

"קניאל" חברה ישראל לקופסאות בע"מ;  
"לנין" בית תרופות לקופסאות ופחים בע"מ.

מהות הכבילה:

הסדרת הייצור של סוגים מסוימים של קופסאות פח  
למזון בכל אחד מהמפעלים.

ההסדר האמור פתוח לעיון הציבור ברשות להגבלים  
עסקיים, רח' דוד המלך 8, ירושלים.

ד' בטבת התשנ"ו (27 בדצמבר 1995)  
(חמ 680-3)

יורם טורבוביץ

הממונה על ההגבלים העסקיים

### הודעה על פטור מאישור הסדר כובל

לפי חוק ההגבלים העסקיים, התשמ"ח-1988

אני מודיע כי בתוקף סמכותי לפי סעיף 14 לחוק  
ההגבלים העסקיים, התשמ"ח-1988, נתתי ביום כ"ו בכסלו  
התשנ"ו (19 בדצמבר 1995), פטור מאישור בית הדין להסדר  
כובל שפרטיו הם:

הצדדים להסדר:

איגוד יצרני מוצרי עץ ורהיטים בישראל וחברי  
האיגוד.

מהות ההסדר:

ההסדר שלגביו ניתן הפטור הוא החלטת האיגוד כי  
השתתפות בתערוכת רהיטי ישראל (הנקראת כיום  
"ריהוטים") לא תהא פתוחה לחברי האיגוד, אשר בסמיכות  
ומנים השתתפו בתערוכות אשר לדעת האיגוד פוגעות  
בייחוד ובמוניטין של תערוכת רהיטי ישראל.

הפטור כפוף לתנאי הממונה כפי שצוינו בהחלטה.

הפטור יעמוד בתוקפו לתקופה של שלוש שנים מיום  
מתן ההחלטה האמורה.

הפטור פתוח לעיון הציבור ברשות להגבלים עסקיים,  
רח' דוד המלך 8, ירושלים.

ד' בטבת התשנ"ו (27 בדצמבר 1995)  
(חמ 41-3)

יורם טורבוביץ

הממונה על ההגבלים העסקיים

1 ס"ח התשמ"ח, עמ' 128.

### מינוי חבר וממלא מקום במועצה הארצית לתכנון ולבניה מתוך הרשויות בפנקס המהנדסים והאדריכלים

לפי חוק התכנון והבניה, התשכ"ה-1965

בתוקף סמכותי שר הפנים לפי סעיפים 2(ב) ו-48א(א)  
לחוק התכנון והבניה, התשכ"ה-1965, שהואצלה לי, אני  
ממנה, מתוך הרשויות בפנקס המהנדסים והאדריכלים, את

1 ס"ח התשכ"ה, עמ' 307.

2 י"פ התשל"א, עמ' 761.

(גימלאות) [נוסח משולב], התש"ל-1970, קבעה ועדת  
השירות את התיאומים כמפורט להלן לחישוב המשכורת  
הקובעת של העובדים המדרגים בדירוג הפרקליטים.

א. עובד שפרש מן השירות במהלך שנת 1993 ועד ליום  
31.1.1994 ולא קיבל דרגת פרישה ערב פרישתו, תחושב  
משכורתו הקובעת, החל מיום 1.2.1994, כאילו היתה  
דרגתו דרגה אחת מעל לדרגת פרישתו.

ב. עובד שפרש מן השירות במהלך שנת 1993 ועד ליום  
31.1.1994 וקיבל חצי דרגת פרישה ערב פרישתו, תחושב  
משכורתו הקובעת, החל מיום 1.2.1994, כאילו היתה  
דרגתו חצי דרגה מעל לדרגת פרישתו.

ג. על אף האמור לעיל, עובד שפרש מן השירות במהלך  
שנת 1993 ועד ליום 31.1.1994 בדרגה 4א ולא קיבל  
דרגת פרישה ערב פרישתו, תחושב משכורתו הקובעת  
מיום פרישתו כאילו דרגתו היתה דרגה 4א+ ומיום  
1.2.1994, כאילו דרגתו היתה דרגה 5א.

ד. עובד שפרש מן השירות במהלך שנת 1993 ועד ליום  
31.1.1994 בדרגה 4א+ ולא קיבל דרגת פרישה ערב  
פרישתו, תחושב משכורתו הקובעת, החל מיום 1.2.1994,  
כאילו דרגתו היתה דרגה 4א+.

ה' בטבת התשנ"ו (26 בדצמבר 1995)  
(חמ 938-3)

יצחק גל-נור

יושב ראש ועדת השירות

1 ס"ח התש"ל, עמ' 65.

### הודעה בדבר רשימת נציגי שר הפנים בוועדות להשלמת תכניות

לפי חוק התכנון והבניה, התשכ"ה-1965

בתוקף סמכות שר הפנים לפי סעיף 109א(ב) לחוק  
התכנון והבניה, התשכ"ה-1965, שהועברה אלי, אני מודיע  
כי פסקואל ברויד ועופרה ליבנה ייכללו ברשימת נציגי שר  
הפנים לוועדות להשלמת תכניות.

ד' בטבת התשנ"ו (27 בדצמבר 1995)  
(חמ 2160-3)

עמרם קלעג'י

המנהל הכללי של משרד הפנים

1 ס"ח התשכ"ה, עמ' 307; התשמ"ח, עמ' 144.

2 י"פ התשל"א, עמ' 761.

3 י"פ התשמ"ט, עמ' 3155; התשנ"א, עמ' 622; התשנ"ג, עמ'  
3452; התשנ"ד, עמ' 4280.

### הודעה על רישום הסדר כובל

לפי חוק ההגבלים העסקיים, התשמ"ח-1988

בהתאם לסעיף 7(ב) לחוק ההגבלים העסקיים,  
התשמ"ח-1988, אני מודיע בזאת כי נרשם הסדר כובל  
לגבי ייצור קופסאות פח למזון.

הצדדים להסדר הם:

1 ס"ח התשמ"ח, עמ' 128.



## רשות ההגבלים העסקיים

ט' טבת תשנ"ו  
01 ינואר 1996

לכבוד  
הממונה על חקיקת משנה  
משרד המשפטים  
ירושלים

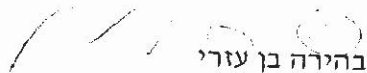
ג.נ.,

### הנדון : הודעות לפרסום ברשומות

- מצ"ב - 1. הודעה על פטור מאישור הסדר כובל .  
2. הודעה על רישום הסדר כובל .

אודה לך עבור פרסום ההודעות ברשומות לפי סעיפים 7(ב) ו- 14 לחוק ההגבלים העסקיים  
התשמ"ח - 1988.

בכבוד רב,

  
בהירה בן עזרי

העתק : לשכת הדובר - לפרסום ההודעות בשני עיתונים יומיים



## רשות ההגבלים העסקיים

### **הודעה על פטור מאישור הסדר כובל לפי חוק ההגבלים העסקיים התשמ"ח - 1988<sup>1</sup>**

אני מודיע כי בתוקף סמכותי לפי סעיף 14 לחוק ההגבלים העסקיים התשמ"ח - 1988, נתתי ביום 19 בדצמבר 1995 (כ"ז כסליו התשנ"ו), פטור מאישור בית הדין להסדר כובל שפרטיו הם:

הצדדים להסדר:

איגוד יצרני מוצרי עץ ורהיטים בישראל וחברי האיגוד.

מחוז ההסדר:

ההסדר לגביו ניתן הפטור הוא החלטת האיגוד כי השתתפות בתערוכת רהיטי ישראל (הנקראת כיום "ריהוטים") לא תהא פתוחה לחברי האיגוד, אשר בסמיכות זמנים השתתפו בתערוכות אשר לדעת האיגוד פוגעות בייחוד ובמוניטין של תערוכת רהיטי ישראל.

הפטור כפוף לתנאי הממונה כפי שצוינו בהחלטה.

הפטור יעמוד בתוקפו לתקופה של שלוש שנים מיום מתן ההחלטה האמורה.

הפטור פתוח לעיון הציבור ברשות להגבלים עסקיים, רח' המלך דוד 8 ירושלים.

