or indirectly taken part in the EMO or not.

13. These restrictions on competition may affect trade between Member States.

- (a) In odd-numbered years organizers of fairs and exhibitions in Community countries have only a very limited range of machine tools to attract visitors, since most of the major tool manufacturers take part in only one exhibition, EMO.
- (b) Machine tool manufacturers wishing to enter a specific market or having new products to promote and sell cannot take part in other international fairs and exhibitions which could help them enter into contact and do business with traders in other countries.
- (c) Every other year machine tool manufacturers' distributors who have taken part in the EMO cannot display machine tools at other fairs and exhibitions in CECIMO member countries, consequently losing a major opportunity of

contacting their customers and doing business in these countries.

- (d) This situation also creates difficulties for the customers of machine tool manufacturers, for whom it is not always easy to travel abroad to see machine tools they may wish to buy.

C. Applicability of Article 85 (3)

14. CECIMO's decisions on the EMO rules satisfy the tests of Article 85 (3) for the following reasons:

- (a) CECIMO's activities concerning organization of EMOs must be considered as a rationalization of participation in fairs and exhibitions; this is particularly important in a business sector in which such participation is particularly costly:
 - (i) by means of the EMO almost all machine tools of manufacturers of a certain size are grouped together and available for comparison. A complete overall picture of the sector is accordingly provided. This encourages manufacturers to tailor their ranges in the best way possible to the very varied demand for machine tools and to do a considerable amount of business, expending a minimum on promotion;
 - (ii) although expenses incurred by participation at the EMO are generally somewhat higher than those for participation in other exhibitions and national and local fairs, they should be compared only with the total expenses a manufacturer would incur by taking part in a whole series of other fairs and exhibitions giving him the same commercial results. In view of the fact that most of the machine tool manufacturers are small or medium-sized undertakings and at the same time strongly export orientated it is of particular importance for their promotion costs that they can every second year limit their participation at exhibitions to one where they have the opportunity of showing their machine tools to competitors and potential customers from the whole world. In even-numbered years they must normally envisage participating at four or five different exhibitions without being assured of the same world wide visiting to any of them.

Expenses incurred by taking part in fairs and exhibitions, added to the cost price of the machine tools, will therefore be considerably lower on account of EMO participation.

As regards the direct interests of machine tool manufacturers, all producers still remain free to choose the promotional events they consider most profitable in even-numbered years and the EMO in odd-numbered years; besides it is now possible for the manufacturer to obtain a special authorization to exhibit his machine tools at other exhibitions or fairs even though he also exhibits them at the EMO;

- (iii) as regards the activities of machine tool manufacturers' distributors, they gain at least indirectly an advantage if the machine tool manufacturer they represent takes part in the EMO, because the presence of leading manufacturers attracts a much wider range of potential customers and they can profit by the situation straight away. This is even more so when they are themselves present at the EMO with their manufacturer which is normally the case.

It follows that the EMO rules contribute to improving the distribution of goods and promoting economic progress;

- (b) by the regular concentration of the bulk of world machine tool production in one single place but in rotation in different countries, as actually achieved by means of the EMOs, interested users can avoid excessive travelling and instead make a single trip to see all the machine tools they are interested in, possibly even buying them thanks to direct contacts with exhibitors. On account of the exemptions granted for the display of certain machines in local events, small businesses not attending the EMO may see the machine tools of special interest to them at local fairs. Moreover, a reduction in the number of fairs and exhibitions attended helps to reduce the advertising expenditure which is incorporated in the price of machine tools. Their cost price is therefore contained and with it, in view of the keen competition on this market, the price ultimately paid by the user.

The EMO rules, therefore, bring sufficiently extensive direct advantages for users to derive a fair

share of the benefit resulting from the rationalization produced by the EMO;

- (c) the restrictions arising from the undertakings given by the machine tool manufacturers exhibiting at the EMO, or by their distributors, not to take part in any other exhibition in odd-numbered years, except in exceptional circumstances and with prior authorization from CECIMO, are essential to the achievement of rationalization in the display of machine tools at fairs and exhibitions. Without these restrictions the rationalization effects would be largely reduced (if not eliminated) because the manufacturers who wish to exhibit at the EMO would have no reason for not being present at a number of other exhibitions or fairs where those of their competitors who are not participating at the EMO were exhibiting. Furthermore, this provision does not go beyond the bounds of what is necessary to attain the objective since in even-numbered years manufacturers and distributors are free to exhibit wherever they wish, which avoids the drawbacks of an over-rigid system, and also because in EMO years they may obtain authorization from CECIMO to exhibit some of their machines elsewhere also.

Account must be taken in this connection of the limited number of locations suitable for organizing a machine tool exhibition, which requires quite substantial material resources.

It must also be borne in mind that CECIMO modified the restrictions by exempting all bench machine tools from EMO Rule I/7 and giving manufacturers and their intermediaries the opportunity to display some of their machine tools at other non-specialized local fairs and exhibitions, without their whole range being excluded from the EMO.

