

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 December 1983

relating to a proceeding under Article 85 of the EEC Treaty (IV/27.492 — SMM & T Exhibition Agreement)

(Only the English text is authentic)

(83/666/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the European Economic Community,

I. THE FACTS

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 6, 7 and 8 thereof,

- (1) The SMM & T which was founded in 1902 is the principal trade association for the motor industry in the United Kingdom. All English manufacturers, importers and distributors may be members of the Society. Actually, the members represent the vast majority of the sales of motor industry products in the United Kingdom.

Having regard to the application for negative clearance and notification submitted on 25 June 1973 by the Society of Motor Manufacturers and Traders Ltd (SMM & T), London, of a standard Exhibition Agreement entered into by member signatories and concerning the display of motor vehicles, freight containers and motor goods at exhibitions in the United Kingdom, and in particular the rules governing the direct and indirect participation of exhibitors at such exhibitions,

- (2) The objectives of the Society are, amongst others, to encourage and promote in the United Kingdom and abroad the interests of the motor industry. One of the specific purposes for which the Society was founded is to conduct, hold and promote shows, exhibitions, competitions, races and trials of the products of the motor industry and of assisting therein.

Having regard to the publication ⁽²⁾ of a summary of the rules contained in the Exhibition Agreement, pursuant to Article 19 (3) of Regulation No 17,

The application for negative clearance and the notification presented by the SMM & T relate only to this specific objective and to any measures adopted in pursuance thereof.

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

- (3) The Society is divided into a number of relevant trade sections (car manufacturers and sales concessionaires, freight container manu-

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

(2) OJ No C 216, 23. 8. 1980, p. 2.

facturers, etc). Each section is headed by a committee.

The competent bodies of the Society are the Council which is its highest authority and elects the members; the Executive Committee which has the general direction of the policy and outside activity of the Society; and the General Purposes Committee which runs, amongst others, the exhibition policy of the Society.

- (4) The SMM & T organizes a great number of exhibitions and shows of motor industry products every year throughout the United Kingdom, some of which are general motor exhibitions displaying a variety of motor goods and others are more specialized exhibitions relating to a particular sector of the motor industry like freight containers, caravans and trailers or accessories and components.

The major exhibition organized by the SMM & T is the International Motor Show which is held biennially in even-numbered years in Birmingham at the National Exhibition Centre. Until 1976 the International Motor Show had been held annually in October at Earls Court in London. The first International Motor Show in Birmingham was held in October 1978.

- (5) The Exhibition Agreement in the form in which it was notified to the Commission in 1973 was entered into by member signatories of the Society. It was a continuing arrangement although formally renewed every two years. However, members of the Society were under no obligation to become signatories to the Exhibition Agreement. Manufacturers, and concessionaires for motor vehicles, freight containers and motor goods as well as wholesalers of motor goods, but not mere distributors, could subscribe to the Exhibition Agreement of which the main points were as follows:

- the member signatories should not exhibit or assist in the exhibition of motor vehicles, freight containers or motor goods at any exhibition held within the United Kingdom other than such as are held by the Society, without the consent or approval of the Society,

- the approval of the Society would also be necessary in order to participate in, support, or publish the results of any competition, race or comparative test in the United Kingdom,

- the Society should make to the member signatories a preferential charge for space at exhibitions held by the Society which should be less than the space charge payable by non-signatories,

- upon breaches of the Exhibition Agreement member signatories would forfeit their right to a preferential space charge and they might at the discretion of the Society be excluded from exhibitions organized by the Society,

- any question or dispute that might arise as to the meaning and effect of the Exhibition Agreement should in the first instance be decided by the General Purposes Committee of the Society from whose decision appeal might be made to the Council of the Society. The Council's decision would be final and conclusive.

- (6) Every year the SMM & T would draw up a list of general and specialized exhibitions and fairs which had been approved for participation by member signatories of the SMM & T or for participation by member signatories belonging to certain sections of the Society. Upon application permission to participate at particular events might be given by the Committee of the relevant trade section with the eventual approval of the General Purposes Committee of the Society.

