

COMMISSION

COMMISSION DECISION

of 28 September 1981

relating to a proceeding under Article 85 of the EEC Treaty

(IV.29.988 — Italian flat glass)

(Only the Italian text is authentic)

(81/881/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 1, 3 and 4 thereof,

Having regard to the own-initiative proceedings taken by the Commission on 22 January 1980 against Fabbrica Pisana SpA, Pisa, Società Italiana Vetro SpA, San Salvo (Chieti), Vernante Pennitalia SpA, Cuneo, Istituto Sviluppo Vetro, Milan, Associazione Sviluppo Vetro Italia Centrale, Ancona and Associazione Meridionale del Vetro in Lastre, Catania, in respect of agreements and decisions by associations concerning the flat glass market in Italy,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963⁽²⁾,

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 16 June 1981,

Whereas:

I.

THE FACTS

The main facts of the case are the following:

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

A. THE UNDERTAKINGS

I. The associations

Istituto Sviluppo Vetro (ISVE) was established in Milan in 1975 by the major firms specializing in flat glass wholesaling, located in Northern Italy. It was wound up by decision of its annual meeting on 13 March 1979. Firms belonging to the association controlled over 50 % of the flat glass market in northern Italy.

Associazione Sviluppo Vetro Italia Centrale (ASVIC) was established in Ancona on 24 July 1976 by the leading wholesalers in the following regions: Umbria, the Marches, Emilia-Romagna and Tuscany. It was wound up by decision of its board of directors on 20 April 1979.

The proceedings initiated against these two associations were continued against the firms which belonged to them when the agreements were implemented.

Associazione Meridionale del Vetro in Lastre (AMVL) was established in Catania on 11 September 1976; its members are the major wholesalers in southern Italy and in particular in the Rome area. It accounts for over 50 % of the flat glass market in the regions covered.

The associations are non-profit making and adopted identical articles of association and rules relating to:

- the development of a purchasing policy with the aim of providing members with the best possible contract terms,
- the cheapest possible distribution and processing of flat glass.

The associations were established for a renewable period of five years. Firms wishing to join the association had to:

- be engaged in the business of distributing or processing flat glass,
- fulfil certain conditions relating to solvency and business conduct,
- receive the votes of two thirds of the members of the board of directors (consiglio direttivo).

II. The companies

1. *Fabbrica pisana SpA* (hereinafter referred to as 'Fabbrica pisana'), whose head office is in Pisa and whose capital amounts to Lit 11 934 500 000, is a wholly-owned subsidiary of Saint-Gobain Industries, a member of the Saint-Gobain/Pont-a-Mousson Group, which is among the largest industrial groups in the world, comprising 134 companies established in 17 different countries. It is divided into six industrial and commercial divisions, and each division comes under a holding company wholly controlled by Saint-Gobain/Pont-a-Mousson. In addition to *Fabbrica pisana*, the Group owns the following companies in Italy, all of which are in various ways connected with the glass market: *Vetzeria milanese Luchini-Perego*, *Vetzeria italiana Balzaretto-Modigliani*, *Vetzeria Luigi Fontana* and *Vetzerie riunite Bordoni-Miva*; of these, *Vetzeria Luigi Fontana*, Milan, together with its subsidiary *Felice Quentin*, Florence, is the country's largest processor/wholesaler.

The Saint-Gobain/Pont-a-Mousson Group employs some 110 000 persons, 69 000 of whom work in the 'buildings' division, which includes the glass-producing factories. Saint-Gobain Industries, which heads the 'buildings' division, controls 25 subsidiaries, including *Fabbrica pisana* in Italy, which employs some 3 000 persons. *Fabbrica pisana* has factories at Caserta, Pisa, Savigliano and Turin, producing the following types of glass:

- float glass, clear and coloured (blue, amber, bronze, green and grey),
- cast glass, clear and coloured, including U-section profiled glass,
- processed glass products for the building industry (BIVER).