  
ד"ר יורם טורבול

הממונה על ההגבלים העסקיים;

27 בדצמבר 1995  
ד' בטבת התשנ"ו

<sup>1</sup> ס"ח התשמ"ח, עמ' 128

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
036	TRANSMISSION		259274	03	OK

.....  
ERRORS

1) HANG UP OR LINE FAIL	2) BUSY	3) NO ANSWER
4) NO FACSIMILE CONNECTION	5) 8 MIN. OVERFLOW	



STATE OF ISRAEL  
 ANTITRUST AUTHORITY  
 8 KING DAVID ST., JERUSALEM  
 TELEPHONE  
 FAX

02-233681  
 02-233687

מדינת ישראל  
 רשות ההגבלים העסקיים  
 המלך דוד 8, ירושלים  
 טלפון  
 פקס

**פקסימיליה FAX**

DATE	19 דצמבר, 1995	תאריך
TO	מר שמואל גרוסמן ע"ד	אל
COMPANY	חיים גרוסמן - שמואל גרוסמן	שם המשרד המקבל
TELEPHONE	03-6965287	טלפון
FAX	03-6938329	פקס
ATTENTION	מר שמואל גרוסמן ע"ד	לידיעה
FROM	בהירה בן עזרי	נשלח ע"י
TOTAL NO. OF PAGES	6	מס' עמודים כולל דף זה
COMMENTS	מצ"ב החלטת הממונה בענין פטור מאישור הסדר כובל.	הערות

ANTITRUS AUTHORITYT

(AUTO) .....

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION
045	TRANSMISSION	

TEL NO.

036938329

PAGE

06

RESULT

OK

ERRORS

- |                            |                    |              |
|----------------------------|--------------------|--------------|
| 1) HANG UP OR LINE FAIL    | 2) BUSY            | 3) NO ANSWER |
| 4) NO FACSIMILE CONNECTION | 5) 8 MIN. OVERFLOW |              |



## רשות ההגבלים העסקיים

### אגוד יצרני עץ ורהיטים בישראל - תערוכת "ריהוטים"

#### החלטה בענין פטור מאישור הסדר כובל

א. מבוא

ביום 25.5.95 הוגשה לרשות ההגבלים העסקיים בקשה להארכת תוקפו של פטור לפי סעיף 14 לחוק ההגבלים העסקיים, התשמ"ח - 1988, שניתן ביום 24.12.92 ואשר הותנה בארבעה תנאים (להלן: "הפטור המקורי"). הבקשה הוגשה מטעם אגוד יצרני מוצרי עץ ורהיטים בישראל (להלן: "האגוד"), כאשר הצדדים להסדר הינם חברי האגוד.

ההסדר לגביו ניתן הפטור הוא החלטת האגוד כי השתתפות בתערוכת רהיטי ישראל (הנקראת כיום "ריהוטים") לא תהא פתוחה לחברי האגוד, אשר בסמיכות זמנים השתתפו בתערוכות אשר לדעת האגוד פוגעות בייחוד ובמוניטין של תערוכת רהיטי ישראל. מטרתו העיקרית של ההסדר היתה והינה קידום מוצרי כחול לבן, באמצעות תערוכה זו.

האגוד טוען בבקשתו כי במהלך תקופת השנתיים בחן הפטור המקורי היה בתוקפו הוכח כי ההסדר לא פגע, לא מנע ולא הפחית את התחרות בעסקים בין חברי האגוד. לדבריו, חברי האגוד מתחרים בינם לבין עצמם תחרות קשה, בכל הנוגע לרמת השירות, לטיב המוצרים, איכותם, מחירם ועיצובם. ההסדר מעניק לחברי האגוד אפשרות ליצור ולשמור על תדמיתו הגבוהה והמכובדת של ענף הרהיטים בישראל, תוך בנית מודל יחודי סביב תערוכת "ריהוטים".

סוגיית הארכת ההסדר נבדקה על ידי בעזרת כלכלן רשות ההגבלים העסקיים. במהלך הבדיקה נערכו פגישות עם אנשי האגוד ועם גורמים נוספים הקשורים לתכנון וארגון תערוכות בישראל. לאחר קבלת נתונים עדכניים בנוגע לאופן יישומו של ההסדר בפועל, במהלך השנתיים בהן הוחל עליו הפטור, הגעתי לידי מסקנה, כי אף כיום ההסדר מגביל באופן לא משמעותי את התחרות בין חברי האגוד לבין עצמם ובין מארגני התערוכות לבין עצמם. לפיכך מצאתי כי אפשר ליתן לו פטור מאישור הסדר כובל, כאמור בסעיף 14 לחוק ההגבלים.

אתאר להלן את הנימוקים שהביאו אותי ליתן את הפטור המקורי, הצגת התלונות כנגד ההסדר הנדון ובדיקתן, ולבסוף אביא את הצדקותי למתן הפטור הנדון.

## ב. נימוקי מתן הפטור המקורי

ביום 24.12.92 ניתן על ידי פטור מאישור הסדר כובל על ידי בית הדין להגבלים עסקיים להגבלת האיגוד את חבריו בכך שאינו מאפשר להם להשתתף בתערוכות הנערכות בסמיכות זמנים עם תערוכת "רהיטי ישראל", אשר לדעתו הן פוגעות בייחוד ובמוניטין של תערוכה זו.

בהחלטתי קבעתי כי "ההסדר בין חברי האיגוד מגביל באופן לא משמעותי את התחרות בעסקים, ובנסיבות המקרה ראוי ליתן פטור בתנאים לפי סעיף 14 לחוק ההגבלים העסקיים. הפגיעה האפשרית העלולה להיגרם עקב ההסדר אינה נחזית כמשמעותית, שכן תערוכת רהיטי ישראל הינה רק אפשרות אחת מבין אפשרויות שונות, באמצעותן יכולים היצרנים לקדם מכירותיהם, ויש ליצרנים המקומיים אינטרס לגיטימי בשאיפתם לבנות ייחודיות סביב התערוכה המאורגנת על ידם. באיזון האינטרסים, יש מקום ליתן משקל לאינטרס האחרון, בתנאים ולתקופת זמן במהלכה ניתן יהיה לאמוד את השפעת ההגבלה על המתרחש במשק".<sup>1</sup>

בנוסף, אף שאבתי תימוכין וחיזוק לגישה האמורה ממדיניות הקהילה האירופית, שם מעניקה הנציבות פטור להסדרים אשר מטילים מגבלות על השתתפות יצרנים בתערוכות וזאת בשל הערך החיובי השולי הנלווה למגבלות, המתבטא בריכוז יצרנים בתחום נתון. הוספתי והדגשתי, כי יוצאים נשכרים הן היצרנים והן הלקוחות אשר נהנים מחשיפת מוצרים מתחרים בו זמנית.

מכלול דברים אלו, בתוספת העמדה הנקוטה באירופה ובארה"ב, הביאו אותי למסקנה כי אפשר ליתן את הפטור המבוקש בתנאים, ולתקופה מוגבלת במהלכה ניתן יהיה כאמור לבחון עובדתית את השפעת ההסדר על התחרות.

## ג. תלונות

ביום 11.12.94 הופנתה אלי תלונה בנוגע להסדר הנדון. בתלונה נטען כי האיגוד החל כבר מאז שנת 1990 לאיים על חבריו לבל ישתתפו בתערוכות של מארגנים אחרים בנושא ריהוט ועיצוב. המתלוננים הוסיפו וטענו, כי בתערוכת "רהיטי ישראל", שמטרתה העיקרית היתה בהגברת המוניטין של מוצרי הרהיטים מתוצרת כחול לבן, הוחל בהצגת מוצרים רבים מיבוא עד כדי כך שהצביון היחודי של התערוכה אבד. בהמשך התלונה נטען כי לאחרונה החל האיגוד לארגן תערוכה נוספת למוצרי אמבט שהינה על טהרת היבוא. האיגוד מיידע את הגורמים המבקשים להציג

<sup>1</sup> החלטת הממונה על ההגבלים העסקיים מיום 24.12.92. עמוד 2.

מרכולתם בתערוכה זו כי אם ישתתפו בתערוכות אחרות שאינן מטעם האיגוד לא יורשו להשתתף בתערוכה זו בעתיד.

בבדיקה שנערכה על ידינו לא מצאנו תשתית עובדתית לכך שהאיגוד מאיים על חבריו או מונע מהם בדרכים אחרות השתתפות בתערוכות שאינן מאורגנות על ידו, באמצעות "החברה הכלכלית - יצוא מוצרי עץ ורהיטים (איגוד יצרני עץ) בע"מ". בפגישה שנתקיימה עם נציגי האיגוד ביום 24.8.95 אף נאמר על ידם, כי נכון הדבר ש"ריהוטים" מיועדת לחברי האיגוד בלבד, אך תערוכת "מטבח ואמבט", הנערכת אחת לשנתיים, פתוחה לכל הרוצה להשתתף בה - גם יצרנים מקומיים וגם יבואנים. אין לגביה כל מגבלת השתתפות, למעט תשלום עבור שטח התצוגה. בנוסף, ועל מנת להפיג כל חשש, הודיעו הנציגים כי הם מוכנים להוציא חוזר לכל חברי האיגוד בו יובהר בלשון מפורשת כי השתתפות חבר איגוד בתערוכות שאינן מאורגנות על ידי האיגוד לא תגביל השתתפותו בתערוכות האיגוד, כפוף להסדר הנדון.

