

### Intentions of the Commission

On the basis of the undertakings given by the parties, the Commission proposes to take a favourable view, pursuant to Article 85 (3) of the Treaty, of the agreements the main provisions of which are set out above. Before doing so, however, it invites interested third parties to send their comments within one month of the date of publication of this notice to the following

address quoting reference IV/33.232 — STET, Italtel, AT&T, AT&T-NSI:

Commission of the European Communities,  
Directorate-General for Competition,  
Directorate B 'Restrictive practices, abuse of dominant positions and other distortions of competition I',  
rue de la Loi 200,  
B-1049 Brussels.

### Notice pursuant to Article 19 (3) of Council Regulation No 17 concerning a request for negative clearance or an exemption pursuant to Article 85 (3) of the EEC Treaty (\*) — Case No IV/33.847 — Philips/Matsushita DCC

(92/C 333/04)

#### A. Subject of notification

In November 1991 Philips International BV 'Philips' the consumer electronic product manufacturer notified a series of agreements and a Memorandum of Understanding for negative clearance or exemption relating to the development and exploitation of the Digital Compact Cassette 'DCC' and the DCC player.

#### B. Undertakings concerned

The relevant undertakings are Philips, Matsushita Electric Industrial Company Ltd ('MEI') of Japan, which is engaged in the design, manufacture and sale of a broad range of consumer products, Thomson Consumer Electronics SA ('TEC'), a company within the French based Thomson group, Telefunken Fernseh und Rundfunk GmbH ('TFR'), part of the Thomson group and active, mainly in Europe, in the consumer electronics field, Institut für Rundfunktechnik GmbH 'IRT' a research institute of German broadcasters, Centre Commun d'Etudes de Télédiffusion et Télécommunications ('CCETT'), the research institute of France Télécom and Sony Corporation of Japan which is involved in the consumer electronic sector. In addition there is a Memorandum of Understanding relating to copyright piracy between Philips and the International Federation of the Phonographic Industry ('IFPI'), representing the international music industry.

#### C. The Digital Compact Cassette 'DCC'

A new type of magnetic tape cassette recording and reproduction system producing digital sound as opposed to the present analogue sound of traditional cassettes. Unlike compact discs ('CDs'), DCC will be backward compatible with analogue cassettes in that these cassettes will be playable on DCC players — the opposite will not be the case however.

#### D. The market

The market for consumer audio products at present consists principally of analogue cassettes, compact discs and vinyl records (though fast declining in the case of

long-play records ('LPs'). This market is estimated to have a turnover of approximately US \$ 35 billion worldwide. The principal European undertakings are Philips, Thomson, Grundig and Telefunken, while in the Far East Matsushita, Sony, Sanyo and Hitachi are the leaders.

#### E. The Agreements and Memorandum of Understanding

##### 1. Multilateral Six Partner Cross Licensing Agreement

The parties ('partners') are Philips, MEI, TEC, TFR, IRT and CCETT. In order to develop manufacture and exploit DCC players and cassettes, the partners grant to each other during the term of the agreement, which will be until the expiration of the last of the DCC patents included in the agreement, a non-exclusive, non-transferable licence in relation to that partner's DCC patents including the right to have made, use, sell or otherwise dispose of DCC players and cassettes.

##### 2. Bilateral agreements between Philips and MEI, TEC, TFR, IRT, CCETT and Sony

These agreements will authorize Philips on an exclusive basis to grant licences in respect of all the partners DCC patents, to third parties, for the purpose of using, manufacturing, selling or otherwise disposing of DCC products. Sony has also given such an authorization to Philips. These bilateral agreements will remain in force until the expiration of the last DCC patent filed on or before 1 July 1991.

##### 3. Standard Player Licence Agreement and Standard Cassette Licence Agreement

Arising out of the agreements described in 2. above, Philips will grant licences on a non-discriminatory, non-exclusive basis to third parties for a period of ten years to enable them to manufacture and sell DCC cassettes and/or players. The rights granted extend to the manufacture of completed cassettes and/or players but not components. There are two anti-piracy provisions incorporated in the agreement:

(a) codes on DCC cassettes, identifying the manufacturer thereof;

(\*) OJ Special edition No 13, 21. 2. 1962, p. 204/62.

(b) a system technically blocking serial digital recording from a copyright protected original digital recording ('serial copying management system').

#### 4. Memorandum of Understanding between Philips and IFPI

The Memorandum, the purpose of which is to counter copyright piracy, provides for Philips to notify IFPI of the identity of each prospective licensee. IFPI will then have a short period (maximum six weeks, including extensions) within which to make inquiries principally in court/tribunal records as to whether the prospective licensee has committed acts of copyright piracy. Philips and IFPI have undertaken that details of such applications shall not be divulged to IFPI members and only within the IFPI secretariat itself on a 'need to know' basis. Philips will then decide, independently of IFPI, whether or not to grant a licence, but having regard to the information furnished by IFPI. In cases where Philips proposes to refuse a licence, principally based on information furnished by IFPI, the application shall be suspended in order to give the prospective licensee an opportunity to avail of independent arbitration. The Directorate-General for Competition shall, in addition, be

kept informed of such cases and of any subsequent arbitration.

5. On initial examination the Commission is of the view that while the Agreements contain some restrictions on competition contrary to Article 85 (1) of the EEC Treaty which could affect trade between Member States (e.g. pooling of patents and know-how, exclusive licensing and standardization of specifications), they together with the Memorandum would in any event merit exemption pursuant to Article 85 (3). In particular they appear to contribute substantially to technical progress and also to serve the interests of the consumer.

On the basis of the above, the Commission proposes to take a favourable position in relation to the Agreements and the Memorandum. The Commission invites interested third parties to send their observations, within one month from the date of publication of this notice, to the following address, quoting the reference 'TV/33.847 — Philips/Matsushita DCC':

Commission of the European Communities  
Directorate-General for Competition  
Directorate for restrictive practices, abuse of dominant positions and other distortions of competition/I  
200, rue de la Loi  
B-1049 Bruxelles.

#### Commission communication in the framework of the implementation of Council Directive 89/392/EEC of 14 June 1989 in relation to machinery <sup>(1)</sup>, as amended by Council Directive 91/368/EEC of 20 June 1991 <sup>(2)</sup>

(92/C 333/05)

#### Publication — for information — of notified bodies that can carry out type examination pursuant to the Directive

The third section of page 10 of the *Official Journal of the European Communities* No C 271 of 20 October 1992 is hereby replaced by the following two sections.

<p>AIF Services SA Zone industrielle de Magre BP 308 F-87008 Limoges Cedex</p> <p>Apave lyonnaise BP 3 F-69611 Tassin Cedex</p>	<p>Injection or compression plastics-moulding machines with manual loading or unloading (point 10 of Annex IV).</p> <p>Injection or compression rubber-moulding machines with manual loading or unloading (point 11 of Annex IV).</p>
<p>Institut national de l'environnement industriel et des risques (Ineris) BP 2 F-60550 Verneuil-en-Halatte</p>	<p>Hydraulic-powered roof supports (point 12, second indent, of Annex IV).</p> <p>Internal combustion engines to be fitted to machinery for underground working (point 12, third indent, of Annex IV).</p>

#### REFERENCE:

The Commission ensures the updating of this list <sup>(3)</sup>.

<sup>(1)</sup> OJ No L 183, 29. 6. 1989, p. 9.

<sup>(2)</sup> OJ No L 198, 22. 7. 1991, p. 16.

<sup>(3)</sup> OJ No C 271, 20. 10. 1992, p. 9.