2. *Società italiana vetro SpA* (hereinafter referred to as 'SIV'), whose head office is in Rome and

whose capital amounts to Lit 28 000 000 000, is a State-controlled company. It was set up in May 1962 by *Ente finanziamento industria meccanica* (hereinafter referred to as 'EFIM'), Rome, and *Società finanziamenti idrocarburi SpA* (hereinafter referred to as 'SOFID'), Milan. At present SOFID and *Società mineraria carbonifera sarda* (hereinafter referred to as 'MCS'), a subsidiary of the EFIM group, each hold 50 % of SIV's capital.

Up to May 1974 SIV had facilities for the production of window glass (drawn sheet glass) only. Its capacity for manufacturing this type of glass was gradually reduced to 38 000 tonnes a year and production ceased altogether in September 1975. In May 1974 a flat glass production line, with a capacity of 120 000 tonnes a year, was put into operation. In addition, in 1979, a flat glass production line belonging to *Flovetto SpA*, a joint subsidiary of SIV and *Fabbrica pisana* (each owning 50 %), came into operation; it has a capacity of 120 000 tonnes a year which the two parent companies share on equal terms.

SIV also controls two processing subsidiaries, *ILVED SpA*, San Salvo, specializing in mirror production and *Vetroeuropa SpA*, Turin, specializing in safety glass.

SIV, whose plant is located at San Salvo (Chieti) and which employs 3 500 persons, now produces float glass, cast glass and processed glass (safety and insulating glass).

SIV's sales organization in Europe comprises an eastern area subsidiary (SIV-Deutschland, Frankfurt) and a western area subsidiary (SIV-France, Paris).

3. *Vernante Pennitalia SpA* (hereinafter referred to as 'Vernante Pennitalia'), whose capital amounts to Lit 16 106 700 000, is based in Cuneo; it was formed on 30 November 1974 through the merger of 'Vernante' and 'Pennitalia', the Italian subsidiary of PPG Industries Inc., Pittsburgh (USA). The capital of Vernante Pennitalia is held by PPG Industries (80.5 %), Vernante's former shareholders (17.5 %) and Montedison (2 %). The company produces float glass, drawn glass and cast glass and also processes these types of glass into finished products. Vernante Pennitalia also controls *Pennitalia Securglas SpA*, whose head office and production facilities are at Roccasecca di Frosinone; this firm mainly produces special types of glass for the car industry.

B. THE PRODUCTS AND THE MARKET

1. In this proceeding, the relevant products are the various categories of flat glass.

Flat glass may be divided into three categories, depending on the manufacturing processes used:

- drawn glass, which is a colourless and transparent sheet used for manufacturing window glass,
- cast glass, which consists of a sheet with an uneven surface, translucent but not transparent, obtained by rolling,
- plate glass, which consists of a transparent sheet whose surfaces are almost perfectly parallel. It may be obtained by two processes: continuous casting and the float glass process; the float glass process is used by SIV, Fabbrica Pisana and Vernante Pennitalia.

All the various types of flat glass are manufactured in different thicknesses and may be clear or coloured, but for technical reasons the same furnace cannot be used to obtain two different types of glass.

2. Industrial production of float glass started in the early sixties. On account of its features and relatively low production costs in relation to quality, it rapidly took the place of most other types of flat glass. Moreover, since it can be used for numerous

applications, it is likely that consumption will increase further in the near future.

3. However, although float glass offers the best ratio of quality to price, substantial quantities of cast glass and drawn glass are still sold in Italy, the former on account of its structure, which is particularly suited to certain applications, and the latter on account of its relatively low manufacturing cost, due to the fact that investment has now been fully amortized.

4. Flat glass manufacturers' customers are mainly wholesalers and processing industries (with the exception of car manufacturers, who absorb 95 % of the glass produced for the car industry). Certain wholesalers, relatively few in number, merely resell the glass in the form in which they purchased it; others also have equipment for cutting and initial processing. Processors manufacture safety glass, insulating glass, mirrors, etc. for the building and furniture industries.

5. The table below shows Italian output, import and export statistics for the three types of flat glass (cast glass, drawn glass and float glass) during the period 1974 to 1978.

