

COMMISSION DECISION

of 5 December 1983

relating to a proceeding under Article 85 of the EEC Treaty

(IV/30.671 — IPTC Belgium)

(Only the French text is authentic)

(83/667/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, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Greece, and in particular Articles 3 and 15 thereof,

Having regard to the Commission Decision of 20 September 1982 to open the proceeding,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission, in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 ⁽²⁾,

After consultation with the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

- (1) On 17 December 1981 the Commission adopted Decision 82/371/EEC ⁽³⁾, finding that certain provisions of the Agreement concerning the use of the NAVEWA-ANSEAU conformity label for washing machines and dishwashers (hereinafter referred to as the 'Agreement'), signed on 13 December 1978, constituted infringements of Article 85 (1) of the EEC Treaty, inasmuch as they prevented

importers of washing machines and dishwashers into Belgium who were not the official 'sole' importers of the brand of washing machines or dishwashers in question from obtaining certificates of conformity for the machines imported by them on the same terms as manufacturers and sole importers.

- (2) That Decision was addressed to the Association nationale des services d'eau (ANSEAU-NAVEWA), the Union des fournisseurs des artisans de l'alimentation (UFARAL-ULEVO) and the undertakings listed in Annexes I and II to the Decision which were parties to the Agreement. The two lists, which were compiled from information supplied to the Commission by the Communauté de l'Électricité (CEG), distinguished between firms that were associated in the drawing up of the Agreement (Annex I) and those which became parties to the Agreement after its signature (Annex II). Only the firms in the first category were fined.

- (3) The documentary evidence on the meetings that were held to prepare the Agreement shows that a firm called Allumalux was represented at the following two meetings of the CEG's 'Laundry Care' and 'Dishwashers' groups:

— the meeting held on 23 October 1978, where it was represented by a Mr Demeestere, and

— the meeting on 13 December 1978, where it was represented by a Mr Donnay.

On 19 September 1978 the members of the Laundry Care and Dishwashers groups had been told that one of the aims of the CEG was to obtain for its members preferential treatment over non-members, who would

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

⁽³⁾ OJ No L 167, 15. 6. 1982, p. 39.

have to have their machines individually tested by ANSEAU, whereas CEG members alone would be able to use the NAVEWA-ANSEAU certification mark or conformity label. At the 23 October 1978 meeting delegates were told that the Agreement would have the advantage of providing a weapon against parallel imports.

Allumalux also appeared on a list of firms concerned by the Agreement, dated 31 November 1978.

- (4) Moreover, before the Agreement was finally signed on 13 December 1978, Allumalux received a copy of the draft, to which it could suggest any amendments it might think necessary. Allumalux did not do so.
- (5) The lists communicated by the CEG after the signature of the Agreement, referred to 'Bosch, formerly Allumalux'. The Commission consequently sent the statement of objections in case IV/29.995 to Robert Bosch SA/NV ('Bosch'), Chaussée de Mons 128-130, 1070-Brussels, and not to Allumalux, and Bosch was included in the list of firms that had been associated in drawing up the Agreement.
- (6) Bosch never at any point before the Commission took its decision, either in its written reply to the statement of objections, at the oral hearing or at any other time, denied having been involved in drawing up the Agreement. The Commission therefore considered that Bosch had been involved and imposed on it a fine of 76 500 ECU (Bfrs 3 146 346).
- (7) After being served with the decision, Bosch objected that it had been included as a result of a substantive error in the list of firms fined, since it had only existed as a company since 19 May 1980 and had only been in sole charge of the distribution of the Bosch group's products in Belgium since 1 June 1980. Before that, Bosch group products had been distributed by the independent dealer, IPTC Belgium.
- (8) IPTC and Bosch had signed a contract on 22 May 1980, under which Bosch had acquired only part of IPTC's assets. IPTC had stopped distributing Bosch group products

from 1 June 1980, and as from that date it had also stopped selling washing machines and dishwashers and, therefore, applying the Agreement.

- (9) In reply to a request for information which the Commission sent to IPTC on 8 June 1982 under Article 11 of Regulation No 17, IPTC confirmed that it had imported and distributed Bosch group products in Belgium until 31 May 1980 and that at the time it had used the business name Allumalux. It also confirmed that it was a member of the CEG, had joined that body as an importer and distributor of electrical appliances, and had belonged to the Dishwashers and Laundry Care groups. Its present business was confined, however, to the distribution of air-conditioning equipment. Its most recent turnover figures were as follows ⁽¹⁾:

(Bfrs millions)

| | Total | Household electrical appliances |
|------|-------|---------------------------------|
| 1979 | ... | ... |
| 1980 | ... | ... |
| 1981 | ... | ... |
| 1982 | ... | ... |

- (10) On 4 November 1982 Commission Decision 82/777/EEC ⁽²⁾ amended Decision 82/371/EEC so as to transfer Bosch to the list of firms that had become parties to the Agreement after signature and cancel the fine imposed on the company.
- (11) In the statement of objections sent to IPTC on 24 November 1982, the Commission invited IPTC to reply to the case against it, which rested on the same facts as Decision 82/371/EEC finding that certain aspects of the Agreement infringed Article 85.

