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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 November 1981

relating to a proceeding under Article 85 of the EEC Treaty

(IV/29.236 — Sopelem-Vickers)

(Only the English and French texts are authentic)

(81/1066/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 Council Regulation No 17 of 6 February 1962 ⁽¹⁾, and in particular Articles 4, 6 and 8 thereof,

Having regard to Decision 78/251/EEC of 21 December 1977 ⁽²⁾ by which the Commission granted an exemption pursuant to Article 85 (3), for the period up to 26 February 1981, to three contracts (hereinafter referred to as 'the Agreement') concluded on 17 April 1975 between the Société d'optique, précision, électronique et mécanique (Sopelem) SA, Paris ('Sopelem'), Vickers Ltd, London ('Vickers'), and Microscopes Nachet SA, Paris ('Nachet'),

Having regard to the application for renewal of that exemption filed by the said undertakings on 27 October 1980,

Having regard to the publication of a summary of the Agreement, as required by Article 19 (3) of Regulation No 17, in *Official Journal of the European Communities* No C 223 of 3 September 1981, page 3,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered pursuant to Article 10 of Regulation No 17 on 13 October 1981,

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Whereas the relevant facts are as follows:

1. The Agreement relates to technical cooperation and the exchange of expertise in research and development in the field of microscopy. Its main objective is to enable the parties to it to achieve technical developments in sophisticated microscopes and very advanced technology.

The parties to the Agreement are all large manufacturers of a wide range of high-technology products to whom microscopes are of only minor importance. Competition in microscopes within the common market is intense, and the parties have a very limited market share.

The technical cooperation involved takes the form of coordination of activities through regular contact between the parties and through the exchange of expertise and know-how in the field while each of the parties freely carries on its own research,

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No L 70, 13. 3. 1978, p. 47.

development and manufacturing activities. Some degree of component standardization is also provided for, allowing mutual interchangeability of parts in individual instruments, together with specialized division of production aimed at avoiding irrational duplication. Although the Agreement originally provided otherwise, each party distributes its own goods in the common market, except that Vickers distributes Sopelem/Nachet microscopes in the United Kingdom and Ireland, and Nachet distributes Vickers microscopes in France. Cooperation between the parties has not been extended to other fields of activity during the validity of the Agreement.

Further details may be obtained by referring to the recitals in the preamble to Decision 78/251/EEC.

2. The parties to the Agreement have justified their application for a prolongation of the exemption by the need for them to continue their technical cooperation in order to be able to meet constantly increasing competition. Their cooperation is already well-established and has already produced positive results even though it has only been in operation for a relatively short period.

3. The parties have submitted the annual reports required by Article 3 of the Decision in the development cooperation between them under the Agreement. The Commission draws the following conclusions from these reports:

- (a) technical cooperation, based on the regular exchange of the know-how acquired in each party's individual research and development activities, has consisted mainly of the reciprocal use of microscope accessories and parts; this allows longer production runs, and thus somewhat reduced costs. The parties have recently decided, within the framework of the Agreement, to further intensify their joint development programme;
- (b) during the period in which the Agreement has been applied the parties have not increased their respective market shares, even on their home markets. Their main competitors continue to be Japanese and German manufacturers;
- (c) on the distribution side it has been decided that each of the parties should resume its freedom to sell its own products and to choose its distributors in all Community countries, except in France, where Nachet is sole distributor of Vickers

products, and in the United Kingdom and Ireland, where Vickers is sole distributor of Sopelem/Nachet products;

- (d) cooperation between the parties has not been extended to other fields of activity.

4. The Commission has received no observations from third parties following publication of the notice required by Article 19(3) of Regulation No 17.

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5. Decision 78/251/EEC may be renewed pursuant to Article 8(2) of Regulation No 17, as the requirements of Article 85(3) continue to be satisfied.

6. Technical cooperation and cooperation in research and development remain a necessary means for the undertakings concerned to maintain a more comprehensive range of instruments, to avoid unnecessarily increasing production costs of their microscopes and to compete more energetically against large and economically strong manufacturers in other countries. None of the parties could alone secure these advantages, from which consumers will ultimately benefit. The joint distribution system has been changed, substantially reducing its restrictive effects. To derive the fullest benefit from the technical cooperation between them, however, the parties must use one of their number as distributor in the country in which it is better established. The restrictions on competition contained in the current version of the Agreement are thus indispensable to the attainment of the objectives of the Agreement.

7. During the period in which the Agreement has applied the parties' combined share of the market in question in the Community as a whole has remained very limited and the presence of a large number of larger and economically stronger manufacturers rules out the possibility of eliminating competition in respect of a substantial part of the products in question.

8. The operation of Decision 78/251/EEC has shown that the obligations attached to it are sufficient to allow the Commission properly to assess whether the cooperation which the Agreement establishes between the undertakings remains compatible with the competition rules of the EEC Treaty.

9. That Decision should consequently be renewed, for a 10-year period extending to 26 February 1991, and the same obligations should be attached to it,

HAS ADOPTED THIS DECISION:

Article 1

The exemption pursuant to Article 85 (3) of the Treaty establishing the European Economic Community, granted by the Commission by Decision 78/251/EEC, of the Agreement of 17 April 1975 between the Société d'optique, précision, électronique et mécanique (Sopelem) SA, Vickers Ltd, and Microscopes Nachet SA, is hereby renewed for the period 27 February 1981 to 26 February 1991.

Article 2

The undertakings named in Article 1 shall every second year before the end of March send a report to the Commission covering the preceding period. The first of these reports shall be submitted before the end of March 1983 and shall cover the period from 27 February 1981. The reports shall contain detailed information about:

- (a) the practical results in respect of the parties' cooperation and exchange of expertise in research and development of the instruments covered by the Agreement;

- (b) the developments in the production, sales and market shares of each of the parties in each of the Member States of the EEC for each of those instruments;
- (c) the development of trade in those instruments between the Member States, in particular in those Member States where prior to the Agreement the sales of the parties had been minimal;
- (d) price movements, in particular the prices charged by the parties for the instruments covered by the Agreement;
- (e) any changes in the nature of the Agreement on extension of the parties' cooperation to other fields of activity.

Article 3

This Decision is addressed to the following undertakings:

- Société d'optique, précision, électronique et mécanique (Sopelem) SA, Paris,
- Vickers Ltd, London,
- Microscopes Nachet SA, Paris.

Done at Brussels, 26 November 1981.

For the Commission
Frans ANDRIESEN
Member of the Commission