Flat glass statistics ⁽¹⁾

(in tonnes)

Product	Year	Output	Imports				Exports				Apparent consumption
			EEC	% AC	Outside EEC	% AC	EEC	% Output	Outside EEC	% Output	
Drawn glass	1974	282 695	58 230	19.5	32 159	10.8	53 102	17.9	23 652	7.9	296 330
	1975	164 311	15 990	11.1	28 041	19.4	52 040	31.6	12 250	7.4	144 052
	1976	103 626	46 528	28.1	55 507	33.5	32 819	31.6	7 523	7.2	165 319
	1977	100 035	50 952	29.3	56 544	32.5	33 150	33.1	5 935	5.9	173 788
	1978	92 615	38 607	24.9	46 672	30.1	17 759	19.1	5 380	5.8	154 755
Cast glass	1974	127 982	23 819	15.4	6 391	4.1	2 561	2.0	1 895	1.4	153 736
	1975	77 668	20 752	20.9	5 680	5.7	2 806	3.6	2 200	2.8	99 094
	1976	77 724	22 115	20.2	12 403	11.3	2 108	2.7	3 058	3.2	108 963
	1977	70 910	25 783	26.1	10 262	10.3	2 453	3.4	5 757	8.1	93 750
	1978	77 983	37 571	32.8	9 040	7.9	3 632	4.6	6 741	8.6	114 221
Float glass	1974	203 000	30 169	14.2	10 912	5.1	25 233	12.4	6 975	3.4	211 873
	1975	270 849	9 697	4.3	1 447	0.6	48 188	17.7	12 999	4.8	220 806
	1976	390 786	27 536	7.8	1 567	0.4	54 913	14.0	13 257	3.3	351 719
	1977	383 238	49 114	12.8	8 535	2.2	47 426	12.3	12 407	3.2	381 054
	1978	393 799	65 842	16.6	4 107	1.0	47 549	12.0	19 799	5.0	396 409
Total flat glass	1974	613 677	112 218	16.9	49 462	7.4	80 895	13.1	32 522	5.3	661 939
	1975	512 828	46 438	10.0	35 168	7.5	103 034	20.0	27 449	5.3	463 951
	1976	572 136	95 171	15.4	69 477	11.1	89 840	15.7	28 838	5.0	624 114
	1977	554 183	125 849	19.4	75 341	11.6	23 029	14.9	24 099	4.3	648 245
	1978	564 397	142 020	21.3	58 819	8.9	68 940	12.2	31 920	5.6	665 376

(1) Based on the statistics of Istituto italiano di statistica and on NIMEXE prepared by the Statistical Office of the European Communities.

6. During the currency of the agreements the market shares of Italian producers in the Italian flat glass market as a whole were at least as follows: Fabbrica pisana 20 %, SIV 14 %, Vernante Pennitalia 14 %, Fabbrica Sciarra 3 %, Vetro-Coke 3 %. The remainder was accounted for by imports, particularly of float glass. Some 50 % came from two major European producers Saint-Gobain and BSN, directly or via their Belgian and German subsidiaries; the other 50 % was made up of window glass

and cast glass, notably from the Eastern European State-trading countries and certain occasional supplies of float glass from the United States.

7. A significant proportion of the flat glass output of the companies concerned was exported, particularly by SIV and Vernante Pennitalia which, in 1976 and 1977, sold some 55 % of their output on the markets of other Member States. Fabbrica pisana also exported substantial quantities of flat glass to

other Community countries, in accordance with the Saint-Gobain Group's general business strategy.

members with producers in accordance with a pre-established pattern.

C. THE AGREEMENTS

I. Agreements between wholesalers and processors themselves and decisions by their associations

1. The agreements were applied by means of the three associations' articles and rules, which were exactly the same, and by means of the decisions of the associations' boards of directors, as recorded in the minutes of their meetings. All members were deemed to be represented at the general meeting; its deliberations were mandatory and binding on all members, including those not in agreement.

2. The articles of the three associations imposed the following obligations on members:

- forwarding to the association copies of orders placed with producers,
- undertaking to agree to checks by the producers as laid down in the rules, while the producers undertook to forward to the association copy of invoices and of any credit notes drawn on or issued by members.

3. The rules of procedure of the three associations and the decisions adopted by their boards of directors specified the practical aims of the agreements, the obligations on members, the penalties in the event of infringements and the practical implementing provisions.