בנוגע לטענה בדבר הצגת מוצרי יבוא רבים בתערוכת "ריהוטים" ואיבוד צביונה ה"כחול לבן", הרי שעיון בפרוטוקולים של וועדת המשמעת של האיגוד סותר טענה זו. יו"ר האיגוד בדבריו בישיבת וועדת המשמעת של האיגוד ביום 15.12.93 מבקש להדגיש כי הצגת מוצרים מיבוא בתערוכה הינה חמורה. בנוסף, הובאה לעיונו החלטת וועדת המשמעת של האיגוד, מיום 17.4.94, בענין הפרת תקנון ההשתתפות בתערוכת ריהוטים 94. בהחלטה זו מובא תוכנו של סעיף 1 לתקנון ההשתתפות, לפיו:

"1.1 המציג רשאי להציג בתצוגה מוצרים אופייניים מתוצרת המפעל בלבד.

1.2. במידה והמציג נזקק להוסיף מוצרים משלימים הינו רשאי לעשות כן ובתנאי:

א. שיהיו מתוצרת אחד החברים באיגוד המשתתפים בתערוכה.

ב. לא יעלה מספרם על 10% מהיקף המוצרים בתצוגה.

ג. ובלבד שיהיו אחד או יותר מהמוצרים ברשימה המצ"ב:

1. כסא

2. שולחן סלוני

3. שולחן משרדי

1.3. חל איסור חמור להציג רהיטים מיובאים מכל סוג שהוא."

בין יתר דברי הוועדה נקבע כי "הצגת מוצרי יבוא בתערוכה, שכל יחודה בהצגת תוצרת "כחול לבן", הוא מעשה שלא יעשה ... האיסור לגבי היבוא הוא איסור מוחלט וההתייחסות אליו היא באופן החמור ביותר". החברה שהציגה מוצרי יבוא אף הורחקה לתקופת זמן של שנה אחת מתערוכת "ריהוטים", דהיינו לא התאפשר לה להשתתף בתערוכה שהתקיימה במהלך חול המועד

סוכות תשנ"ה. אוסיף ואומר, כי במהלך הברור שנערך עם חברה זו, הבהיר מזכיר האיגוד כי אין המדובר בתופעה רחבת היקף, וכי לא ידוע לו על יצרנים נוספים שהציגו מוצרי יבוא בתערוכה.

## המלצות למתן הפטור

לאחר בדיקת התלונה האמורה, הגעתי לכלל מסקנה כי ניתן להאריך את הפטור המבוקש. נימוקי מתבססים על הנימוקים שהובאו באישור הפטור המקורי, כאשר אליהם מצטרף רכיב נוסף, והוא בחינת ההסדר בשנות הפעלתו. התלונה היחידה אשר הגיעה לרשות ההגבלים העסקיים בנוגע לאיגוד וההסדר הנדון, היתה זו שהובאה לעיל. תלונה זו נבדקה לעומקה, לרבות בדיקת רווחיות תערוכות האיגוד. לאחר בדיקה זו נמצא כי להסדר הנדון לא היתה השפעה שלילית על אורחות התחרות בין חברי האיגוד לבין עצמם ובין מארגני התערוכות לבין עצמם.

## סוף דבר

נוכח כל האמור לעיל, הגעתי לכלל החלטה, כי אאריך את הפטור שניתן להסדר הנדון מאישור הסדר כובל על ידי בית הדין להגבלים עסקיים, בתנאים הבאים, שעיקרם כבר נקבעו באישור המקורי:

1. ההגבלה של אי השתתפות בתערוכות אחרות יחול רק בתקופת ששת החודשים הקודמים לתערוכת "ריהוטים" ולתקופה של חודשיים לאחריה.
2. החלטת האיגוד כי תערוכה אחרת תשלול זכות השתתפות של חברי האיגוד בתערוכת "ריהוטים" תתקבל בהתאם לכללי הצדק הטבעי, במיוחד על דרך מתן הזדמנות שמיעה (גם על ידי הצגת טיעון בכתב) לכל צד מעוניין העלול להיפגע.
3. ישלח עותק לממונה על ההגבלים העסקיים מכל מכתב ו/או חוזר מאת האיגוד לחבריו בנושא אי השתתפותם בתערוכת רהיטי ישראל.
4. ישלח עותק מפרוטוקול וועדת המשמעת של האיגוד בנוגע לכל תערוכת "ריהוטים" שתקיים.
5. לא תנקט - במישורין או בעקיפין - שום סנקציה נגד חבר האיגוד הבוחר להשתתף בתערוכה שאינה "ריהוטים", זולת אי השתתפות החבר בתערוכת "ריהוטים".



6. ישלח תוזר מטעם האיגוד לכל חבריו, המציין כי בכפוף לסעיף 5 לעיל, לא תנקטנה כל הגבלות על חבר המשתתף בתערוכות שאינן מאורגנות על ידי האיגוד, לרבות אי השתתפות בתערוכות המאורגנות מטעם האיגוד.

הפטור יעמוד בתוקפו לתקופה של שלוש שנים נוספות.

החלטתי זו נתונה לערר בפני בית הדין להגבלים עסקיים על ידי ארגון צרכנים, איגוד עסקי או כל הרואה עצמו נפגע מההסדר הכובל עליו ניתן הפטור.

כמו כן, תבחן החלטה זו על ידי במקרה של שינוי נסיבות מהותי, או במידה ויוצג לפני מידע שלא הובא לידיעתי ואשר יש בו כדי להקרין על הבקשה המאושרת בזאת.

ניתן היום 19 לדצמבר 1995, בירושלים.



ד"ר יורם טורבוביץ

הממונה על ההגבלים העסקיים

STATE OF ISRAEL  
ANTITRUST AUTHORITY  
8 KING DAVID ST., JERUSALEM  
TELEPHONE  
FAX

02-233681  
02-233687

מדינת ישראל  
רשות ההגבלים העסקיים  
המלך דוד 8, ירושלים  
טלפון  
פקס

פקסימיליה FAX

DATE	19 דצמבר, 1995	תאריך
TO	מר שמואל גרוסמן עו"ד	אל
COMPANY	חיים גרוסמן - שמואל גרוסמן	שם המשרד המקבל
TELEPHONE	03-6965287	טלפון
FAX	03-6938329	פקס
ATTENTION	מר שמואל גרוסמן עו"ד	לידיעה
FROM	בהירה בן עזרי	נשלח ע"י
TOTAL NO. OF PAGES	6	מס' עמודים כולל דף זה
COMMENTS	מצ"ב החלטת הממונה בענין פטור מאישור הסדר כובל.	הערות



THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION
045	TRANSMISSION	

TEL NO.

036938329

PAGE

06

RESULT

OK

.....  
ERRORS

- |                            |                    |              |
|----------------------------|--------------------|--------------|
| 1) HANG UP OR LINE FAIL    | 2) BUSY            | 3) NO ANSWER |
| 4) NO FACSIMILE CONNECTION | 5) 8 MIN. OVERFLOW |              |



## רשות ההגבלים העסקיים

### אגוד יצרני עץ ורהיטים בישראל - תערוכת "ריהוטים"

#### החלטה בענין פטור מאישור הסדר כובל

א. מבוא

ביום 25.5.95 הוגשה לרשות ההגבלים העסקיים בקשה להארכת תוקפו של פטור לפי סעיף 14 לחוק ההגבלים העסקיים, התשמ"ח - 1988, שניתן ביום 24.12.92 ואשר הותנה בארבעה תנאים (להלן: "הפטור המקורי"). הבקשה הוגשה מטעם אגוד יצרני מוצרי עץ ורהיטים בישראל (להלן: "האגוד"), כאשר הצדדים להסדר הינם חברי האגוד.