⁽¹⁾ In the published version of this Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

⁽²⁾ OJ No L 325, 20. 11. 1982, p. 20.

II. LEGAL ASSESSMENT

A. Article 85 of the EEC Treaty

- (12) IPTC is an undertaking within the meaning of Article 85 of the EEC Treaty. It was involved in the drawing up of the Agreement and was a party to it from 1 January 1979 to 31 May 1980. It was a member of the CEG's Laundry Care and Dishwashers groups which drafted the Agreement; under the business name of Allumalux, it is listed among the firms represented at two of the meetings that were held to finalize the Agreement and is also on the list of the original parties to it. IPTC also applied the Agreement by purchasing NAVEWA-ANSEAU labels and affixing them to all the machines it sold.
- (13) On the grounds set out in Decision 82/371/EEC (paragraphs 37 to 67), which IPTC has produced no evidence to refute, a number of provisions of the Agreement constituted infringements of Article 85 of the EEC Treaty.

B. Article 15 (2) of Regulation No 17

- (14) Hence, it is established that IPTC acted in breach of Article 85 from 1 January 1979 until 31 May 1980 by participating in the preparation of, and subsequently applying, the NAVEWA-ANSEAU Agreement.
- (15) It is well known that business practices seeking to prevent parallel imports and to erect artificial trade barriers within the Community, and thus to undermine the unity of the common market, are regularly investigated and condemned by the Community authorities. In the present case, the restrictions on parallel imports, imposed by means of a contractual system for enforcing conformity with technical standards which was mandatory on third parties, constituted serious infringements of Article 85.
- (16) IPTC participated in the infringements deliberately because it was aware of the anti-competitive intent of the Agreement. The members of the CEG's Laundry Care and Dishwashers groups had been told that one of the aims of the CEG in setting up the new

approval system was to obtain preferential treatment for its members and that the Agreement would have the advantage of providing a weapon against parallel imports.

- (17) IPTC is not exonerated from responsibility for the infringement of the competition rules by the fact that its representatives at the meetings of the Laundry Care and Dishwashers groups had no authority to commit the company to anything. IPTC was sent a copy of the Agreement for comment before its final adoption. It was thus familiar with the text of the Agreement behind its obligation to affix NAVEWA-ANSEAU labels and had had an opportunity to propose amendments to it. Moreover, the persons representing IPTC did in fact commit the company, and IPTC proceeded to apply the Agreement by purchasing labels and affixing them to the machines it sold.
- (18) IPTC shares in the responsibility for the infringement because of its own involvement in drawing up the Agreement and because of its membership of the CEG, which took a leading part in drawing up and implementing the Agreement.
- (19) It is therefore appropriate to impose a fine on IPTC under Article 15 (2) of Regulation No 17, the size of the fine to be determined by the duration of the infringement, the particular circumstances in which it was committed and the position of the undertaking on the relevant market.

However, in view of the drastically reduced scale of IPTC's overall business, the fine should be lower than those imposed on the other firms that were involved in drawing up the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of the Agreement concerning the use of the NAVEWA-ANSEAU conformity label, signed in Brussels on 13 December 1978, which

prevented importers other than sole importers from obtaining certificates of conformity for the washing machines and dishwashers they imported into Belgium on the same terms as manufacturers and sole importers, constituted infringements of Article 85 (1) of the EEC Treaty during the period during which IPTC Belgium was a party to the Agreement. This applies in particular to Articles 2, 4.1, 5 and 6 of the said Agreement and to Article 6 of the special rules annexed to that Agreement.

Article 2

1. A fine of 5 000 (five thousand) ECU, that is Bfrs 229 502, is hereby imposed on IPTC Belgium.
2. The fine shall be paid to Banque Bruxelles-Lambert — Agence Européenne — account No

310-0231000-32 in the name of the Commission of the European Communities, within three months of the date of notification of this Decision.

Article 3

This Decision is addressed to IPTC Belgium SA, Chaussee de Mons 128-130, 1070-Brussels.

This Decision shall be enforceable in the manner provided for in Article 192 of the EEC Treaty.

Done at Brussels, 5 December 1983.

For the Commission
Frans ANDRIESSEN
Member of the Commission