(a) The associations' practical aims included:

- a common business policy; to attain this each association had to promote a common approach to sales by issuing, applying and complying with selling prices for flat glass and processed products;
- cooperation with the producers with the aim of promoting 'a production policy to increase the consumption of glass and the value of processed products by means of an appropriate sales policy'. To this end the associations had to 'negotiate' with the producers a special rebate granted to members only by way of consideration for their obligations. At the same time they endeavoured to regulate the orders placed by their

(b) The obligations on members included:

- an undertaking only to purchase products from firms selected by the associations. For this purpose each member had to forward copies of its orders, including the following details:
 - quantity and quality of products,
 - prices and discounts granted,
 - name of supplier (no commitment was implied);
- an undertaking to refrain from making purchases from foreign producers without prior authorization from the board of directors, except in the event of imports:
 - (a) of products from countries subject to Italian Government quotas, up to these quotas;
 - (b) of special products, not manufactured by the producers selected by the association;
- an undertaking, imposed on members importing from Eastern European countries, to make 25 % of imports available to the association, which had to share them out equitably between members 'excluded' from this source of supply, but interested in obtaining such imports. If the importer refused to comply with this obligation, he had to transfer to the association the amount of the difference between his purchase price and the corresponding purchase price of the same domestic products. This obligation did not apply if the importer undertook to resell the product at the domestic market price;
- an obligation on the association to share out equitably between members quantities of products sold at special prices on the basis of purchases made during the previous 12 months at normal prices;
- the payment of a guarantee: Lit 3 million in cash or Lit 6 million in cheques;
- the submission of a detailed warehouse inventory not more than 30 days before becoming a member.

(c) The 'infringements' committed by members, which were likely to incur penalties from the associations, included:

- failure to send a copy of orders to the association;
- refusal to submit to the regular checks carried out by the association;
- the sale or offer for sale of products on terms less stringent or at prices lower than those fixed by the association;
- refusal to follow the purchasing policy laid down by the association's board of directors.

In the event of infringement the board of directors could impose fines of between Lit 250 000 and Lit 3 million and in certain 'serious' cases recommend that producers suspend supplies to the 'recalcitrant' members for a certain period or expel him.

II. Agreements between the associations of wholesalers and processors and the producers

1. Fabbrica pisana, Vernante Pennitalia and SIV were involved from the outset in setting up the associations of wholesalers and processors. The first minutes of the ISVE board of directors meeting on 25 July 1975 record the three producers' willingness to agree to the association's demands concerning:

- prices charged and the special rebate granted to members only,
- guaranteed maintenance of price levels for goods supplied to dealers,
- compliance with scales of rebates and customer lists.

In consideration for the obligations which the producers later acknowledged, the wholesalers and processors undertook to work out a proper ordering schedule from September 1975.

The abovementioned minutes give details of ISVE's decision on sharing out total orders in hand (Lit 3 200 million):

- 56 % for Fabbrica pisana,
- 27 % for Vernante Pennitalia,
- 17 % for SIV.

Since the 56 % allocated to Fabbrica pisana also includes orders from Fontana, its sales subsidiary,

which amounted to 37 % of the total, the breakdown of the remainder was:

- 32 % for Fabbrica pisana,
- 42 % for Vernante Pennitalia,
- 26 % for SIV.

2. The agreements relating to ISVE were formalized at a meeting held in Milan on 27 February 1976.

ISVE later requested an undertaking from Fabbrica pisana, Vernante Pennitalia and SIV by three letters sent the same day (9 April 1976), summarizing the main points of the agreements, which were ratified by means of an exchange of letters. A similar undertaking was also requested on behalf of the two other associations which were then being set up:

- (a) Fabbrica pisana replied to ISVE on 21 April 1976 and to ASVIC and AMVL on 29 September 1976;
- (b) Vernante Pennitalia's replies were sent to ISVE on 9 June 1976 and to ASVIC and AMVL on 15 November 1976.
- (c) SIV replied to ISVE on 5 May 1976 and to AMVL and ASVIC on 8 November 1976.