ההסדר לגביו ניתן הפטור הוא החלטת האגוד כי השתתפות בתערוכת רהיטי ישראל (הנקראת כיום "ריהוטים") לא תהא פתוחה לחברי האגוד, אשר בסמיכות זמנים השתתפו בתערוכות אשר לדעת האגוד פוגעות בייחוד ובמוניטין של תערוכת רהיטי ישראל. מטרתו העיקרית של ההסדר היתה והינה קידום מוצרי כחול לבן, באמצעות תערוכה זו.

האגוד טוען בבקשתו כי במהלך תקופת השנתיים בהן הפטור המקורי היה בתוקפו הוכח כי ההסדר לא פגע, לא מנע ולא הפחית את התחרות בעסקים בין חברי האגוד. לדבריו, חברי האגוד מתחרים בינם לבין עצמם תחרות קשה, בכל הנוגע לרמת השירות, לטיב המוצרים, איכותם, מחירים ועיצובם. ההסדר מעניק לחברי האגוד אפשרות ליצור ולשמור על תדמיתו הגבוהה והמכובדת של ענף הרהיטים בישראל, תוך בנית מודל יחודי סביב תערוכת "ריהוטים".

סוגיית הארכת ההסדר נבדקה על ידי בעזרת כלכלן רשות ההגבלים העסקיים. במהלך הבדיקה נערכו פגישות עם אנשי האגוד ועם גורמים נוספים הקשורים לתכנון וארגון תערוכות בישראל. לאחר קבלת נתונים עדכניים בנוגע לאופן יישומו של ההסדר בפועל, במהלך השנתיים בהן הוחל עליו הפטור, הגעתי לידי מסקנה, כי אף כיום ההסדר מגביל באופן לא משמעותי את התחרות בין חברי האגוד לבין עצמם ובין מארגני התערוכות לבין עצמם. לפיכך מצאתי כי אפשר ליתן לו פטור מאישור הסדר כובל, כאמור בסעיף 14 לחוק ההגבלים.

אתאר להלן את הנימוקים שהביאו אותי ליתן את הפטור המקורי, הצגת התלונות כנגד ההסדר הנדון ובדיקתן, ולבסוף אביא את הצדקותי למתן הפטור הנדון.

## ב. נימוקי מתן הפטור המקורי

ביום 24.12.92 ניתן על ידי פטור מאישור הסדר כובל על ידי בית הדין להגבלים עסקיים להגבלת האיגוד את חבריו בכך שאינו מאפשר להם להשתתף בתערוכות הנערכות בסמיכות זמנים עם תערוכת "ירהיטי ישראל", אשר לדעתו הן פוגעות בייחוד ובמוניטין של תערוכה זו.

בהחלטתי קבעתי כי "ההסדר בין חברי האיגוד מגביל באופן לא משמעותי את התחרות בעסקים, ובנסיבות המקרה ראוי ליתן פטור בתנאים לפי סעיף 14 לחוק ההגבלים העסקיים. הפגיעה האפשרית העלולה להיגרם עקב ההסדר אינה נחזית כמשמעותית, שכן תערוכת רהיטי ישראל הינה רק אפשרות אחת מבין אפשרויות שונות, באמצעותן יכולים היצרנים לקדם מכירותיהם, ויש ליצרנים המקומיים אינטרס לגיטימי בשאיפתם לבנות ייחודיות סביב התערוכה המאורגנת על ידם. באיזון האינטרסים, יש מקום ליתן משקל לאינטרס האחרון, בתנאים ולתקופת זמן במהלכה ניתן יהיה לאמוד את השפעת ההגבלה על המתרחש במשק"<sup>1</sup>.

בנוסף, אף שאבתי תימוכין וחיזוק לגישה האמורה ממדיניות הקהילה האירופית, שם מעניקה הנציבות פטור להסדרים אשר מטילים מגבלות על השתתפות יצרנים בתערוכות וזאת בשל הערך החיובי השולי הנלווה למגבלות, המתבטא בריכוז יצרנים בתחום נתון. הוספתי והדגשתי, כי יוצאים נשכרים הן היצרנים והן הלקוחות אשר נהנים מחשיפת מוצרים מתחרים בו זמנית.

מכלול דברים אלו, בתוספת העמדה הנקוטה באירופה ובארה"ב, הביאו אותי למסקנה כי אפשר ליתן את הפטור המבוקש בתנאים, ולתקופה מוגבלת במהלכה ניתן יהיה כאמור לבחון עובדתית את השפעת ההסדר על התחרות.

## ג. תלונות

ביום 11.12.94 הופנתה אלי תלונה בנוגע להסדר הנדון. בתלונה נטען כי האיגוד החל כבר מאז שנת 1990 לאיים על חבריו לבל ישתתפו בתערוכות של מארגנים אחרים בנושא ריהוט ועיצוב. המתלוננים הוסיפו וטענו, כי בתערוכת "ירהיטי ישראל", שמטרתה העיקרית היתה בהגברת המוניטין של מוצרי הרהיטים מתוצרת כחול לבן, הוחל בהצגת מוצרים רבים מיבוא עד כדי כך שהצביון היחודי של התערוכה אבד. בהמשך התלונה נטען כי לאחרונה החל האיגוד לארגן תערוכה נוספת למוצרי אמבט שהינה על טהרת היבוא. האיגוד מיידע את הגורמים המבקשים להציג

<sup>1</sup> החלטת הממנה על ההגבלים העסקיים מיום 24.12.92. עמוד 2.

מרכולתם בתערוכה זו כי אם ישתתפו בתערוכות אחרות שאינן מטעם האיגוד לא יורשו להשתתף בתערוכה זו בעתיד.

בבדיקה שנערכה על ידינו לא מצאנו תשתית עובדתית לכך שהאיגוד מאיים על חבריו או מונע מהם בדרכים אחרות השתתפות בתערוכות שאינן מאורגנות על ידו, באמצעות "החברה הכלכלית - יצוא מוצרי עץ ורהיטים (איגוד יצרני עץ) בע"מ". בפגישה שנתקיימה עם נציגי האיגוד ביום 24.8.95 אף נאמר על ידם, כי נכון הדבר ש"ריהוטים" מיועדת לחברי האיגוד בלבד, אך תערוכת "מטבח ואמבט", הנערכת אחת לשנתיים, פתוחה לכל הרוצה להשתתף בה - גם יצרנים מקומיים וגם יבואנים. אין לגביה כל מגבלת השתתפות, למעט תשלום עבור שטח התצוגה. בנוסף, ועל מנת להפיג כל חשש, הודיעו הנציגים כי הם מוכנים להוציא חוזר לכל חברי האיגוד בו יובהר בלשון מפורשת כי השתתפות חברי איגוד בתערוכות שאינן מאורגנות על ידי האיגוד לא תגביל השתתפותם בתערוכות האיגוד, כפוף להסדר הנדון.

בנוגע לטענה בדבר הצגת מוצרי יבוא רבים בתערוכת "ריהוטים" ואיבוד צביונה ה"כחול לבן", הרי שעיון בפרוטוקולים של וועדת המשמעת של האיגוד סותר טענה זו. יו"ר האיגוד בדבריו בישיבת וועדת המשמעת של האיגוד ביום 15.12.93 מבקש להדגיש כי הצגת מוצרים מיבוא בתערוכה הינה חמורה. בנוסף, הובאה לעיוננו החלטת וועדת המשמעת של האיגוד, מיום 17.4.94, בענין הפרת תקנון ההשתתפות בתערוכת ריהוטים 94. בהחלטה זו מובא תוכנו של סעיף 1 לתקנון ההשתתפות, לפיו:

"1.1 המציג רשאי להציג בתצוגה מוצרים אופייניים מתוצרת המפעל בלבד.

1.2. במידה והמציג נזקק להוסיף מוצרים משלימים הינו רשאי לעשות כן ובתנאי:

א. שיהיו מתוצרת אחד החברים באיגוד המשתתפים בתערוכה.

ב. לא יעלה מספרם על 10% מהיקף המוצרים בתצוגה.

ג. ובלבד שיהיו אחד או יותר מהמוצרים ברשימה המצ"ב:

1. כסא

2. שולחן סלוני

3. שולחן משרדי

1.3. חל איסור חמור להציג רהיטים מיובאים מכל סוג שהוא."

בין יתר דברי הוועדה נקבע כי "הצגת מוצרי יבוא בתערוכה, שכל יחודה בהצגת תוצרת "כחול לבן", הוא מעשה שלא יעשה ... האיסור לגבי היבוא הוא איסור מוחלט וההתייחסות אליו היא באופן החמור ביותר". החברה שהציגה מוצרי יבוא אף הורחקה לתקופת זמן של שנה אחת מתערוכת "ריהוטים", דהיינו לא התאפשר לה להשתתף בתערוכה שהתקיימה במהלך חול המועד

סוכות תשנ"ה. אוסיף ואומר, כי במהלך הבירור שנערך עם חברה זו, הבהיר מזכיר האיגוד כי אין המדובר בתופעה רחבת היקף, וכי לא ידוע לו על יצרנים נוספים שהציגו מוצרי יבוא בתערוכה.

