

## COMMISSION DECISION

of 17 November 1981

relating to a proceeding under Article 15 of Council Regulation No 17

(IV/30.211 — Comptoir commercial d'importation)

(Only the French text is authentic)

(82/53/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962<sup>(1)</sup>, and in particular Article 15 (1) (b) thereof,

Having regard to the Commission's letter of 27 October 1978 addressed to Comptoir commercial d'importation (CCI), consisting of a request for information in accordance with Article 11 (3) of Regulation No 17,

Having regard to the reply from CCI dated 17 November 1978,

Having regard to the Commission's decision of 8 May 1981 to initiate a proceeding in this matter.

Having heard the undertaking's concerned in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC<sup>(2)</sup>,

Having regard to the opinion delivered by the Advisory Committee on Restrictive Practices and Dominant Positions on 18 September 1981, pursuant to Article 10 of Regulation No 17,

Whereas :

## I

## FACTS

The facts may be summarized as follows :

## A. THE UNDERTAKING

1. CCI is a company established in Paris under French law. CCI is principally engaged in the import and resale of a wide variety of products. A small part of CCI's business is concerned with electric motors for domestic and industrial vacuum

cleaners supplied by Matsushita Electric Trading Company Ltd (Matsushita) of Japan.

2. These motors are intended for resale to domestic and industrial vacuum cleaner manufacturers who build them into their finished products.

## B. THE COMPLAINT

Between January and August 1978 the Commission was informed that CCI was refusing to supply manufacturers in the United Kingdom with Matsushita electric motors.

In particular the Commission received a copy of a letter from CCI to a United Kingdom manufacturer dated 10 August 1978 in which CCI stated that it could not sell motors to customers outside France.

## The investigation by the Commission

(a) *The Commission's request for information*

On 27 October 1978 the Commission addressed to CCI a request for information pursuant to Article 11 of Regulation No 17. The letter was sent by registered post and contained the standard warning of the penalties provided for by that Regulation should incorrect information be supplied in reply thereto. The substance of the letter was as following :

'The Commission has received information to the effect that the commercial relations between your company and Matsushita-Tokyo give rise to restrictions on trade between Member States of the Community. Certain of these restrictions may amount to infringements of the rules on competitions.

In order to assess the position in the light of Articles 85 and 86 of the Treaty, I shall be grateful if you will supply the following information :

1. A copy of the document or documents which define the nature of your relations with the company Matsushita.
2. ... (Turnover).
3. ... (Matsushita products).

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(2)</sup> OJ No 127, 20. 8. 1963, p. 2268/63.

This request is made pursuant to Article 11 of Council Regulation No 17. Please supply this information within two weeks of receipt of this letter.'

CCI replied to the Commission by registered letter dated 17 November 1978 as follows:

'We acknowledge receipt of your letter of 27 October.

1. We do not have any written agreement governing our relations with Matsushita Electric Trading Co. Tokyo, Japan which supplies us as well as delivering directly to other customers. All products quoted and delivered by our supplier are offered to our French customers and sometimes to foreign customers, without any restriction on sale or resale.

Certain industrial motors meeting the demand of foreign customers are not quoted to us and consequently we cannot offer them.

In principle our business is carried out only in France since we do not have any commercial outlet abroad nor the after sale or service facilities there which users require.

2. ... (Turnover)

3. ... (Matsushita products)

To repeat, we confirm that we are subjected to no restrictions on sale or resale in any country, France or abroad, of Matsushita products, motors included (which represent only 0.3 % of our overall turnover), which are quoted to us and which are supplied to us (...).'

(b) *The inspection by the Commission*

On 7 August 1979 an inspection was carried out at the premises of CCI in accordance with the powers vested in the Commission by virtue of Article 14 (1) of Regulation No 17. CCI had been notified of the Commission's intention and its chairman was present.

During the course of the inspection, CCI provided the Commission with copies of a number of documents including telexes and letters which related to the complaint referred to above.

On 15 August 1979 the Commission carried out a similar inspection at the premises of the United Kingdom manufacturer concerned, and obtained

copies of further correspondence relating to the matter.