3. The content of the agreements between ISVE and the producers, as emerging from the abovementioned exchange of correspondence and the minutes of the association's general meetings, may be summarized as follows:

- (a) the producers granted a special rebate to dealers belonging to the association; the amount was initially set at 7 % (certain exceptions were envisaged for special glasses);
- (b) all members' orders had to be channelled through the associations and only orders forwarded in this way qualified for the special rebate;
- (c) the transaction relating to the special rebate was performed every six months;
- (d) each producer's list of customers had to be updated each year on the basis of objective criteria, taking into account volume of purchases (or sales), number of employees and investments (Vernante Pennitalia did not ratify this clause);
- (e) the wholesalers and processors undertook to comply with the price lists for processed products based on prices agreed with the producers;

- (f) the associations undertook to assign their members' purchasing quotas to the individual producers;
 - (g) the processors and wholesalers belonging to the associations were obliged to agree to checks on their own accounts, performed by a committee appointed by the producers;
 - (h) the members undertook to provide the producers with lists of orders in hand from non-Italian producers when the agreements were entered into;
 - (i) members not satisfying the conditions laid down by the producers were barred from receiving the special rebate. This penalty supplemented those provided for by the associations (see C I 3 (c) above).
- (c) The associations could act as buying agencies and endeavoured to control flat glass imports into Italy, for example, in the case of imports from Germany (ISVE minutes No 6 of 18 November 1975), from Belgium (ISVE minutes No 2 of 6 October 1976) and from Spain (ISVE minutes No 25 of 13 January 1977).
 - (d) By decision of 8 April 1976 ISVE obliged its members to send their orders direct to the association, which would be responsible for passing them on to the producers.
 - (e) The associations gave their members the instructions necessary for enabling statistical data to be recorded; imports were also concerned.
 - (f) The special rebate was regularly granted to firms belonging to the association and paid on the agreed dates.

4. The agreements between AMVL and ASVIC and the producers were less complex and did not include all the abovementioned clauses. However, they did include an undertaking on the part of the wholesalers and processors to share out their purchases equitably between Italian producers only and the undertaking on the part of the latter to grant members a special rebate which was the same as that reserved for ISVE members.

However, tension and differences developed between the interested parties throughout the entire currency of the agreements. The producers continued to supply a number of independent wholesalers on equal, or even better terms than association members, while the wholesalers and processors still made occasional purchases abroad. Nevertheless there were very few such cases; the number increased substantially only shortly before the agreements were terminated.

III. Application of the agreements

The documentation assembled, notably the minutes of general meetings, reveals that the above agreements were applied, although often only partially and intermittently.

- (a) ISVE and AMVL informed members, either by circulating price lists or by notifying 'production costs', of the prices that wholesalers and processors were to charge. ISVE minutes No 26 of 11 February 1977 reveal that they were the highest prices in the world. The associations could authorize percentage increases on these prices, differentiated according to glass qualities and delivery terms.
- (b) The rebates which members could grant to customers were also covered by agreements within the associations. Other discounts were authorized in accordance with market requirements and on the basis of the origin of the glass, its quality and delivery terms.

Further to the content of the agreements summarized at 3 above, the special rebate was 7% up to 30 April 1976 and 5% from 1 May 1976. ISVE minutes No 32 of 29 June 1977 refer to the association's proposal to Fabbrica pisana and SIV that the agreements should be given new impetus by increasing the special rebate from 5 to 10%. The parties to the agreements initially agreed that the special rebate should be paid quarterly, but finally agreed on six-monthly payments.

IV. Duration of the agreements

The agreements between the associations and the producers were gradually abandoned during the second half of 1977; the producers no longer adhered to their undertaking to grant the special rebate only to members of the associations. Only Fabbrica pisana formally withdrew from the agreements on 21 November 1977.

The articles and rules of ISVE and ASVIC together with the decisions taken by the two associations continued to apply until they were wound up. AMVL retained its power to act as a buying agency and to fix prices and terms of sale for its members. However, within the associations, the agreements and decisions adopted were virtually no longer applied once the agreements with the producers were terminated. Even the links between members of AMVL lost much of their significance when the support of the other associations and producers disappeared.

II

ASSESSMENT

A. APPLICABILITY OF ARTICLE 85 (1)

Article 85 (1) of the Treaty establishing the European Economic Community prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices 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.

