COMMISSION

COMMISSION DECISION
of 24 January 1999
relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement
(Case IV.F.1/36.718. CECED)

(notified under document number C(1999) 5064)

(Only the English text is authentic)

(Text with EEA relevance)

(2000/475/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the EC Treaty [1], as last amended by Regulation (EC) No 1216/1999 [2], and in particular Article 6 thereof,

Having regard to the notification of 22 October 1997 for negative clearance or exemption submitted by the Conseil Européen de la Construction d'Appareils Domestiques (CECED) pursuant to Articles 2 and 4 of Regulation No 17 on 22 October 1997,

Having regard to the summary of the application published pursuant to Article 19(3) of Regulation No 17 and to Article 3 of Protocol 21 to the EEA Agreement [3],

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

Whereas:

I. THE FACTS

A. THE PARTIES

(1) The Conseil Européen de la Construction d'Appareils Domestiques (hereinafter: CECED) is an association under Belgian law, established since 1959 and based in Brussels. It comprises manufacturers of domestic appliances and national trade associations. Whilst being itself party to the agreement that it notified on behalf of the parties other than itself, CECED is entrusted with several tasks regarding its implementation.

(2) CECED members include manufacturers who produce and sell a wide range of domestic appliances under various brands in various Member States. Parties to the agreement include national associations and manufacturers that are either directly party to the agreement or are committed through membership of a national association.

Manufacturers that are a direct party to the agreement include Atag Kitchen Group BV, Bosch Siemens Hausgeräte GmbH, Brandt SA, Candy Elettrodomestici Srl, Electrolux Holdings Ltd, Merloni Elettrodomestici Spa, Miele & Cie GmbH&Co and Whirlpool Europe Srl.

Manufacturers that are a party through a National Trade Association include Antonio Merloni Spa, Dolmar SA, Fagor Electrodomésticos S.Coop. and Smeg SpA.

[1] OJ 13, 21.2.1962, p. 204/62.
[2] OJ L 148, 15.6.1999, p. 5.
[3] OJ C 382, 9.12.1998, p. 6.

national trade associations that are a party include AMDEA (United Kingdom), ANFEL (Spain), FAPE (Spain) ANIE (Italy), EHA (Sweden), Fabrimetal (Belgium), FEEI (Austria), FEHA (Denmark), GIFAM (France), Vlehan (Netherlands), ZVEI (Germany), BESD (Turkey), FEA (Switzerland) and NEL (Norway).

B. RELEVANT MARKET AND POSITION OF THE PARTIES

1. **Product market**

(3) The agreement concerns the market for private washing machines that are used by households to wash textiles for private use ('domestic washing machines'). No alternative method of washing such as hand-washing, laundries, dry cleaning and collectively owned machines can, to any significant extent, be substituted for washing machines in Western countries. Accordingly, no other broader product market that would include other appliances within a single product market can be delineated.

(4) Washing machines can be segmented according to their load capacity, spinning speed, water and energy use, sophistication of programming, and so on. Nonetheless, owing to the similarity in their intended use from a demand standpoint, the various segments do not stand individually as separate product markets.

2. **Geographic market**

(5) There are no noticeable technical and economic barriers to trade. Despite low transport costs and unsophisticated technology, imports into the EEA are not considerable and account for 5 to 7 % of final sales. Major producers hardly have more than three factories in the EEA, from which they supply throughout the whole market. Similar distribution channels are used in different Member States, including specialised chains and department stores, though to differing extents.

(6) Although some brands are predominant in some Member States, the same major producers are present across the EEA. Moreover, the acquisition of a local brand is a widespread practice designed to enhance market penetration. Accordingly, potential competition from groups present in other Member States directly threatens those present in each national market.

(7) The relevant market is therefore for domestic washing machines in the EEA [4].

3. **Position of the parties, market situation**

(8) The manufacturers having signed the agreement hold around 90 % of the EEA market. Their market shares in 1996 were as follows: Electrolux (17,9 %), Bosch-Siemens (11,5 %), Whirlpool (10 %), Candy (9,2 %), Brandt (9 %), Merloni (9 %), Miele (4,8 %), Fagor (2,6 %), Atag (0,3 %), Dolmar (0,1 %), Smeg (0,1 %), third party production from CECED members (16 %).