## המלצות למתן הפטור

לאחר בדיקת התלונה האמורה, הגעתי לכלל מסקנה כי ניתן להאריך את הפטור המבוקש. נימוקי מתבססים על הנימוקים שהובאו באישור הפטור המקורי, כאשר אליהם מצטרף רכיב נוסף, והוא בתינת ההסדר בשנות הפעלתו. התלונה היחידה אשר הגיעה לרשות ההגבלים העסקיים בנוגע לאיגוד וההסדר הנדון, היתה זו שהובאה לעיל. תלונה זו נבדקה לעומקה, לרבות בדיקת רוחניות תערוכות האיגוד. לאחר בדיקה זו נמצא כי להסדר הנדון לא היתה השפעה שלילית על אורחות התחרות בין חברי האיגוד לבין עצמם ובין מארגני התערוכות לבין עצמם.

## סוף דבר

נוכח כל האמור לעיל, הגעתי לכלל החלטה, כי אאריך את הפטור שניתן להסדר הנדון מאישור הסדר כובל על ידי בית הדין להגבלים עסקיים, בתנאים הבאים, שעיקרם כבר נקבעו באישור המקורי:

1. ההגבלה של אי השתתפות בתערוכות אחרות יחול רק בתקופת ששת החודשים הקודמים לתערוכת "ריהוטים" ולתקופה של חודשיים לאחריה.
2. החלטת האיגוד כי תערוכה אחרת תשלול זכות השתתפות של חברי האיגוד בתערוכת "ריהוטים" תתקבל בהתאם לכללי הצדק הטבעי, במיוחד על דרך מתן הזדמנות שמיעה (גם על ידי הצגת טיעון בכתב) לכל צד מעוניין העלול להיפגע.
3. ישלח עותק לממונה על ההגבלים העסקיים מכל מכתב ואו חוזר מאת האיגוד לחבריו בנושא אי השתתפותם בתערוכת רהיטי ישראל.
4. ישלח עותק מפרוטוקול וועדת המשמעת של האיגוד בנוגע לכל תערוכת "ריהוטים" שתתקיים.
5. לא תנקט - במישרין או בעקיפין - שום סנקציה נגד חבר האיגוד הבוחר להשתתף בתערוכת שאינה "ריהוטים", זולת אי השתתפות החבר בתערוכת "ריהוטים".

6. ישלח חוזר מטעם האיגוד לכל חבריו, המציין כי בכפוף לסעיף 5 לעיל, לא תנקטנה כל הגבלות על חבר המשותף בתערוכות שאינן מאורגנות על ידי האיגוד, לרבות אי השתתפות בתערוכות המאורגנות מטעם האיגוד.

הפטור יעמוד בתוקפו לתקופה של שלוש שנים נוספות.

החלטתי זו נתונה לערר בפני בית הדין להגבלים עסקיים על ידי ארגון צרכנים, איגוד עסקי או כל הרואה עצמו נפגע מההסדר הכובל עליו ניתן הפטור.

כמו כן, תבחן החלטה זו על ידי במקרה של שינוי נסיבות מהותי, או במידה ויוצג לפני מידע שלא הובא לידיעתי ואשר יש בו כדי להקרין על הבקשה המאושרת בזאת.

ניתן היום 19 לדצמבר 1995, בירושלים.



ד"ר יורם טורבוביץ

הממונה על ההגבלים העסקיים

חיים גרוסמן - שמואל גרוסמן

משרד עורכי-דין ונוטריון

H. GROSSMAN - S. GROSSMAN

Advocate & Notary Office

בית אמות משפט, שד' שאול המלך 8, תל-אביב 64733

.Anot Mishpat Bldg 8, Shaul Hamelech Blvd. Tel-Aviv 64733

טל. 03-6965287, Phones. פקס: 03-6938329 Fax:

18.5.95

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63/52



לכבוד

ד"ר יורח טורבוביץ

הממונה על הגבליט עסקיים

רח' דוד המלך 8,

ירושלים 94101

א.נ.,

הנדון: איגוד יצרני מוצרי עץ ורהיטים בישראל -

בקשה לקבלת פטור ע"פ סעיף 14

לחוק ההגבלים העסקיים, ה'תשמ"ח - 1988

במצורף בקשה להארכת תוקפו של הפטור מקבלת אישור להסדר כובל שניתן ביום

24.12.92.

לכבוד רב,

שמואל גרוסמן, עו"ד

מכתב 2029



## חוק ההגבלים העסקיים, התשמ"ח - 1988

### ב ק ש ח פ ט ו ר מ א י ש ו ר ה ס ד ר כ ו ב ל

בהתאם לסעיף 14 לחוק ההגבלים העסקיים, התשמ"ח - 1988, מוגשת בזה בקשה להארכת תוקפו של הפטור מקבלת אישור להטור כובל, שניתן ע"י הממונה על הגבלים עסקיים ביום 24.12.92.

העתק החלטת הממונה מיום 24.12.92 מצורף לבקשה זו.

1. המבקש הוא איגוד יצרני מוצרי עץ ורהיטים בישראל (להלן: "האיגוד") מרח' המרד 29, נול-אביב.

האיגוד מיוצג ע"י עו"ד שמואל גרוטמן, משד' שאול המלך 8, תל-אביב.

2. הצודים להטכם הם חברי האיגוד.

3. ההטור לגביו ניתן הפטור הוא החלטת האיגוד כי השתתפות בתערוכת רהיטי ישראל לא תהא פתוחה לחברי האיגוד אשר בסמיכות זמנים השתתפו בתערוכות אשר לדעת האיגוד פוגעות בייחוד ובמוניטין של תערוכת רהיטי ישראל.

4. הפטור המקורי הותנה בקיום ארבעה תנאים אשר פורטו בסעיף 7(א) - 7(ד) להחלטת הממונה מיום 24.12.92.

תנאים אלה יחולו גם לגבי הארכת הפטור.

5. הנימוקים המצדיקים את מתן הפטור פורטו, בזמנו, בפניית ב"כ האיגוד, עו"ד ד"ר אמנון גולדנברג, מיום 5.8.92.

נימוקים אלו תקפים גם היום לענין הארכת תקפו של הפטור.

לשם הנוחות, מצורף לבקשה זו העתק הפניה.



6. במהלך תקופת השנתיים בהן הפטור המקורי בתוקפו הוכח כי ההסדר לא פגע, לא מנע ולא הפחית את התחרות בעסקים בין חברי האיגוד.

נהפוך הוא, משך כל ימות השנה ובאמצעות כל דרכי קידום ומכירות, לרבות במהלך תערוכות רהיטי ישראל, מתחרים ביניהם היצרנים חברי האיגוד, תחרות קשה על טיב, על מחיר, על עיצוב המוצרים ועל דמות השירות.

עם זאת, מאפשר ההסדר לחברי האיגוד ליצור ולשמור על תדמיתו הגבוהה והמכובדת של ענף הרהיטים בישראל ולבנות יתרונות סביב התערוכה המאורגנת על ידם.

7. אני מצהיר שכל הפרטים האמורים הם מלאים ונכונים, שהמסמכים המצורפים הם נכונים ומלבדם אין כל מסמך הקובע את ההסדר או הנוגע לו.

החבר הנבחר  
במחלוקת  
ת. 61990  
טל. 03-662026

עמי ליכט

מזכיר האיגוד

7.5.95

ואריך

מדינת ישראל  
משרד התעשייה והמסחר  
הממונה על ההגבלים העסקיים

החלטה בענין איגוד יצרני רהיטים בישראל

נתבקשתי על ידי ב"כ איגוד יצרני מוצרי עץ ורהיטים בישראל, (להלן "האיגוד") במכתבו מיום 5.8.92 לקבוע כי החלטת האיגוד להגביל השתתפות חברי האיגוד בתערוכות המתרחשות בסמיכות זמנים לתערוכת "רהיטי ישראל" אינה בגדר הסדר כובל, כמשמעותו בחוק ההגבלים העסקיים, התשמ"ח - 1988 (להלן "החוק"). ולחילופין, אם אקבע כי ההסדר נכנס למסגרת הסדר כובל, מבקשים הצדדים האיגוד לקבל פטור ע"פ סעיף 14 לחוק.