1. Fabbrica pisana, SIV and Vernante Pennitalia and the companies belonging to ISVE, ASVIC and AMVL are undertakings within the meaning of Article 85 (1) of the EEC Treaty.
2. The decision taken by the associations ISVE, ASVIC and AMVL and the agreements forming the object of this procedure, governing relations between the member undertakings, themselves and their relations with Fabbrica pisana, SIV and Vernante Pennitalia, are decisions by associations of undertakings and agreements between undertakings within the meaning of Article 85 (1).
3. The decisions and agreements have as their object and effect the prevention, restriction and distortion of competition between the undertakings concerned on the flat glass market.
 - (a) The agreements between the wholesalers and processors themselves and the decisions by the associations:
 - (a.1) the agreements between the wholesalers and processors themselves and the deci-

sions taken by the associations ISVE, ASVIC and AMVL may be assessed together since the three associations had the same objectives, means and effects. They were intended to restrict competition between the major Italian dealers in this product. It must be pointed out that, as regards quality, flat glass is a particularly homogeneous product despite the fact that there are various different types (float, drawn, cast). As a result the only areas in which suppliers can compete are prices and terms of sale. The powers of the three associations' management bodies to negotiate product prices and to select suppliers on behalf of their members restrict the freedom of the association's members to compete when purchasing and hence to compete when selling. Moreover, the ban on imports and the obligations to share out, at least in part, any imports from State-trading countries is intended to curtail competition between members. The associations' power to establish uniform prices and determine terms of sale for flat glass has as its object and effect a curbing of the members' interest in and capacity for competing with each other and consequently maintained flat glass prices at artificial levels;

- (a.2) the above agreements and decisions are likely to directly affect trade between Member States. The ban on purchasing the relevant products from foreign producers is above all directed at producers in other Community countries, notably in view of the substantial trade flows within the Community and the output of these producers, a major proportion of which is exported. In addition, the agreements and decisions also affected intra-Community trade indirectly on account of the obligation on members to share out, at least partially, among members quantities of flat glass imported from non-member States and to resell it at prices set by the associations' boards of directors. Such conduct is contrary to the principles of the common market in that it helps to create an artificial pricing system on the Italian market different from that on the other Community markets where unrestricted competition applies also to imported products.

- (b) The agreements between the producers and the associations:
- (b.1) the agreements by which the wholesalers and processors undertook to make their purchases of flat glass in accordance with pre-established quotas assigned to the producers concerned, who in return granted them a special discount, constitute restrictions of competition of a kind explicitly referred to in Article 85 (1) (c). The clauses providing for the forwarding of commercial information and for the carrying out of checks on the implementation of the agreements are also caught by the prohibition in Article 85 (1), because they enabled the producers to ensure that the rules agreed were being respected by all the undertakings concerned;
- (b.2) the agreements entered into between the producers and the associations were likely to affect trade between Member States for the following reasons:
- (a) all the producers concerned did not restrict their business to the Italian market, but also had a stake in the markets of other member countries. Trade flows between Member States were inevitably altered since each producer, on account of the pre-established quotas for the Italian market, was no longer in a position to establish independently his own production and sales policies;
- (b) the producers granted the special rebate to members of the associations in compensation for *inter alia* the export ban which the latter had imposed on themselves; trade flows between Italy and the other Member States were therefore appreciably affected by these agreements, since some 60 % of marketing opportunities on the Italian flat glass market were artificially withdrawn from producers in other Member States.
4. The agreements and decisions appreciably restricted competition on the Italian market in flat glass, not only by the nature of the restrictions envisaged, but also as a consequence of the

market position held by the undertakings concerned. The associations accounted for some 60 % of all flat glass sales on the Italian market, and comprised most of the major Italian dealers in this product, while the producers accounted for some 94 % of output and satisfied some 60 % of consumption of flat glass in Italy.

B. INAPPLICABILITY OF ARTICLE 85 (3)

Pursuant to Article 85 (3) of the EEC Treaty the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement, any decision or any concerted practice which contributes to the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and which does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives of afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

1. As provided for in Article 4 (1) of Regulation No 17, agreements in respect of which parties concerned seek application of Article 85 (3) must be notified to the Commission. Until they have been notified, no decision in application of Article 85 (3) may be taken. In this instance, no such notification was given. Consequently, it is not possible to examine whether the requirements under Article 85 (3) have been met by the agreements in question.