- (7) In August 1979 another British exhibition organizer, Earls Court and Olympia Ltd and its subsidiary Fernston Ltd (Earls Court), made an application to the Commission pursuant to Article 3 of Regulation No 17. In its complaint Earls Court alleged that the SMM & T Exhibition Agreement as applied by the Society and its members infringed Articles 85 and 86 of the Treaty.

- (8) When the SMM & T decided to move the International Motor Show to Birmingham, Earls Court decided to hold a limited motor exhibition in October in London, in the years where the SMM & T were not organizing their International Motor Show. It was accordingly decided to hold at Earls Court in October 1977, for the first time, a motor exhibition although with participation of dealers only.

The exhibition, known as 'Motorfair 1977' was approved under the Exhibition Agreement by the SMM & T for dealer participation only and with the exclusion of certain trade sections of the Society. The approval meant that manufacturers and importers were allowed to support the participation at 'Motorfair 1977' of their dealers who would in any event have been free to participate at their own expense, since they could not be signatories to the Exhibition Agreement.

(9) When Earls Court in 1978 sought the SMM & T's approval under the Exhibition Agreement for a 'Motorfair 1979' as a dealer exhibition the SMM & T refused such approval. This refusal eventually led Earls Court to cancel the planned 'Motorfair 1979' in September 1979 because the number of dealers who would participate without the support of their manufacturer or concessionaire had been so reduced that there was no longer scope for holding the exhibition.

(10) Having examined the complaint the Commission requested the SMM & T to change the Exhibition Agreement. The SMM & T has complied with the Commission's request and has amended the Exhibition Agreement substantially. The main points of the new modified Exhibition Agreement are as follows:

— in the years where the SMM & T organizes international motor vehicle exhibitions signatory members of the Society may participate directly or indirectly in the exhibition of motor products in the United Kingdom at exhibitions not organized by the SMM & T only to the extent permitted by the relevant sections of the Society which shall permit such participation in circumstances and to a degree which is not likely to prejudice the impact of the SMM & T's own international exhibitions organized in those years,

— in the years where there is no international motor vehicle exhibition organized by the SMM & T signatory members are free to participate directly or indirectly without restriction in exhibitions not organized by the Society,

— signatories to the Exhibition Agreement have preference over others in the allocation of space at any international exhibition of motor vehicles organized by the

SMM & T and also enjoy preferential charges (about 25 % less) for space at such exhibitions; the benefits of this clause shall cease to apply on any breach of the Agreement by the member,

— any question or dispute arising as to the meaning and effect of the Exhibition Agreement shall, at the request of any party affected by the said question or dispute, be subject to appeal to an independent arbitrator.

(11) Following the amendments made by the SMM & T to the Exhibition Agreement Earls Court withdrew its complaint.

(12) When amending the Exhibition Agreement the SMM & T originally proposed to insert a restriction on member signatories' participation at exhibitions of potential national importance in the years when the SMM & T does not organize international motor exhibitions. After discussions with the Commission's departments this clause was abandoned.

(13) The Commission has received no observations from third parties subsequent to the publication made pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Applicability of Article 85 (1)

Article 85 (1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions of 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.

(14) The Exhibition Agreement is an agreement between undertakings on the one part and an association of undertakings on the other. Any measure or decision by the SMM & T taken in implementation of the Exhibition Agreement constitutes a decision by an association of undertakings.

The Exhibition Agreement in its present form has as its object or effect the restriction of competition within the common market in the following ways:

- (i) competition between manufacturers and importers of motor goods who are signatories to the Exhibition Agreement and between their dealers is restricted or distorted in that in the years where the SMM & T organizes international motor vehicle exhibitions they are hindered in or prevented from exhibiting and promoting their products to the trade and to the general public in competition with each other at such exhibitions as have not been organized or approved for participation by the SMM & T;
- (ii) competition between organizers of exhibitions at which motor goods may be displayed is restricted or distorted since they are hindered in or prevented from obtaining the participation of manufacturers, importers and also effectively dealers in the years where the SMM & T organizes an international motor vehicle exhibition in the United Kingdom.
- (15) These restrictions of competition are liable to affect trade between Member States as follows:
- (i) in the years in which the SMM & T organizes international motor exhibitions importers of motor goods who are signatories to the Exhibition Agreement are prevented in whole or in part from displaying motor goods manufactured in other Member States at such exhibitions in the United Kingdom as are not held or approved by the SMM & T. This may have the result that only a limited or incomplete range of motor goods from other Member States may be displayed for inspection by the trade or the customers of these goods at such exhibitions;
- (ii) organizers of exhibitions and fairs which have not been approved by the SMM & T are deprived of the opportunity of exhibiting in the United Kingdom motor goods manufactured in other Member States during the years mentioned under (i) above; this obstacle to trade in services by organizers of exhibitions operating between Member States is liable to jeopardize freedom of trade between such States in a manner contrary to the objective of creating a single market for all those States.
- (16) In view of the importance of the sales of motor goods which the signatories to the Exhibition Agreement represent, these effects upon trade between Member States are far from negligible.
- (17) Article 85 (1) consequently applies to the SMM & T Exhibition Agreement.

B. Applicability of Article 85 (3)

Under Article 85 (3) of the Treaty, the provisions of Article 85 (1) may be declared inapplicable in the case of any decision by an association of undertakings which contributes to improving 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:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(18) The Commission has, on a number of occasions ⁽¹⁾, confirmed that it is its policy in the field of exhibitions and fairs to accept agreements or arrangements — such as the SMM & T Exhibition Agreement — where they achieve rationalization and cost saving and also present advantages to the consumers which objectively outweigh the restrictive elements involved.

(19) The abovementioned advantages of rationalization and cost saving are achieved by the SMM & T Exhibition Agreement as follows:

- (i) exhibitions of motor products in the United Kingdom are organized by the SMM & T at such intervals and in such a manner as to ensure the most effective

⁽¹⁾ Commission's Decisions in Cematex (OJ No L 227, 8. 10. 1971, p. 26), renewed on 24 May 1983 (OJ No L 140, 31. 5. 1983, p. 27); UNIDI (OJ No L 228, 29. 8. 1975, p. 17); BPICA (OJ No L 299, 23. 11. 1977, p. 18), renewed on 30 April 1982 (OJ No L 156, 7. 6. 1982, p. 16) and EMO (OJ No L 69, 20. 3. 1969, p. 13), renewed on 7 December 1978 (OJ No L 11, 17. 1. 1979, p. 16).

and high-prestige presentation of the widest possible range of the motor industry's products to potential customers, the general public and the media;

- (ii) the costs incurred by manufacturers and importers for participating at motor exhibitions in the United Kingdom are reduced since they are confined to such exhibitions, at which the widest obtainable variety of motor goods is exhibited, and which are the most effective from a marketing point of view.

It may therefore be concluded that the Exhibition Agreement contributes to improving the distribution of motor goods in the United Kingdom and also to promoting economic progress.

- (20) A fair share of this improvement in distribution and economic progress accrues to consumers. The periodic concentration of the exhibitions organized by the SMM & T enables consumers to gain a full picture of the range of products available and to be in a better position to make their choice without having to travel from one exhibition to another in order to see all available products.
- (21) The restrictions imposed upon manufacturers and importers on participation every second year at exhibitions which may prejudice the impact of the SMM & T's international motor exhibitions may be regarded as indispensable to the attainment of the benefit achieved through the rationalization of the display of motor goods at such events.
- (22) The Exhibition Agreement does not eliminate competition between manufacturers and importers of motor goods in the United Kingdom nor does it eliminate competition between organizers of exhibitions at which motor goods are or may be displayed.

Participation at exhibitions is not the only way for manufacturers and importers of motor goods to attract the interest of the trade or other potential customers. All the media are at the disposal of manufacturers and importers

for attracting customers. Furthermore, it must be borne in mind in this connection that their dealers, apart from having direct daily contact with the majority of potential customers, remain free to participate at any exhibition or fair they wish and their promotion activities will ultimately contribute to maintaining a high degree of competition between manufacturers and between importers.