(9) As with other traditional domestic appliances, saturation is apparent for washing machines. Equipment to household ratios in the Community are becoming stagnant, within a range from 96 % in Spain to 77 % in Sweden. Renewal of installed equipment and sociodemographic trends, like the number and size of households, are the main driving forces of demand.

(10) The market is characterised by competition from several large competitors and considerable bargaining pressure from large distribution or buying groups [5]. In previous years, sales of machines have been stable, whilst sales values have dramatically shrunk. Production capacities have been widely rationalised. On average, production capacities of up to 75 % are currently being achieved in the Community. Overall, the situation in the market, which is relatively fragmented, looks depressed compared with both the past and other fast growing markets for other domestic appliances. There are no indications that the situation is any different in the wider EEA market.

4. **Energy efficiency in the relevant market**

(11) Pursuant to Article 2 and Annexes I to IV to Commission Directive 95/12/EC of 23 May 1995 implementing Council Directive 92/75/EEC with regard to energy labelling of household washing machines [6], as amended by Directive 96/89/EC [7], washing machines sold throughout the Community are classified and labelled according to their energy efficiency (kWh/Kg, or Kilowatt-hours/kilograms of load) into seven categories from A to G ('energy categories'). Such categories are used in the agreement.

(12) Electricity consumption is essential in the operation of washing machines. It also accounts for a major share of operating costs during their long lifetime (12 years on average in the Community). Through the EC energy label, consumers can easily assess the cost-effectiveness of a choice amongst different energy categories. In addition to economic factors, advertising campaigns often stress energy performance, thereby differentiating products, in a context where environmentally friendly products attract more and more consumers. Thus, energy-efficiency has an influence on purchasing decisions, and hence on competition between manufacturers.

[4] This view is also consistent with Case IV.M.458 Electrolux-AEG, point 21, (OJ C 187, 9.7.1994, p. 14).

[5] See footnote 4.
[6] OJ L 136, 21.6.1995, p. 1.
[7] OJ L 338, 28.12.1996, p. 85.

(13) In 1997, about 10 to 11 % of washing machines sold in the EEA belonged to classes D to G. For some important manufacturers, the share of such machines in their product range was higher than one-third. However, no party manufactures machines exclusively in categories D to G.

(14) According to CECED, between 1978 and 1994 the energy consumption of washing machines was reduced by 40 % per unit in the European market. Despite such improvements, consumption due to the operation of washing machines accounts on aggregate for 2 % of total electricity consumption in the Community. There is no indication that market factors other than energy prices have played a significant role in spontaneously bringing about such results for the industry as a whole.

(15) The most direct way of improving energy-efficiency, and thus of raising the energy category, is through a reduction in the amount of water used in the washing cycle. A further way is to reduce the amount of 'free water' at the bottom of the drum. Other improvements that contribute indirectly to energy efficiency are more accurate water-level sensors and more sensitive controls. Various upgrades of mechanical parts also result in an overall improvement in efficiency. These include replacement of induction motors with universal motors, upgrading of pressure switches, use of an adjustable thermostat or a more sophisticated timer, use of a lower-powered heating element and modification of the drum, tub and balancing of the machine. No further improvements which raise the energy efficiency of machines currently in category A are likely in the medium term, owing to technological constraints.

(16) The energy-efficiency of washing machines, itself positively correlated with spin speed, appears directly proportional to their price. Owing to the functional interdependence between different product characteristics, it is not possible to isolate completely the effects of upgrading energy efficiency, other parameters being constant. All technical means of improving energy-efficiency are translated into higher production and purchase costs. The approximate unit-cost increase of shifting to category C from categories G to D, including apportioned R&D costs and changes in the production process or components, is estimated in a range between EUR 6,3 and 60 per machine (1,2 and 11,5 % of average selling prices in the Community) at the production stage.

(17) However, the distribution of such costs is uneven, depending on the composition of production and sales in each Member State. For instance, according to information submitted by the parties, were all machines sold in the Community to reach a weighted average efficiency of 0,23 kWh/Kg, the estimated price increase would be around 1 to 2 % in northern Europe and 8 to 14 % in southern Europe and the United Kingdom, where the share of categories between D and G is the highest.

C. THE AGREEMENT

(18) The agreement basically covers three sets of objectives: (i) production and imports of washing machines, (ii) monitoring and reporting, and (iii) promotion of technological development as well as consumer education. It includes the following provisions.