(c) *The results of the investigation*

The facts as disclosed by the documents which were obtained by the Commission at the inspections referred to above are as follows:

- (a) CCI is the sole distributor for Matsushita vacuum cleaner motors in France as is shown *inter alia* by a telex sent from Matsushita to CCI on 5 December 1977:

'Of course, we rejected to quote (—), CCI is our only distributor of this item in France'.

- (b) In December 1977 the United Kingdom Matsushita distributor complained to Matsushita of attempts by a French customer of CCI to export Matsushita motors from France to the United Kingdom. Matsushita then informed the distributor and CCI that no motors would be supplied to CCI for re-export to the United Kingdom. An extract from one of the telexes sent by Matsushita to CCI on 9 December 1977 reads as follows:

'Anyway, please study if (...) is going to manufacture in France, otherwise we cannot supply'.

- (c) On 26 July 1978, the director of a United Kingdom manufacturing company made a direct approach to CCI with a view to purchasing about 10 000 electric motors per annum. It appears, however, that the purchases were to be made jointly with a French customer.
- (d) On 26 July 1978 CCI telexed Matsushita with details of the order, requesting authority to supply part of this order to the French customer in Paris and the remainder direct to the United Kingdom.
- (e) On 27 July 1978 Matsushita replied by telex refusing the request because of its commercial relationship with its United Kingdom distributors.
- (f) On 31 July 1978 CCI sent three telexes pressing Matsushita to agree to permit deliveries to the United Kingdom.
- (g) On 3 August 1978 the United Kingdom manufacturer wrote to CCI asking for confirmation of prices and delivery dates.
- (h) On 10 August 1978 Matsushita in full knowledge of the above telexed CCI as follows:

'Considering our relation with the British customer we can't supply Motor(s) to you. If the French customer will manufacture cleaner(s) themselves in France it is possible for us to supply. If they don't accept this proposal please stay away from them ...'

- (i) On 10 August 1978, CCI wrote to the United Kingdom manufacturer as follows :

'Following the meeting with our Mr Versein, and subsequent inquiries to Matsushita, we regret to state that we cannot sell motors to you for manufacturing in UK.'

We are only allowed to sell in France, and we can sell to the French customer the motors they will mount or modify or preassemble etc in France.'

- (j) On 21 August 1978 the United Kingdom manufacturer wrote to CCI as follows :

'In reply to your letter dated 10 August — the contents of which we have duly noted. We are rather amazed that you are not allowed to sell motors to us in England, particularly as we are in the EEC. I would not have thought that there would be any restrictions by the French Government in selling to us. Please let us know whether it is the French Government or Matsushita who do not permit the sale to us of motors.'

- (k) On 6 September 1978 CCI replied as follows :

'Following your letter dated 21 August, we regret to confirm that we are not allowed to sell Matsushita motors out of France. That restriction relies on the fact that we are distributors of Matsushita motors for France, and that our distribution agreement with Matsushita does not allow us to sell in other countries.'

As you know, French regulations oblige us to sell any product we offer on the market, to any French customer who can give evidence of payment. But we are not obliged to sell abroad, and in that special case, Matsushita protects his UK distributor, that is quite correct.'

- (l) On 8 November 1978 CCI informed Matsushita by telex that it was confirmed that the cleaners would be assembled in France. The telex continued :

'Should draw your attention to strong regulations regarding free circulation inside common market. Have got presently an inquiry on that subject. Are mailing to Mr Miki copy of exchange of letters. Should be very cautious.'

The letter from CCI to Matsushita, dated 7 November 1978, stated as follows :

'We send you herewith :

- (a) copy of a letter dated 27 October 1978, sent to us by "Commission des Communautés Européennes", Bruxelles.
- (b) copy of our answer which we intend to send before 18 November.

As per your telexes, reference CIE-1573, 25 October 1978, and CIE-1474, 10 August 1978, we abstained from selling to the UK manufacturer.

We suppose that (the United Kingdom manufacturer) has raised a complaint.'

- (m) On 8 November 1978, the chairman of CCI, Mr Pierre Kahn, wrote to Mr Gilles Paris, the technical director of CCI who had signed most of the telexes addressed to Matsushita, as follows :

*'With regard to the letter from the European Commission*

Attached :

- 1. EEC letter of 27 October 1978.
- 2. Copy of my draft reply of November 1978 which will be sent on the 17.
- 3. Copy of my letter of 7 November to Mr Niki.