בקשת האיגוד לא נולדה בחלל ריק, בבחינת יש מאין, אלא תולדה היא של פרקטיקה אשר עמדה במרכז של מחלוקת מסחרית ומשפטית בין האיגוד ובין חברת סימונס (ישראל) מערכות שינה בע"מ (להלן "סימונס"). בנסיבות אלה, הזמנתי את חברת סימונס להשמיע מלוא טענותיה לענין בקשת האיגוד. ואכן, סימונס באמצעות כא וחה הגישה אלי ביום 30.9.92 הסתייגותה ממהלכי האיגוד. לטענת סימונס ההסדר מהווה הסדר כובל, ואין הוא הסדר שניתן או ראוי ליתן עליו פטור ע"פ סעיף 14 לחוק. זאת ועוד, סימונס רואה בפעולת האיגוד הסדר המגביל באופן משמעותי את תחרות בעסקים בכך שהחלטת האיגוד באה לשלול מייצרני הרהיטים את אחת משתי אפשרויות קידום המכירות העיקריות הקיימות מבחינת היצרנים בשוק הישראלי.

אתיחס לסוגיות כסדרן, ראשית אבחן את השאלה אם ההסדר המתואר מהווה הסדר כובל. במידה והסדר זה נופל בגדרו של הסדר כובל, אדרש לבקשת הפטור ושיקוליה.

אחרית דבר, בהתאם לסמכותי לפי סעיף 43(א)(1) לחוק הנני קובע כי ההסדר בין חברי האיגוד, הינו הסדר כובל כמשמעותו בסעיפים 2 ו-5 לחוק. בנסיבות המקרה, החלטתי להעתר לבקשת האיגוד למתן פטור מחובת רישום הסדר כובל, בתנאים ולתקופה כפי שיפורטו בהמשך. אכאז בתמצית טעמיי:

## 1. רקע עובדתי

1. איגוד יצרני מוצרי עץ ורהיטים בישראל מונה כ-150 יצרני עץ ורהיטים בישראל. פעם בשנה, בתקופת חג הסוכות נערכת תערוכה מטעמו, ושמה בישראל "רהיטי ישראל", שמטרתה לחשוף את תוצרת חברי האיגוד לקהל לקוחות פוטנציאלי.

2. לטענת האיגוד, כאמצעות תערוכת רהיטי ישראל וייחודה, יעלה בידו לקדם את ענף הרהיטים בישראל בדרך של בניית תדמית איכותית ועדכנית. נטען כי בשנים האחרונות סובל הענף מפחות כמעמדו בשוק, אולי בשל החשיפה למגוון מוצרי יבוא. נוכח כך, החליט האיגוד לייחד את ההשתתפות בתערוכתו שלו, בדרשו מחבריו אי-השתתפות בתערוכות אחרות שבהן מוצגים מגוון מוצרים, באופן שריהוט אינו אלא מרכיב זניח בתערוכה הסובל נזקי תדמית. במילות האיגוד, ייחוד תערוכת האיגוד היא "כתוצאה מרשימה ויחודית של רהיטים ישראליים תוצרת כחול-לבן ברמה גבוהה", תוך שתערוכה זו ירד קרנה אם בסמיכות זמנים, ישתתפו חברי האיגוד "בתערוכות בהן מוצג ערך רב של מוצרים אחרים, לרבות מוצרי ריהוט מיובאים זולים ובאיכות נמוכה". אך מובן, כי האיגוד אינו רשאי להרחיק חבר מהאיגוד אשר בוחר להשתתף בתערוכה חליפית, אלא שזכות ההשתתפות בתערוכת האיגוד מותנית בהסכמת שבתקופה נתונה לא ישתתף החבר בתערוכה מגוונת.

1. האיגוד מגביל את חבריו בכך שאינו מאפשר לחברי האיגוד להשתתף בתערוכות בסמיכות זמן עם תערוכת "רהיטי ישראל" ובכך מגביל את החברים בענין דרכי הפרסום העומדים לבחירתם. הגבלה זו עומדת בניגוד להוראת סעיף 2(א) לחוק. הגבלה זו עלולה להפחית את התחרות בין חברי האיגוד לבין עצמם בכך שמי שבוחר להשתתף בתערוכה אחת אינו רשאי להציג את מוצריו בתערוכת "רהיטי ישראל", ואין לו אפשרות להתחרות בתערוכה זאת, יחד עם חבריו באיגוד. כמילים אחרות, מצטמצם בפני חברי האיגוד מגוון האמצעים להצגת מרכולתם, משום שעומדים הם בפני הכרירה או להציג ייחודית בתערוכת האיגוד או להציג בכל תערוכה שיחפצו למעט תערוכת רהיטי ישראל.
2. כמו כן, החלטת האיגוד שלא לאפשר השתתפות בתערוכת "רהיטי ישראל" אם חבר בחר להשתתף בתערוכה אחרת הינה בגדר קביעת קו פעולה על ידי איגוד עסקי העלול למנוע או להפחית תחרות בעסקים בין חברי האיגוד. מכאן, שהחלטת האיגוד מגבשת "קו פעולה" כמשמעות הדבר לפי סעיף 5 לחוק, וגם מסיבה זו יש לראותה כהסדר כובל.
3. אמור מעתה, החלטת האיגוד מהווה הסדר כובל. הסדר זה, עד כה לא בא עליו אישור בית הדין לפי סעיף 9 לחוק או היתר זמני לפי סעיף 13 או פטור לפי סעיף 14 לחוק. הסדר זה, אם מגביל הוא כאופן לא משמעותי את התחרות בעסקים, ואם ימצאו טעמים לכך, רשאי הממונה על ההגבלים העסקיים לפטור את הצדדים להסדר מהחובה לקבל את אישור בית הדין. לדעתי ההסדר בין חברי האיגוד מגביל אך באופן לא משמעותי את התחרות בעסקים, ובנסיבות המקרה ראוי ליתן פטור בתנאים לפי סעיף 14 לחוק. הפגיעה האפשרית העלולה להיגרם עקב ההסדר אינה נחזית כמשמעותית, שכן תערוכת "רהיטי ישראל" הינה רק אפשרות אחת מבין אפשרויות שונות באמצעותן יכולים היצרנים לקדם מכירותיהם, ויש ליצרנים המקומיים אינטרס לגיטימי בשאיפתם לבנות ייחודיות סביב התערוכה המאורגנת על ידם. באיזון האינטרסים, יש מקום ליתן משקל לאינטרס האחרון, בתנאים ולתקופת זמן כמהלכה ניתן יהיה לאמוד את השפעת ההגבלה על המתרחש במשק.
4. לגישתי זו, שאכתי תימוכין וחיזוק מהמדיניות של הקהילה האירופית בהקשר להחלת סעיף 85(3) לאמנת רומא. באירופה, מעניקה הנציבות פטור להסדרים אשר מטילים מגבלות על השתתפות יצרנים בתערוכות וזאת כשל הערך החיובי השולי הנילוה למיגבלות, המתבטא בריכוז יצרנים כתחום נתון; יוצאים נשכרים הן היצרנים והן הלקוחות אשר נהנים מחשיפת מוצרים מתחרים בו זמנית. הגבלות כאי-השתתפות בתערוכות אחרות שומרות על המוניטין ועל רמת התערוכות ובכך מתגברת ההשתתפות בתערוכה הענפית ומקודמות המטרות שפורטו.

ראה לענין זה The Regulations of the  
International Permanent of Motor Manufacturers (1983) 2 CMLR 40:

"The BPICA regulations do not eliminate competition between fair organisers, since the latter are entitled to seek the inclusion of motor vehicles in any exhibition other than those which are not authorized by BPICA and also since motor vehicles are only one form of advertising among many other at his disposal. The regulations do not eliminate competition between manufacturers or distributors of motor vehicles, for the display of a product at an exhibition is only one of the methods of marketing. In order to promote sales, manufacturers of motor vehicles have at their disposal all the facilities of the mass media for attracting the largest possible number of consumers.

1. VIFKA O.J. 1986 L. 291/46. נראה בנדון: פסק הדין בענין
2. Whish, Competition Law 2nd Ed p. 433.
3. Competition Law of the EEC. 2nd ed. Bael and Ballis p. 338.
4. A.G. of Canada v. Law Society of British Columbia 137 D.L.R. (3d).

דומה, כי הגישה האמריקאית כמו גישת השוק המשותף, בוחנת את טובת הכלל הנובעת מהגבלות על השותפות בתערוכות.