At all events, at least one of the requirements under Article 85 (3) has not been met. Through these agreements and decisions almost all flat glass production in Italy and some 60 % of the Italian consumption of flat glass could be shielded from the interplay of competition both between Italian producers and between, in consequence of the combined effects of uniform prices and sales quotas, Italian wholesalers; this eliminated competition in respect of a substantial part of the relevant products during the currency of the agreements.

The ban on purchasing abroad, the commitments to purchase from the Italian producers entered into by the associations, and the special rebate granted to wholesalers and processors

also made access to this same 60 % share of Italian consumption more difficult for flat glass producers and dealers in other Member States.

2. Furthermore, consideration must be given to whether the agreements in question may be regarded as being exempt from the obligation to notify pursuant to Article 4 (2) of Regulation No 17, which provides that the notification requirement does not apply to agreements where the only parties thereto are undertakings from one Member State and the agreements do not relate either to imports or to exports between Member States.

In this case the latter condition is not fulfilled since the members of the three associations agreed to prohibit dealers from importing flat glass, except on the express authorization of the associations' boards of directors, in consideration for the producers' undertaking to grant a special discount to wholesalers adhering to this undertaking. Article 4 (2) is therefore inapplicable.

C. APPLICABILITY OF ARTICLE 15 (2) OF REGULATION No 17

Pursuant to Article 15 (2) of Regulation No 17, the Commission may impose fines on undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85 (1).

In this instance, however, it is not necessary to impose fines, as the Commission has been able to establish that the agreements and decisions were applied for a relatively short period, given the nature and aims of the restrictions, and that even while they were in formal existence their restrictive clauses were implemented partially and to a limited extent,

HAS ADOPTED THIS DECISION:

Article 1

The agreements between the undertakings belonging to the associations ISVE, ASVIC and AMVL, the decisions of the associations, and the agreements

drawn up by the undertakings through the management bodies of the associations with the Italian flat glass producers Fabbrica Pisana SpA, Società italiana vetro SpA and Vernante Pennitalia SpA constitute infringements of Article 85 (1) of the Treaty establishing the European Economic Community, in their clauses concerning:

- (a) as regards the articles, implementing rules and decisions taken by these associations:
- the obligation on members to make purchases through the associations,
 - the prohibition on members' importing, and the obligation to share out any goods imported following the association's prior authorization, from State-trading countries,
 - the adoption and observance of a common price list;
- (b) as regards the agreements between the associations and the producers:
- the establishment of sales quotas,
 - the granting of a special rebate,
 - the forwarding of business information,
 - the supervision of the activities of the members of the associations.

Article 2

This Decision is addressed to:

Fabbrica pisana SpA, Pisa,
Società italiana vetro SpA, San Salvo (Chieti),
Vernante Pennitalia SpA, Cuneo,
Associazione meridionale vetro in lastre, Catania, in the name and on behalf of its members,

and the undertakings belonging to Istituto Sviluppo Vetro, Milan, and Associazione Sviluppo Vetro Italia Centrale, Ancona, listed in Annexes A and B.

Done at Brussels, 28 September 1981.