1. **Production and imports**

(19) The parties agree to cease producing and/or importing into the Community the following categories of machines:

— after 31 December 1997 (as a first step) machines belonging to categories E, F and G, excluding machines under category E with load capacity lower than 3 kg and vertical axis machines,

— after 31 December 1999 (as a second step) machines belonging to category D, excluding load capacity lower than 3 kg and machines with a spin speed lower than 600 rpm (revolutions per minute).

(20) Moreover, each party agrees to contribute to reaching a weighted average efficiency of 0,24 kWh/kg by 31 December 2000 for all the machines produced.

2. **Monitoring and reporting**

(21) CECED will establish and update a database, monitored by an independent consultant who will report annually to CECED and to the Commission on the fulfilment of the objectives by category class and in the terms of the overall target of 0,24 kWh/kg. The independent consultant will aggregate the individual data submitted by each manufacturer.

3. **Consumer education and technological improvement**

(22) The parties agree to improve the availability of information on the environmentally conscious use of washing machines (how to operate the machine with less energy, detergent, and water) and to promote a wider dissemination of energy-saving technology (hot-fill installations, improving load dependence) and techniques (use of low washing temperatures).

4. **Effective date of implementation and new parties**

(23) According to CECED, from as early as 1996 onwards, the parties to the agreement had felt obliged to act in the spirit of the terms that were being negotiated between them. During its enquiry, the Commission has gathered data showing that, prior to the entry into force of the agreement, a number of manufacturers being party to the agreement effectively diminished or ceased their production of machines belonging to energy categories that would have been phased out, had the agreement been signed in 1996.

(24) The agreement is open to new participants and remains valid until 31 December 2001. Since its entry into force, other manufacturers like Arçelik (Turkey) and Iar Siltal Srl (Italy) have joined it. The initial market coverage is thereby extended to 95 % of the relevant market.

II. **LEGAL ASSESSMENT**

A. ARTICLE 81(1) OF THE EC TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

(25) Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement prohibit all agreements or concerted practices between undertakings and associations of undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market or the EEA, and in particular those which control production or technical development.

1. **Agreements and/or concerted practices between undertakings or associations of undertakings**

(26) CECED is an association of undertakings. Those of its members that are parties to the agreement are manufacturers or importers of domestic appliances, or associations of such manufacturers or importers.

(27) The agreement which is the subject of this Decision is therefore an agreement between undertakings and associations of undertakings within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. The collective implementation of some of its provisions from 1996 onwards, in so far as the parties have felt obliged to act in the spirit of the terms that were being negotiated between them, is also an agreement or, at least, a concerted practice, within the meaning of those provisions.

2. **The object or the effect of preventing, restricting or distorting competition**

(a) *Joint target*

(28) The agreement sets forth an obligation whereby the parties will use their best endeavours to contribute to a sector-wide target. This target is largely achieved by the fulfilment of the specific obligation to comply with a minimum efficiency standard. This general obligation is not accompanied, on the basis of the information submitted in the notification, by quota allocations or by specification of the individual contribution of each manufacturer or importer to the attainment of the common target.

(29) Consequently, this provision does not have as its object or effect the restriction of competition.

(b) *Restriction of production and imports*

Restrictive object

(30) CECED members agree no longer to manufacture or to import washing machines that do not meet the criteria that they have agreed upon. The agreement sets a standard of energy efficiency, with which all the washing machines that the parties manufacture or import have to comply. By this obligation, the parties are no longer free to produce or to import machines under categories D to G, as they were free to do, and actually did, before the agreement.

(31) Some manufacturers focused their production exclusively on categories A to C, and partly D, prior to the agreement. The agreement guarantees to them that other parties will not meet consumer demand for machines in categories D to G. Such a guarantee is important in a stagnant market with strong competitors and research of sales opportunities. The agreement therefore prevents manufacturers and importers from competing throughout the full range of energy categories, as they did before the agreement.

(32) The agreement narrows down consumer choice, from category A to C, and partly D, compared to current A to G. It is unlikely that a range of energy efficiency as broad as that currently prevailing will reoccur in the affected market in the short term, because of technological constraints. Thus, the agreement prevents distributors, retailers and, ultimately, consumers from choosing amongst different categories of machines otherwise available. Technical diversity and consumer choice are thereby reduced.

(33) Accordingly, the agreement, which restricts the parties' autonomy in producing or importing the machines of their choice, has the object of controlling one important product-characteristic on which there is competition in the relevant market, thereby restricting competition between the parties.