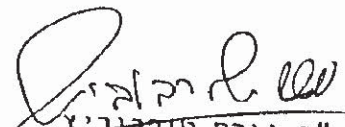
נראה: בספרו של  
Von Kalinowski Antitrust, Counseling and Litigation Techniques  
בכרך 2 עמ' 19-53:

"There may be other grounds for justifying advertising restraints under a rule-of-reason analysis. Agreements not to compete on some aspect of advertising might be justified if they are reasonably related to some procompetitive purpose. To take two hypothetical examples, a consortium of area boat show at the local civic center might agree to suspend temporarily regular, individual advertising so as to concentrate on promoting the show to maximize its attendance...

5. אכן, גם אם כמבט ראשון ניתן היה לסבור כי בקשת פטור זו מהווה חריג שאין להתירו, הרי שכמבט שני ולאור העמדת הנקוטה הן בקהילה האירופית והן בארה"ב, מצאתי כי יש מקום לעשות שימוש בסמכותי לפי סעיף 14 לחוק וליתן את הפטור המבוקש, בתנאים, ולתקופה מוגבלת במהלכה ניתן יהיה לבחון עובדתית את השפעת ההסדר על התחרות.

6. על פי סמכותי לפי סעיף 14(א) לחוק אני נותן פטור מרישום הסדר כובל-להחלטה האיגוד כי השתתפות בתערוכת רהיטי ישראל לא תהא פתוחה לחברי האיגוד אשר בסמיכות זמנים, השתתפו בתערוכות אשר לדעת האיגוד הן פוגעות בייחוד ובמוניטין של ותערוכת רהיטי ישראל.

7. על פי סמכותי לפי סעיף 14(ב) לחוק אני מתנה את הפטור בתנאים הכאים:
- (א) ההגבלה של אי השתתפות בתערוכות אחרות יחול רק בתקופת ששת החודשים הקודמים לתערוכת "רהיטי ישראל" ולתקופה של חודשיים לאחריה.
  - (ב) החלטת האיגוד כי תערוכה אחרת תשלול זכות השתתפות של חברי האיגוד בתערוכת רהיטי ישראל תתקבל בהתאם לכללי הצדק הטבעי, במיוחד על דרך מתן הזמנות שמיעה (גם על דרך הצגת טיעון בכתב) לכל צד מעוניין העלול להפגע.
  - (ג) יישלח עותק לממונה מכל מכתב ו/או חוזר מאת האיגוד לחבריו בנושא אי-השתתפותם בתערוכת "רהיטי ישראל".
  - (ד) לא תנקט - במישרין או בעקיפין - שום סנקציה נגד חבר האיגוד הבוחר להשתתף בתערוכה שאינה "רהיטי ישראל", זולת אי השתתפות החבר בתערוכת "רהיטי ישראל".
- הפטור יעמוד בתוקפו לתקופה של שנתיים, במהלכן תבחן השפעת הפטור. כל צד מעוניין העלול להפגע מהחלטה זו, או שלדעתו חל שינוי נסיבות, רשאי להציג עניינו בפניי. הרואה עצמו נפגע מהחלטתי רשאי, בכתב מנומק, לערור בפני אב בית הדין, כאמור בסעיף 15 לחוק.
- ניתן היום, ה-24 בדצמבר, 1992, ופועלה של החלטת הפטור מכאן ואילך.

  
ד"ר יורם טזרפריץ  
הממונה על ההגבלים העסקיים



AMNON GOLDENBERG <sup>מאמ</sup> <sup>מאמ</sup>  
 RUTH OREN <sup>מאמ</sup>  
 ZVI KALIR <sup>מאמ</sup>  
 HUGH KOWARSKY <sup>מאמ</sup> <sup>מאמ</sup>  
 ASGAD STERN <sup>מאמ</sup>  
 YEKOSHUA HORESH <sup>מאמ</sup>  
 REUVEN REHAF <sup>מאמ</sup> <sup>מאמ</sup>  
 YOAV BEN-DOR <sup>מאמ</sup> <sup>מאמ</sup>  
 ALEX HEITMAN <sup>מאמ</sup>  
 TAL BANO <sup>מאמ</sup>  
 SHOSHANA GAVISH <sup>מאמ</sup>  
 YUDITH SHWEIGER <sup>מאמ</sup>  
 SHEILA ELLIS <sup>מאמ</sup>  
 BOAZ OKON <sup>מאמ</sup>  
 NIR COHEN <sup>מאמ</sup>  
 DORON DAN <sup>מאמ</sup>  
 DINA GIL-MOYAL <sup>מאמ</sup>  
 GIL ORION <sup>מאמ</sup>  
 EHUD ARZI <sup>מאמ</sup>  
 CHARLES NOCHUMSOHN <sup>מאמ</sup> <sup>מאמ</sup>  
 AMIR KESS <sup>מאמ</sup>  
 HAGAY BRENNER <sup>מאמ</sup>  
 HELEN HELSTON <sup>מאמ</sup>  
 NIV ZEKLER <sup>מאמ</sup>

ABRAHAM LEVIN <sup>מאמ</sup> <sup>(1901-1991)</sup>  
 NEHEMIA SALOMON <sup>(1903-1990)</sup>

**S. HOROWITZ & CO.**  
 ADVOCATES, NOTARIES AND PATENT ATTORNEYS

**S. HOROWITZ & CO. HOUSE**  
 31, AHAD HAAM ST.  
 TEL AVIV 65202, ISRAEL  
 PHONE: (972)3-200305  
 P.O.B. 2499, TEL AVIV 61024  
 TELEX: 341488 AGOS IL  
 FAX: (972)3-291974  
 FAX: (972)3-292143

**ש. הורוביץ ושות'**  
 עורכי-דין, נטרונים, עורכי פטנטים

**בית ש. הורוביץ ושות'**  
 31 אחד העם  
 תל-אביב 65202  
 200305 (972)3  
 ת.ד. 2499, תל-אביב 61024  
 טלפקס: 341488 AGOS IL  
 פקס: 291974 (972)3  
 פקס: 292143 (972)3

I/97/

5 באוגוסט 1992

ש. הורוביץ ושות'  
 עורכי-דין, נטרונים, עורכי פטנטים  
 31 אחד העם  
 תל-אביב 65202  
 200305 (972)3  
 ת.ד. 2499, תל-אביב 61024  
 טלפקס: 341488 AGOS IL  
 פקס: 291974 (972)3  
 פקס: 292143 (972)3

ז' לוי (1901-1991)  
 טולדמן (1903-1990)

לכבוד  
 ד"ר יורם טורבוביץ, עו"ד  
 הממונה על ההגבלים העסקיים  
 משרד התעשייה והמסחר  
 רחוב אגרון 30  
 ירושלים

ד"ר טורבוביץ הנכבד,

הנדון: בקשה לקביעת הממונה על ההגבלים העסקיים -  
החלטת איגוד יצרני מוצרי עץ ורהיטים בישראל  
 טעיפים 14 ו-43(א)(1) ו-(2) לחוק  
 ההגבלים העסקיים, התשמ"ח - 1988

1. בהמשך לפגישתנו במשרדך ביום 28.7.92, הנני מתכבד לפנות אליך בנושא החלטתו של איגוד יצרני מוצרי עץ ורהיטים בישראל (להלן - "האיגוד"). החלטה זו קובעת כי ההשחתות בתערוכת רהיטי ישראל (תערוכה שיוזם ומארגן האיגוד וייחודה הוא בתצוגה מרשימה וייחודית של רהיטים ישראליים תוצרת כחול-לבן ברמה גבוהה), לא תהא פתוחה לחברי האיגוד אשר בטמיכות זמנים, השותפו בתערוכות בהן מוצג ערב רב של מוצרים אחרים, לרבות מוצרי ריהוט מירבאים זולים ובאיכות נמוכה, לדעת האיגוד, (דוגמת תערוכת "אדם ועולמו" המציגה לקהל הרחב מגוון מוצרים ומצרכים מתחום המזון, הטקסטיל הקוסמטיקה והנעליים). בכל הנוגע לפנינה זו אליך, הוחלט למנות את ההחלטה הנ"ל במובן זה שהאיסור להציג בתערוכות אחרות מהסוג שצויין, יחול אך במחצית השנה הקודמת לתערוכת רהיטי ישראל ובחודשיים שלאחריה.

2. לצורך האמור וכדי לא לחרוג מהחלטת האיגוד העומדת לבחינתך, נקדים ונפרט מעט על העומד ברקעה של החלטת האיגוד ועל אופיה.