For the Commission

Frans ANDRIESEN

Member of the Commission

ANNEX A

ISVE members

Bosisio F.lli Vetriere	Via S. Biagio, 15	20030 Paderno Dugnano (MI)
Checchin Vetri srl	Casella Postale, 24	30030 Favaro Veneto
Chierichetti	Via U. Foscolo, 4	21052 Busto Arsizio
Co. Vetro SpA	Via La Bruina	10400 Volvera
Climanord SpA	Via Pacinotti, 9	37100 Verona
Darglass SpA	Via Orzinuovi, 129	25100 Brescia
Emar di Arosio R. sas	Viale Regina Margherita	20050 Macherio
Ferrari Vetri sas	Via Gigli, 24	21052 Busto Arsizio
Fontana Luigi & C. SpA	Via Romagnoli, 6	20146 Milano
Giannobi Aurelio	Via I. Nievo, 28	20038 Seregno
Glass Fer di Pina Sergio sas	Via S. Maurizio, 66	22036 Erba
Isolar Glass SpA	Via S. Lorenzo (casella postale 72)	39031 Brunico
Mariani & Colnaghi	Via Como, 89	20035 Lissone
Meregalli & Radaelli	Via Grigna, 13	20031 Cesano Maderno
Mioni sas	Via Enrico Fermi, 13	36015 Schio
Multiglass SpA	Località Nuova Betosca	24050 Orio al Serio
Pandiani Giovanni	Via Pisacane, 49	20129 Milano
F.lli Ravera C e A	Strada Beinette Tetto Garetto	12100 Cuneo
Rotondi Daniele e C.	Via Bordighera, 32	20142 Milano
Arosio Carlo	Via Zanelli, 14	20035 Lissone
Socover SpA	Via G. Colombo, 81/A	20100 Milano
Soc. vetraria biancadese	Via Paris Bordone, 74	31030 Biancade
Standard Serramenti	Via Dalmazia, 3	20059 Vimercate
Veca di Cesana & C. SpA	Via Di Vona, 91	20062 Cassano d'Adda
Vetraria d'Adda SpA	Strada Statale Cremasca	24052 Azzano San Paolo
Vetraria d'Adda sas	Via F. Argellati, 1/A	20143 Milano
Vetraria Galimberti	Via Longoni, 104	20030 Barlassina
Vetraria Rima Desio	Via Tagliabue, 91	20033 Desio
Vetreria Longoni	Via San Carlo	20042 Albate
Vetrobrianza SpA	Via Milano, 22	22063 Cantù
Vetromeccaniche italiane SpA	Casata Centurione, 32/R	16100 Genova
Vismara Elia snc	Via Cavour, 143	20034 Giussano
F.lli Zadra	Piazza Mercato, 2	32100 Belluno
Vetreria Muller	Via del Vigneto, 9	39100 Bolzano
Vetrobergamo SpA	Via Provinciale	24040 Lallio
VAM dei F.lli Restelli snc	Via Isonzo, 64	21042 Caronno Pertusella
La Vetreria snc	Via Botti, 12	28044 Intra
Vetrodomus di Pastore e C.	Via Altipiano di Asiago, 5	25100 Brescia
Società Cristalli Temperati	Regione Carpine, Via Alba, 13	10024 Moncalieri (Torino)
PELV	Via Lambertenghi, 14	20159 Milano
Giacomo Sangalli	Via Conegliano, 75	31058 Susegana
Vetraria Cogliati sns	Viale della Repubblica, 85	20035 Lissone

*ANNEX B***ASVIC members**

Camaeti Amedeo Figli snc	Via P. D'Altri, Diegaro 1°	47023 Cesena
Revel Carlo sas	Passo Varano	60100 Ancona
Ilva Specchi di F.lli Molinelli	Via San Germano, 114	61010 Tavullia (PS)
Manifattura Specchi e Vetro Felice Quentin SpA	Via San Morese, 55-57	50019 Sesto Fiorentino
Cristal Luxor di Lupi Antonio	Via Maremmana, 7	50050 Stabbia-Sovana
Nova Vetro	Via M. Giuntini	56023 Navacchio
Vetreria Osimana di Mario Signori	Via Settenpedana, 88	60027 Osimo
Ives snc	Via Becci, Villa San Martino	61100 Pesaro
Vetreria Artistica snc	Via Archimede, 480, Case Castagnoli	47023 Cesena
Vetreria Fratelli Gori	Via Pratese, 103	51100 Pistoia
Giachetti Pilade snc	Via Arno Osmannoro	50019 Sesto Fiorentino
Vetreria Vitrum	Via dei Procacci, 107, Località Soriella	52046 Lucignano
Industria del Vetro di Morbidelli e C.	Zona Industriale del Porto	60100 Ancona
Vetreria Fratelli Mariani snc	Via XX Settembre, 48	06034 Foligno (PG)
Luigi Fontana e C. sp.	Via E. Romagnoli, 6	20100 Milano