(34) The agreement will inevitably raise the production costs of those manufacturers that used to produce machines which are no longer allowed. Estimates of costs for adapting washing machines to the new minimum standard would suggest that production and unit costs would increase appreciably, albeit not excessively, for those models which need upgrading. Therefore, in the short term, the agreement is likely to increase the price of those models, and hence the prices of some manufactuers' product ranges, thereby raising their costs and bringing their prices closer to those of competitors, thereby distorting price competition.

(35) The agreement does not directly impose any reduction of output, since more efficient machines would, in principle, replace those being phased out. Limited effects on output, if any, may only arise indirectly through reduced demand, depending on price elasticity, which is low for washing machines, when viewed separately from other factors.

(36) Nonetheless, the agreement will have the effect of reducing electricity demand, electricity being essential in the operation of washing machines. According to CECED, the agreement is likely to reduce electricity output by 7,5 TWh, out of the estimated 38 TWh (1995) attributed to washing machines in the Community once the machines already installed are totally replaced. Production capacities which have been devised to meet foreseeable demand, and hence electricity producers, are thereby affected and their output restricted, by up to 2 % of the total.

(37) The agreement to prevent the parties from producing or importing categories of washing machines under energy labels D to G has thus the object of restricting or distorting competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

(c) *Exchange of information*

(38) The agreement compels the parties to submit data on annual sales of washing machines, broken down by category of energy-efficiency class. The information is exchanged through an independent notary, entrusted with the task of collating data confidentially submitted by each individual manufacturer on production and sales. Only aggregated data on sales made on the Community market in the previous year will be made available to competitors in an otherwise fragmented market.

(39) The exchange of information, which is necessary to review the progress achieved and relevant to the functioning of the overall agreement, does not have the object or the effect of restricting competition.

(d) *Consumer information and dissemination of energy-saving technology*

(40) The undertaking included in the agreement sets the general goal of improving consumer information on more economic patterns in the use of the appliances. The wider dissemination of energy-saving technology does not specify any particular expedients imposing restrictions on the parties.

(41) Such undertakings are not restrictive of competition.

3. **Appreciable effects on competition and trade between Member States**

(42) Electricity consumption is not negligible as a purchase criterion, and hence as a basis on which there is competition in the relevant market, of which the parties, as was noted in recital 24, jointly hold in excess of 95 %.

(43) The agreement is also likely to have dissimilar geographic effects within the EEA. Since producers have only a few plants from which they currently supply throughout the EEA, the agreement will affect the composition of imports from one Member State to another, for those manufacturers who produced machines in classes D to G, before 1996.

(44) Depending on the composition of sales, price increases due to up-grading current product ranges will be unevenly distributed amongst Member States. As a result, demand will be affected, in direct proportion to the share of machines being phased out in each national market. Such share is the highest in those five Member States where the efficiency of washing machines is below the Community average.

(45) Following full implementation of the agreement by the year 2001, 1 718 models in energy classes G, F, E and D (i.e. just less than 63 %) would no longer be produced or imported, out of a total Community range of 2 730 models in 1995. In terms of unit sales, the number of machines that would no longer be allowed in the market accounted for 10 to 11 % of the Community total in 1997. As an order of magnitude, this is nearly the size of the Austrian, Swedish and Benelux markets altogether.

(46) Accordingly, the agreement is likely to have an appreciable effect on competition and trade between Member States within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

B. ARTICLE 81(3) OF THE EC TREATY AND ARTICLE 53(3) OF THE EEA AGREEMENT

1. **Contribution to economic or technical progress and conferment of benefits on the consumer**

(47) The agreement is designed to reduce the potential energy consumption of new washing machines by at least 15 to 20 % (relative to 1994 data on models of washing machines). According to CECED, were models of phased-out machines to be replaced by an equivalent number of machines in categories A, B and C, currently available on the market, 7,5 TWh would be saved in 2015 out of the estimated 38 TWh consumed by the operation of washing machines in the Community in 1995.

(48) Washing machines which, other factors being constant, consume less electricity are objectively more technically efficient. Reduced electricity consumption indirectly leads to reduced pollution from electricity generation. The future operation of the total of installed machines providing the same service with less indirect pollution is more economically efficient than without the agreement.

(49) Such potential improvement in four years of implementation of the agreement is remarkable, compared to improvements in the past. Were energy efficiency to improve at the same rate as it did between 1978 and 1994 without any agreement, the attainment of a 20 % improvement would require eight years, instead of four. In addition to faster and more certain results, there is no evidence that changes in behaviour may nullify the improvement of the efficiency ratio ([8]).