The EMO regulations do not therefore impose restrictions which are not indispensable to the attainment of the above objectives;

- (d) for organizers of fairs and exhibitions machine tools only represent one form of promotion among others; moreover all manufacturers remain free, even in the years when the EMO is held, to choose between the EMO and other events:

- (i) organizers of fairs other than CECIMO may organize, one year in two, exhibitions in which all those interested are free to take part and in EMO years they can count on the participation of certain machine tool manufacturers who have not exhibited at the EMO or who have obtained special authorization from CECIMO;
- (ii) the fact that machine tool manufacturers (or their distributors) are obliged to make a choice does not eliminate competition between the undertakings concerned, particularly as CECIMO has made provision for authorizing them to exhibit elsewhere even in EMO years.

CECIMO has therefore not eliminated competition between the organizers of fairs or between sellers of machine tools.

15. The Commission Decision of 13 March 1969 may accordingly be renewed, pursuant to Article 8 (2) of Regulation No 17, since the tests of Article 85 (3) of the Treaty are still satisfied.

D. Applicability of Articles 6 and 8 of Regulation No 17

16. The applications for renewal of the Commission Decision, pursuant to Article 85 (3), were submitted by CECIMO before 31 December 1978, the date the Decision expires. Pursuant to Article 6 (1) of Regulation No 17, the Commission Decision may take effect from 1 January 1979.

17. When fixing the duration of validity of the Decision, pursuant to Article 8 (1) of Regulation No 17, the Commission must take account of the type of business in question and, notably, the fact that EMOs are held every two years. A 10-year period may therefore be fixed.

18. Pursuant to Article 8 (1) of Regulation No 17, obligations should be attached to the Decision, enabling the Commission to monitor the application of Rule I/7 by CECIMO.

In EMO years, CECIMO must be obliged immediately to notify all documents or other information on cases

of refusal of admission or exclusion of a manufacturer from the EMO or a refusal to authorize a manufacturer to exhibit directly or indirectly some of his machines elsewhere during an EMO year. Moreover, CECIMO and all national associations of machine tool manufacturers in the Community belonging to CECIMO must inform the Commission about all exhibitions and fairs which may be arranged or sponsored, in the years when the EMO is not held, by a national association of machine tool manufacturers in the Community who is a member of CECIMO and in particular submit in due time before the exhibition or fair is held all rules and regulations governing access to or exclusion from that exhibition or fair,

HAS ADOPTED THIS DECISION:

Article 1

It is hereby declared, pursuant to Article 85 (3) of the Treaty establishing the European Economic Community, that the provisions of Article 85 (1) are not applicable to the EMO rules relating to exhibitors' participation in other fairs or events held in Member States of the European Economic Community.

Article 2

The following obligations are attached to the declaration set out in Article 1:

- (a) CECIMO shall immediately inform the Commission of any case of refusal to admit or exclusion of a machine tool manufacturer from an EMO or any case of refusal to authorize the manufacturer to exhibit some of his machine tools elsewhere during a year when an EMO is held. It shall keep the Commission informed of developments in such cases and decisions taken by CECIMO or by the arbitration bodies;
- (b) CECIMO and all national associations of machine tool manufacturers in the Community belonging to CECIMO shall furthermore inform the Commission of all exhibitions or fairs arranged or sponsored by them in years when an EMO is not held and in due time before such exhibition or fair takes place submit all rules and regulations governing access to or exclusion from that exhibition or fair.

Article 3

This Decision shall take effect on 1 January 1979 and shall remain in force until 31 December 1988.

Article 4

This Decision is addressed to the European Committee for Cooperation of Machine Tool Industries (CECIMO), Brussels, and the following national associations of machine tool manufacturers currently belonging to CECIMO:

- Fachverband der Maschinen- und Stahlbauindustrie Österreichs, Vienna, Austria;
- Syndicat des constructeurs belges de machines-outils pour le travail des métaux (Sycomom), Brussels, Belgium;
- Verein Schweizerischer Maschinen-Industrieller (VSM), Zurich, Switzerland;
- Verein Deutscher Werkzeugmaschinenfabriken e.V. (VDW), Frankfurt-on-Main, Federal Republic of Germany;
- Foreningen af Danske Værktøjsmaskinfabrikanter, Copenhagen, Denmark;
- Asociación Española de Fabricantes de Máquinas-Herramientas, San Sebastián, Spain;

- Syndicat des constructeurs français de machines-outils (SCFMO), Neuilly-sur-Seine, France;
- The Machine Tool Trades Association (MTTA), Metalworking Machine Tool Manufacturer Section, London, United Kingdom;
- Unione Costruttori Italiani Macchine Utensili (UCIMU), Milan, Italy;
- Mekaniske Verksteders Landsforening, Oslo, Norway;
- Vereniging voor Metaal- en Electrotechnische (FME), Groep Gereedschapswerktuigen, The Hague, Netherlands;
- Centro de Cooperação des Industriais de Máquinas-Ferramentas (Cimaf), Oporto, Portugal;
- Föreningen Svenska Verktygmaskintillverkare, Stockholm, Sweden.

Done at Brussels, 7 December 1978.

For the Commission

Raymond VOUEL

Member of the Commission