If I receive a telex from Mr Niki before the 17. I may change certain terms of my letter. The letter has however been carefully considered and having regard to the letters sent to (the United Kingdom manufacturer) I have no alternative but to put up a screen (mentionner un paravent).

You may bring a copy of these letters on Thursday next in case you see Mr Niki or one of his close colleagues.'

- (n) On 14 November 1978 CCI telexed Matsushita complaining about delay in delivery of the order to the French customer. The telex states :

'Before placing order we received instructions from you to enter order only if it was for production in France for French market. So we did. We do not understand why you want to delay shipment as we carefully followed your instructions. By the way we have now troubles with Commission des Communautés Européennes because we followed your instructions and delivery problems with you for same reason.'

### The reply of CCI to the statement of objections

In its reply to the statement of objections and at the subsequent hearing CCI maintained *inter alia* that its letter dated 17 November 1978 did not contain false information in response to the request of the Commission. The letters to the United Kingdom manufacturer dated 10 August 1978 and 6 September 1978 were incorrect and written in error by a technician acting as a holiday replacement who was unaware of the true situation. The matter was therefore an isolated incident. CCI claims that the request for information was, in any event, unclear and imprecise and therefore did not comply with the requirements of Articles 11 and 15 of Regulation No 17.

At the hearing, however, Mr Alain Kahn, a director of CCI, stated that the technician referred to was in fact Mr Gilles Paris, the technical director of CCI.

On 18 August 1981, after the hearing, CCI informed the Commission by letter that Matsushita had agreed, on 18 October 1979, that CCI could supply the United Kingdom manufacturer. The manufacturer in question also informed the Commission that it had made arrangements which ensured a satisfactory supply.

## II

### LEGAL APPRECIATION

Article 15 (1) (b) of Regulation No 17 provides that the Commission may by decision impose on undertakings fines of 100 to 5 000 units of account where, intentionally or negligently, they supply incorrect information in response to a request made pursuant to Article 11 (3).

Under Article 11 (1) of Regulation No 17 the Commission is empowered to obtain from undertakings all information necessary for its enquiries.

For this purpose the Commission in practice sends in the first instance a written request for information to

the undertaking concerned. Article 11 (3) requires the Commission to state in its request the legal basis and purpose thereof and also the penalties provided for in Article 15 (1) (b) for supplying incorrect information.

Article 11 (5) provides for a time limit to be fixed by the Commission for the supply of such information.

For the purposes of Article 15 (1) (b), therefore, the definition of a request for information must extend to the complete document containing all the elements provided for in Article 11 (1), (3) and (5) and should not be limited to the particular questions seeking information. In this context the response to a request for information should be considered in its entirety and such consideration should not be limited to the specific answers to individual questions set out in the Commission's request.

It follows, therefore, that for the purposes of Article 15 (1) (b), a response to a request for information must be taken to include not only the answers to the actual questions asked by the Commission, but also to information supplied which goes beyond the particular scope of those questions as well as information supplied by the undertaking on its own initiative which does not directly relate to any specific question asked by the Commission.

CCI is an undertaking within the meaning of Article 15 of Regulation No 17. On 27 October 1978 the Commission sent a request for information to CCI pursuant to Article 11 (3) of Regulation No 17 and CCI replied thereto on 17 November 1978.

In the introduction to its request, the Commission informed CCI that it had received information that the commercial relations between CCI and Matsushita could give rise to restrictions on trade between Member States which might infringe the rules on competition.

The Commission requested *inter alia* a copy of the document or documents which defined the commercial relationship of these two undertakings. The request also set out the legal basis for the request as well as the penalties for supplying incorrect information.

In its reply CCI supplied no documents relating to its relations with Matsushita and stated that there was not written agreement which governed its relationship with Matsushita, adding that its relations with Matsushita involved no restriction on the sale or resale of Matsushita products offered to its customers in France or abroad. This information was repeated at the end of the letter.

The documents subsequently obtained at the inspections carried out by the Commission, however, particularly the telexes discovered on the premises of CCI, define a business relationship which is in contradiction with the reply made by CCI to the Commission in response to the request for information.