(50) The agreement is also likely to focus future research and development on furthering energy efficiency beyond the current technological limits of category A, thereby allowing for increased product differentiation amongst producers in the long run ([9]).

(51) CECED estimates the pollution avoided at 3,5 million tons of carbon dioxide, 17 000 tons of sulphur dioxide and 6 000 tons of nitrous oxide per year in 2010, working on the basis of average emission values. Although such emissions are more efficiently tackled at the stage of electricity generation, the agreement is likely to deliver both individual and collective benefits for users and consumers.

(a) *Individual economic benefits*

(52) The level at which the minimum performance standard is set provides a fair return within reasonable pay-back periods to a typical consumer for higher initial purchase costs derived from the more stringent standard in fact set out by CECED. Savings on electricity bills allow recouping of increased costs of upgraded, more expensive machines within nine to 40 months, depending mainly on frequency of use and electricity prices.

(53) While the agreement will eliminate certain models which are in category D and below, it is not possible to determine in advance its effect on the average selling price of those models of washing machines which are not directly affected. Indeed, the restriction in one product-dimension, energy consumption, may increase competition on other product characteristics, including price. Therefore, while the minimum price of washing machines is likely to increase, it cannot be ruled out that products in categories A and B may become available at a lower price. In a market characterised by strong competition amongst manufacturers and bargaining power from distributors, these benefits are likely to accrue to consumers.

(54) Were these competition-enhancing effects to take place, the narrowing of the price range and the increase in average selling prices would be less pronounced than would otherwise be foreseeable.

(b) *Collective environmental benefits*

(55) According to Article 174 of the EC Treaty, environmental damage should be rectified at source. The Community pursues the objective of a rational utilisation of natural resources, taking into account the potential benefits and costs of action. Agreements like CECED's must yield economic benefits outweighing their costs and be compatible with competition rules ([10]). Although electricity is not a scarce resource and consumption reductions do not tackle emissions at source, account can also be taken of the costs of pollution.

(56) The Commission reasonably estimates the saving in marginal damage from (avoided) carbon dioxide emissions (the so-called 'external costs') at EUR 41 to 61 per ton of carbon dioxide. On a European scale, avoided damage from sulphur dioxide amounts to EUR 4 000 to 7 000 per ton and EUR 3 000 to 5 000 per ton of nitrous oxide ([11]). On the basis of reasonable assumptions, the benefits to society brought about by the CECED agreement appear to be more than seven times greater than the increased purchase costs of more energy-efficient washing machines. Such environmental results for society would adequately allow consumers a fair share of the benefits even if no benefits accrued to individual purchasers of machines.

(57) The expected contribution to furthering energy efficiency both within the current technological limits of categories A to C and beyond the limits of category A, the cost-benefit ratio of the standard and the return on investment for individual users point to the conclusion that the agreement is likely to contribute significantly to technical and economic progress whilst allowing users a fair share of the benefits.

([8]) Purchasers are interested in the service that washing machines provide. When frequency of use and hence absolute electricity consumption (total kg of clothes washed per kWh/kg), are constrained by operating costs, decreases in such costs stimulate an increase in use. Such increase may outweigh the reduction in relative consumption (i.e. kWh per kg of clothes washed).

([9]) This would allow the current energy categories under the EC energy label being reviewed in the light of technical progress.

([10]) Articles 3(1)(f) and 7 of EP and Council Decision 2179/98/EC of 24 September 1998 on the review of the European Community programme of policy and action in relation to the environment and sustainable development 'Towards sustainability' (OJ L 275, 10.10.1998, p. 1).

([11]) These values reflect the current state of knowledge and may need to be reviewed in the light of future research.

2. **Indispensability of the restrictions**

(58) The agreement does not impose on the parties restrictions that are unrelated or unnecessary to the fulfilment of its objective benefits. The outright prohibition of some energy categories does not prescribe any specific technical means for the achievement of the minimum standard, to the exclusion of others, nor does it impose other limitations on any other aspect of the proper or commercial behaviour of the parties.

(59) Regarding the reduction of total electricity consumption through the operation of washing machines, the agreement opts for an approach based on individual product characteristics. The Commission has examined whether it would be possible to devise less restrictive alternatives that would be capable of delivering similar reductions based on other approaches. For instance, the parties could theoretically limit the agreement to the undertaking to contribute to an industry-wide target, information campaigns and a greater focus on fulfilling EU eco-label criteria.

