

REGULATION No 67/67/EEC OF THE COMMISSION
of 22 March 1967

on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements

THE COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 87 and 155 thereof;

Having regard to Article 24 of Regulation No 17 of 6 February 1962¹;

Having regard to Regulation No 19/65/EEC of 2 March 1965² on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices;

Having regard to the Opinions delivered by the Advisory Committee on Restrictive Practices and Monopolies in accordance with Article 6 of Regulation No 19/65/EEC;

Whereas under Regulation No 19/65/EEC the Commission has power to apply Article 85 (3) of the Treaty by regulation to certain categories of bilateral exclusive dealing agreements and concerted practices coming within Article 85;

Whereas the experience gained up to now, on the basis of individual decisions, makes it possible to define a first category of agreements and concerted practices which can be accepted as normally satisfying the conditions laid down in Article 85 (3);

Whereas, since adoption of such a regulation would not conflict with the application of Regulation No 17, the right of undertakings to request the Commission, on an individual basis, for a declaration under Article 85 (3) of the Treaty would not be affected;

Whereas exclusive dealing agreements of the category defined in Article 1 of this Regulation may fall within the prohibition contained in Article 85 (1) of the Treaty; whereas since it is only in exceptional cases that exclusive dealing agreements concluded within a Member State affect trade between Member States, there is no need to include them in this Regulation;

Whereas it is not necessary expressly to exclude from the category as defined those agreements which do not fulfil the conditions of Article 85 (1) of the Treaty;

Whereas in the present state of trade exclusive dealing agreements relating to international trade lead in general to an improvement in distribution because the entrepreneur is able to consolidate his sales activities; whereas he is not obliged to maintain numerous business contacts with a large number of dealers, and whereas the fact of maintaining contacts with only one dealer makes it easier to overcome sales difficulties resulting from linguistic, legal, and other differences; whereas exclusive dealing agreements facilitate the promotion of the sale of a product and make it possible to carry out more intensive marketing and to ensure continuity of supplies, while at the same time rationalising distribution; whereas, moreover, the appointment of an exclusive distributor or of an exclusive purchaser who will take over, in place of the manufacturer, sales promotion, after-sales service and carrying of stocks, is often the sole means whereby small and medium-size undertakings can compete in the market; whereas it should be left to the contracting parties to decide whether and to what extent they consider it desirable to incorporate in the agreements terms designed to promote sales; whereas there can only be an improvement in distribution if dealing is not entrusted to a competitor;

Whereas as a rule such exclusive dealing agreements also help to give consumers a proper share of the resulting benefit as they gain directly from the improvement in distribution, and their economic or

¹ OJ No 13, 21.2.1962, p. 204/62.

² OJ No 36, 6.3.1965, p. 533/65.

supply position is thereby improved as they can obtain products manufactured in other countries more quickly and more easily;

Whereas this Regulation must determine the obligations restricting competition which may be included in an exclusive dealing agreement; whereas it may be left to the contracting parties to decide which of those obligations they include in exclusive dealing agreements in order to draw the maximum advantages from exclusive dealing;

Whereas any exemption must be subject to certain conditions; whereas it is in particular advisable to ensure through the possibility of parallel imports that consumers obtain a proper share of the advantages resulting from exclusive dealing; whereas it is therefore not possible to allow industrial property rights and other rights to be exercised in an abusive manner in order to create absolute territorial protection; whereas these considerations do not prejudice the relationship between the law of competition and industrial property rights, since the sole object here is to determine the conditions for exemption of certain categories of agreements under this Regulation;

Whereas competition at the distribution stage is ensured by the possibility of parallel imports, whereas, therefore, the exclusive dealing agreements covered by this Regulation will not normally afford any possibility of preventing competition in respect of a substantial part of the products in question;

Whereas it is desirable to allow contracting parties a limited period of time within which they may, in accordance with Article 4 of Regulation No 19/65/EEC, modify their agreements and practices so as to satisfy the conditions laid down in this Regulation, without it being possible, under Article 4 (3) of Regulation No 19/65/EEC, to rely thereon in actions which are pending at the time of entry into force of this Regulation, or as grounds for claims for damages against third parties;

Whereas agreements and concerted practices which satisfy the conditions set out in this Regulation need no longer be notified; whereas Article 4 (2) (a) of Regulation No 27,¹ as amended by Regulation No 153,² can be repealed, since agreements which it was possible to notify on Form B 1 would normally come within the scope of the exemption;

Whereas agreements notified on Form B 1 and not amended so as to satisfy the conditions of this

Regulation should be made subject to the normal notification procedure, in order that they may be examined individually;

HAS ADOPTED THIS REGULATION:

Article 1

1. Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation it is hereby declared that until 31 December 1972 Article 85 (1) of the Treaty shall not apply to agreements to which only two undertakings are party and whereby:

- (a) one party agrees with the other to supply only to that other certain goods for resale within a defined area of the common market; or
- (b) one party agrees with the other to purchase only from that other certain goods for resale; or
- (c) the two undertakings have entered into obligations, as in (a) and (b) above, with each other in respect of exclusive supply and purchase for resale.