The exchange of telexes between CCI and Matsushita shows that CCI knew that it was expected to obtain the prior approval of Matsushita before making any delivery abroad and more particularly to the United Kingdom and that Matsushita was not prepared to give such approval since the re-export of Matsushita products from France to the United Kingdom adversely affected the interests of the Matsushita distributor there. Although there was no formal distribution agreement, the fact that CCI knew that it had to seek prior authority from Matsushita and to comply with Matsushita's instructions contained in the various telexes is an indication of the existence of an agreement within the meaning of Article 85 (1).

The existence of an agreement is furthermore expressly referred to in CCI's letter to the United Kingdom manufacturer dated 6 September 1978 in which CCI stated that it was only allowed to sell in France.

The information therefore supplied by CCI to the Commission in response to the request made pursuant to Article 11 (3) of Regulation No 17 was incorrect in that CCI was in fact prevented by Matsushita from supplying a customer in another Member State as can be seen from the abovementioned exchange of telexes.

The Commission considers that CCI acted intentionally in supplying incorrect information. It is evident that CCI was aware of the requirements of Community law in respect of the free movement of goods within the common market and of its duty to provide accurate information to the Commission. It is also evident that CCI was aware of the specific reason for the request for information. Furthermore, the Commission's request for information made it clear that it had received information which led it to believe that CCI's relationship with Matsushita was restricting trade. It was in this context that the Commission was seeking information to ascertain the precise nature of the commercial relationship of the two undertakings and whether there was any infringement.

Furthermore, CCI chose in its response to the Commission's request to volunteer general information regarding the sale and resale of Matsushita products. Even if, as CCI appear to consider, the questions of the Commission must be strictly adhered to,

this information went beyond the scope of the Commission's questions.

CCI quite rightly supposed that the request for information was made as a result of an informal complaint from the United Kingdom manufacturing company and although having consulted Matsushita chose quite deliberately to deny the substance of that complaint and, as is stated in the internal memorandum of Mr Kahn to Mr Paris of 8 November 1978, to deceive the Commission by means of a carefully worded 'screen'.

It is therefore clear that CCI knew perfectly well that the purpose of the Commission's request was to establish whether there was a prohibition on exports to the United Kingdom.

Contrary to the submissions made by CCI in its reply to the statement of objections and at the hearing, the Commission is satisfied that this is not an isolated case which occurred as the result of the ignorance of a holiday replacement. The evidence shows that Mr Paris was in constant communication with Matsushita at all material times. He was directly concerned with the implementation of his company's marketing policy, as can be seen from the note Mr Kahn wrote to him on 8 November 1978.

The Commission considers that CCI is guilty of a serious infringement. Notwithstanding the efforts made by CCI to persuade Matsushita to agree to the delivery of goods to the company in the United Kingdom and the fact that CCI is now permitted by Matsushita to supply such goods, its incorrect reply amounted to an attempt deliberately to conceal from the Commission the existence of a situation which could amount to a serious infringement, namely a prohibition on exports. Such a prohibition as CCI appears to have known perfectly well, is incompatible with one of the fundamental aims of the EEC Treaty, the creation of a single market.

### The fine

In all the circumstances the Commission is accordingly of the opinion that the imposition of the maximum fine provided for by Article 15 is justified in the light of the incorrect information supplied by CCI,

HAS ADOPTED THIS DECISION:

### Article 1

The Comptoir commercial d'importation intentionally supplied incorrect information in its reply dated 17

November 1978 to a request made by the Commission on 27 October 1978 pursuant to Article 11 (3) of Regulation No 17.

*Article 2*

By virtue of Article 15 of Regulation No 17 a fine of 5 000 units of account, that is FF 30 946·90 is imposed on the Comptoir commercial d'importation. This sum is to be paid to the Société Générale Paris, to the account of the Commission of the European Communities, account No 5 770 0065, within three months of the date of notification of this Decision to the Comptoir commercial d'importation.

*Article 3*

This Decision shall be enforceable in the manner provided for in Article 192 of the Treaty establishing the European Economic Community.

*Article 4*

This Decision is addressed to the Comptoir commercial d'importation, of 42, rue Etienne Marcel, F-75081 Paris.

Done at Brussels, 17 November 1981.

*For the Commission*

Frans ANDRIESEN

*Member of the Commission*

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