(a) *Industry-wide target*

(60) The setting of a more stringent industry-wide target could in theory lead to more indirect pollution abatement whilst allowing manufacturers or importers more flexibility than the application of a mandatory minimum standard. Provided that each party complied with the common target, it would be free to decide on the share of different energy categories within its total product range, by compensating a minor proportion of machines below category C through a predominant proportion of top categories A and B.

(61) However, such a system would face difficulties that would jeopardise the attainment of the expected results. In the specific market context, purchasers that have bargaining power could focus their orders on machines below category C. Whilst the unilateral decision to cease production of such machines could remedy this, it would, in practice, be tantamount to applying the minimum standard. Only a joint agreement with distributors and retailers would help to overcome this problem. If at all workable, such an agreement would have higher transaction and monitoring costs and could be even more restrictive.

(b) *Information campaigns*

(62) Mere information campaigns, which are a separate part of the agreements, are also plainly less effective than a standard. As previously stated, the existing Community energy label already provides consumers with the necessary information on energy efficiency. However, evidence shows that, as external costs are not fully reflected in consumer's calculations when contemplating a purchase, the provision of information is not sufficient to realise the agreement's environmental benefits to their fullest possible extent. Moreover, the information stressed in the agreement relates to the conditions on the use of the machine, which allow for further reduction of electricity consumption besides the technical efficiency ratio of the machine. Such campaigns are therefore complementary to the standard, rather than being a substitute for it.

(c) *Eco label*

(63) Commission Decision 96/461/EC [12] of 11 July 1996 establishing ecological criteria for the award of the Community eco label to washing machines covers energy consumption (categories A and B being eligible), water and detergent use as well as consumer information. Some manufacturers have been awarded the eco label. However, it should be remembered that the eco label has as one of its main features its selective character. The label is only awarded to those products with the lowest environmental impact in a product range. It is an instrument that rewards the top environmental class. On the other hand, the CECED agreement aims at phasing out the least energy-efficient products (categories D to G). The eco label is therefore not intended to apply to products such as the ones envisaged in the agreement. The agreement and the eco label are complementary and reinforce each other. The parties to the agreement will always have the possibility, in addition to the agreement, of applying for the award of an eco label, as a supplementary way of enhancing the environmental benefits achieved by their washing machines.

3. **No elimination of competition**

(64) Major distributors agree that other factors like price, brand image, and technical performance may have more weight in purchase decisions than energy efficiency. Meanwhile, three energy categories, from A to C, and part of D, will still remain available to manufacturers, once the agreement is fully implemented.

(65) Moreover, whilst not imposing unnecessary restrictions *de jure*, the agreement does not *de facto* impose any particular means of improving energy efficiency. The technology needed to produce machines under categories A to C is available to all manufacturers. The parties have therefore a wide variety of technical choices, on which they can effectively compete, to meet the minimum energy efficiency standard.

[12] OJ L 191, 1.8.1996, p. 56.

(66) Though machines pertaining to categories D to F account for a significant volume of final sales, about 90 % of the market (1996) will fall outside the scope of the agreements. Since third parties remain free to produce and to import machines below such categories, the agreement does not appreciably raise barriers to entry into the EEA market.

(67) Therefore, it can be concluded that the cumulative conditions of Articles 81(3) of the EC Treaty and 53(3) of the EEA Agreement are fulfilled.

4. **Duration of the exemption**

(68) Pursuant to Article 8(1) of Regulation No 17, a decision in application of Article 81(3) is to be issued for a specific period. As notified, the obligations agreed by the parties remain binding upon them until 31 December 2001. It is therefore appropriate to define the duration of this exemption accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, the provisions of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement are hereby declared inapplicable for the period from 22 October 1997 to 31 December 2001, to the agreement entered into on 24 September 1997 by the Conseil Européen de la Construction d'Appareils Domestiques and some of its members, regarding production and imports of domestic washing machines falling within energy categories D to G as defined by Directive 95/12/EC.

Article 2

This Decision is addressed to:

Conseil Européen de la Construction d'Appareils Domestiques (CECED)
Diamant Building
Boulevard A. Reyers/A. Reyerslaan 80
B-1030 Brussels

Done at Brussels, 24 January 1999.

For the Commission

Mario MONTI

Member of the Commission