As far as competition between organizers of exhibitions is concerned it is only moderately affected by the Exhibition Agreement. Any organizer who wishes to arrange an exhibition, in the years other than those of SMM & T exhibitions, is free to do so. Even in years when the SMM & T holds its own international exhibitions only organizers of exhibitions which are likely to prejudice the impact of the SMM & T's international events will be prevented from attracting the participation of manufacturers and importers. Finally, it should be borne in mind also in this connection that dealers remain free to participate on their own account at any exhibition and any time they wish, although they cannot count, in the years when the SMM & T organizes its international exhibitions, on economic support by the signatories of the Agreement.

- (23) Since all the requirements of Article 85 (3) are therefore satisfied, it is possible to grant an exemption to the Exhibition Agreement currently applied by the SMM & T.

C. Applicability of Articles 6, 7 and 8 of Regulation No 17

According to Article 8 (1) of Regulation No 17, a decision in application of Article 85 (3) is to be issued for a specific period and conditions and obligations may be attached thereto. In addition, under Article 8 (2) of the said Regulation the Commission has a duty to ensure that the requirements of Article 85 (3) continue to be satisfied.

- (24) The Exhibition Agreement which had been used by the SMM & T for a long time before 1 January 1973 when the United Kingdom became a member of the European Economic Community was notified to the Commission on 25 June 1973.

However, it was not until 1977 when the Exhibition Agreement influenced the 'Motorfair 1977' organized by Earls Court and 1979 when the application by the SMM & T of the Exhibition Agreement led to the cancellation of 'Motorfair 1979' that the full effect of the restrictive elements of the Exhibition Agreement in its original form became manifest and gave rise to a complaint, and to action on the part of the Commission.

- (25) Following intervention by the Commission the SMM & T in full cooperation with the Commission has modified the Exhibition Agreement in such a manner as to satisfy the requirements of Article 85 (3). The Commission therefore intends to apply Article 7 of Regulation No 17 and declare the provisions of Article 85 (1) inapplicable to the notified Exhibition Agreement from 1 January 1973 to 1 July 1980, the day on which the amended Exhibition Agreement was first submitted to the Commission.
- (26) In determining the duration of its Decision under Article 8 of Regulation No 17 the Commission must take account of the specific characteristics and needs of the motor industry as well as the frequency of the events covered by the Exhibition Agreement. It would therefore seem appropriate to grant exemption for the period from 1 July 1980 to 31 December 1994.
- (27) Pursuant to Article 8 (1) of Regulation No 17, obligations may be attached to the Decision enabling the Commission to ensure, during the period of exemption, that the requirements of Article 85 (3) continue to be satisfied.

The SMM & T should therefore be obliged to inform the Commission immediately of any changes in the Exhibition Agreement and of any alteration of the practical application of it.

Furthermore the SMM & T should immediately inform the Commission about any refusal of approval under the Exhibition Agreement of motor exhibitions organized in the United Kingdom by others than the Society.

Finally, the SMM & T should each year before the end of January submit to the Commission a calendar of international motor exhibitions organized by the Society in the United Kingdom during that year,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85 (1) of the EEC Treaty are, pursuant to Article 85 (3), hereby declared inapplicable to the SMM & T Exhibition Agreement. This Decision shall take effect as from 1 July 1980 and shall remain in force until 31 December 1994.

Article 2

The prohibition in Article 85 (1) of the Treaty is hereby declared inapplicable to the SMM & T Exhibition Agreement from 1 January 1973 to 30 June 1980, pursuant to Article 7 of Regulation No 17.

Article 3

The following obligations shall be attached to the Decision set out in Article 1:

- the SMM & T shall immediately inform the Commission of any changes in the Exhibition Agreement and any alteration of the practical application thereof,
- the SMM & T shall immediately inform the Commission about any refusal of approval under the Exhibition Agreement of motor exhibitions organized in the United Kingdom by others than the SMM & T itself,
- each year, before the end of January, the SMM & T shall submit to the Commission a calendar of its international motor exhibitions for that year.

Article 4

This Decision is addressed to the Society of Motor Manufacturers and Traders Ltd, Forbes House, Halkin Street, London SW1X 7DS, and to all signatories to the Exhibition Agreement, to whom the SMM & T is hereby required to forward the Decision.

Done at Brussels, 5 December 1983.

For the Commission
Frans ANDRIESEN
Member of the Commission