2. Paragraph 1 shall not apply to agreements to which undertakings from one Member State only are party and which concern the resale of goods within that Member State.

Article 2

1. Apart from an obligation falling within Article 1, no restriction on competition shall be imposed on the exclusive dealer other than:

- (a) the obligation not to manufacture or distribute, during the duration of the contract or until one year after its expiration, goods which compete with the goods to which the contract relates;
- (b) the obligation to refrain, outside the territory covered by the contract, from seeking customers for the goods to which the contract relates, from establishing any branch, or from maintaining any distribution depot.

2. Article 1 (1) shall apply notwithstanding that the exclusive dealer undertakes all or any of the following obligations:

- (a) to purchase complete ranges of goods or minimum quantities;
- (b) to sell the goods to which the contract relates under trade marks or packed and presented as specified by the manufacturer;

¹ OJ No 35, 10.5.1962, p. 1118/62.

² OJ No 139, 24.12.1962, p. 2918/62.

(c) To take measures for promotion of sales, in particular:

- to advertise;
- to maintain a sales network or stock of goods;
- to provide after-sale and guarantee services;
- to employ staff having specialised or technical training.

Article 3

Article 1 (1) of this Regulation shall not apply where:

- (a) manufacturers of competing goods entrust each other with exclusive dealing in those goods;
- (b) the contracting parties make it difficult for intermediaries or consumers to obtain the goods to which the contract relates from other dealers within the common market, in particular where the contracting parties:
 - (1) exercise industrial property rights to prevent dealers or consumers from obtaining from other parts of the common market or from selling in the territory covered by the contract goods to which the contract relates which are properly marked or otherwise properly placed on the market;
 - (2) exercise other rights or take other measures to prevent dealers or consumers from obtaining from elsewhere goods to which the contract relates or from selling them in the territory covered by the contract.

Article 4

1. As regards agreements which were in existence on 13 March 1962 and were notified before 1 February 1963, the declaration contained in Article 1 (1) of inapplicability of Article 85 (1) of the Treaty shall have retroactive effect from the time when the conditions of application of this Regulation were fulfilled.

2. As regards all other agreements notified before the entry into force of this Regulation, the declaration contained in Article 1 (1) of inapplicability of Article 85 (1) of the Treaty shall have retroactive effect from the time when the conditions of application of this Regulation were fulfilled, but not earlier than the day of notification.

Article 5

As regards agreements which were in existence on 13 March 1962, notified before 1 February 1963 and amended before 2 August 1967 so as to fulfil the conditions of application of this Regulation, the prohibition in Article 85 (1) of the Treaty shall not apply in respect of the period prior to the amendment, where such amendment is notified to the Commission before 3 October 1967. The notification shall take effect from the time of receipt thereof by the Commission. Where the notification is sent by registered post, it shall take effect from the date on the postmark of the place of dispatch.

Article 6

The Commission shall examine whether Article 7 of Regulation No 19/65/EEC applies in individual cases, in particular when there are grounds for believing that:

- (a) the goods to which the contract relates are not subject, in the territory covered by the contract, to competition from goods considered by the consumer as similar goods in view of their properties, price and intended use;
- (b) it is not possible for other manufacturers to sell, in the territory covered by the contract, similar goods at the same stage of distribution as that of the exclusive dealer;
- (c) the exclusive dealer has abused the exemption:
 - (1) by refusing, without objectively valid reasons, to supply in the territory covered by the contract categories of purchasers who cannot obtain supplies elsewhere, on suitable terms, of the goods to which the contract relates;
 - (2) by selling the goods to which the contract relates at excessive prices.

Article 7

1. Article 4 (2) (a) of Regulation No 27 of 3 May 1962, as amended by Regulation No 153, is hereby repealed.

2. Notification, on Form B 1, on an exclusive dealing agreement which does not fulfil the conditions contained in Articles 1 to 3 of this Regulation shall, if such agreement is not amended so as to satisfy those conditions, be effected before 3 October 1967, by submission of Form B, with annexes, in accordance with the provisions of Regulation No 27.

Article 8

Articles 1 to 7 of this Regulation shall apply by analogy to the category of concerted practices defined in Article 1 (1).

Article 9

This Regulation shall enter into force on 1 May 1967.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 June 1967.

For the Commission

The President

Walter HALLSTEIN