### הרקע להחלטת האיגוד

3. חברי האיגוד מקיימים ביניהם - כל ימות השנה, ובמיוחד במהלך תערוכות "רהיטי ישראל" - תחרות קשה על טיב, על מחיר, על עיצוב נאה ועל רמת שירות כשקהל הלקוחות הפוטנציאלי נחשף למבחר יצרנים ומוצרים וניתנת בידיהם היכולת להשוות מוצרים, תנאים ומחירים.
4. תערוכת רהיטי ישראל המתקיימת מדי שנה מלווה במאמץ ובמטע יחסי ציבור שמטרתם ליצור ולשמור על תדמיתו הגבוהה והמכובדת של ענף הרהיטים בישראל, ענף הסובל, בעיקר בשנים האחרונות, מפיתרון במעמדו. לדעת חברי האיגוד, המונים כ-150 יצרי עץ ורהיטים בישראל, אחת הסיבות לפיתרון זה היא הצגתם של רהיטי איכות מתוצרת ישראל בין בליל רב של מוצרים אחרים, כפי שנעשה, כאמור, בתערוכות "אדם ועולמו".
5. על רקע זה החליט האיגוד כי אין ההשתתפות בתערוכה דוגמת תערוכות "אדם ועולמו" עולה בקנה אחד עם השתתפות בתערוכות "רהיטי ישראל" האיכותיות והיחודיות ולפיכך ניתנת לכל חבר באיגוד, מדי שנה בשנה, הבחירה, בין השתתפות בתערוכה דוגמת תערוכת "אדם ועולמו" או השתתפות בתערוכת "רהיטי ישראל".

### אופי החלטת האיגוד

6. בענייננו, לא עצם החברות באיגוד היא הבעייתית מבחינת זיכוי ההגבלים העסקיים אלא רק (לכאורה) תוכן החלטת האיגוד. ואכן, חבר הבורח להשתתף בתערוכה דוגמת תערוכת "אדם ועולמו" אינו מסתכן בהרוקתו מן האיגוד או בבקיעת צעדים כאלה או אחרים כנגדו, אלא אך באי קיום תנאי הכסירות להשתתפות בתערוכות "רהיטי ישראל". בחירת החבר באיגוד תערוכה להשתתף פתוחה בפניו מדי שנה, חבר הבורח לכבד את ההחלטה חושף עצמו אמנם למיגבלה על השתתפותו, לתקופה מסוימת בסוג מסוים של תערוכות, אלא שהלכה למעשה קימת כיום בשוק אך תערוכה אחת העונה על סוג התערוכות הנפולרות בגדר האיסור. בנוסף, תערוכה הינה באופיה צורת פרסום ועל כן פתוחה עדיין בפני אותו יצרן האפשרות להביא שם מרכולתו לצרכנים

הפרוטנציאלים בדרכי פרסום רבות ומגוונות, לרבות תערוכות שאינן נופלות בגדר האיסור. בנסיבות אשר כאלו נראה כי אין המדובר בהסדר כובל. אף אם תמצי לומר כי המדובר בהסדר כובל הרי שהוא כרוך אך בפגיעה שולית בתחרות (וכפי שנראה בהמשך, יתרונות הפגיעה, אם ישנה כזו, והשלכותיהם הכלכליות החיוביות עולים על חסרונותיה).

#### הדיון המשפטי

7. בשל הספק הלכאורי אם החלטה זו נופלת בתחומי הגדרת "הסדר כובל" לפי חוק ההגבלים העסקיים, הושמ"ח-1988, אני פונה אליך בבקשה להפעיל את הטמכות המוענקת לך בטעיפים 43(א)(1) ו-43(א)(2) לחוק ההגבלים העסקיים, ולקבוע כי החלטה זו אינה הסדר כובל.

8. הטעמים העומדים בבסיס קביעה כזו הינם:

(א) העדרו של סעיף דוגמת סעיף 3 לחוק ההגבלים העסקיים, החשי"ט-1959, בחוק החדש, בנוסחו מ-1988.

סעיף 3 לאותו חוק קבע לאמור:

"יוראו הסדר כהסדר כובל גם כשאדם מקבל לפיו טובת הנאה, אם יקיים אחת הכבילות שבסעיף 2 או שישא בחובה מסוימת אם לא יקיים."

מהעדרו של סעיף זה, בחוק מנוסחו ב-1988, ניתן להטיל ספק אם ברירה כזו - המותירה חופש פעולה בידי חבר האיגוד לכבד את ה"כבילה" ולהשתתף בתערוכת רהיטי ישראל או שלא להשתתף בתערוכה זו ולהשתחרר מן "הכבילה" - באה כיום בגידרו של החוק.

(ב) השכל הישר - הבחירה אם להשתתף בתערוכה היא חופשית וההשתתפות בתערוכה אינה הדרך היחידה למשוך תשומת לב הצרכנים הפרוטנציאלים למוצרים הללו. קים מגוון רחב של אמצעי פרסום זולת הווערוכה בה עסקינן. (השווה: VIFKA, OJ 1986 L291/46, L291/49 - נספח א' וראה גם: N. GREEN, COMMERCIAL AGREEMENTS AND COMPETITION LAW 574 (LONDON, 1986) - נספח ב').



במאמר מוטגר יצויין כי טעם זה מזכיר במידת מה את החריג של "פגיעה לא משמעותית" בתחרות כאמור בסעיף 14 לחוק ההגבלים העסקיים (סעיף שידוך להלן) אך כשלעצמי נראה לי כי בנטיבו הענין שלנו, יש בטעם זה להביא למסקנה כי החלטת האיגוד, והשלכתה על התחרות, אינה כלל הסדר כובל.

9. לחלופין, באט הינך מגיע לכלל מסקנה כי המדובר בהסדר כובל אנקשך לעשות שימוש בסמכותך לפי סעיף 14 לחוק ההגבלים העסקיים ולקבוע כי ההסדר מגביל באופן לא משמעותי את התחרות בעסקים וכי שולחי פטורים מהחובה לקבל אישור להסדר על ידי ביון הדין להגבלים עסקיים.

10. מאמר שהצדקה למתן פטור לפי סעיף 14 לחוק האמור היא "תוצאת ההסדר והשפעתו על התחרות, ולא צורת ההסדר" (ז' גלמור "גישתו של הממונה לפיקוח על ההגבלים עסקיים סוגיות נבחרות" עירובי משפט טו 589, 597) ומאחר שבזיקה לטמכות לפי סעיף זה ניתן לפנות לפטורים למיניהם "כפי שאנו מוצאים בשוק המשותף" (ל.א. קסטנבאום "הערות והרהורים על הצעת חוק ההגבלים העסקיים התשמ"ד-1983", משפטים טו 453, 462) ניפנה להלן לסקירה השוראית ממשפט ה- EEC רבחינת התיחסותו למיגבלות המוטלות על השתתפות בירידים ובערוכות. כל זאת בשים לב לתוצאתו של ההסדר דעסקינן והשפעתו על הפגיעה האפשרית בתחרות להבדיל ממבט צורני גרידא המנותק מהנטיבות האופפות מקרה זה.

11. בקליפת אגוז ניתן לטכם ולאמר כי ככל שמדובר במשפט ה- EEC ניתן תוקף להוראות המטילות מיגבלות על השתתפות בירידים ובערוכות בשל האפקט החיובי הנלווה להן.

בבסיס גישה זו עמד הטעם המכיר ביתרונות הטמונים בירידים ובערוכות. מריכוז יצרנים בשטח תעשייתי מסוים יוצאים נשכרים הן היצרנים והן הלקוחות אשר נהנים מחשיפת מוצרים מתחרים בו זמנית בדרך המעודדת עיסקאות, תוך הפחתת עלויות השווק (בדרך כזו ניתנת ללקוחות אינפורמציה רבה יותר ומוקבלת טקירה שלמה של השוק בו זמנית). במיגבלות כאלו, השומרות על מוניטין של ענף תעשייתי מסוים, יש כדי להרוניע מפני התרבות מהירה של ירידים וממגרן רב של מוצרים מעכפים תעשייתיים שונים. בכך מתיעלת ההשתתפות בערוכות ומקודמת המטרות שפורטו.

(I.V. BAEI AND J.F. BELLIS, COMPETITION LAW OF THE EEC (SECOND EDITION, 1990, UNITED KINGDON) 711 - נספח ג' -  
 וראה גם: נספח ה' - BPICA, OJ 1977 L299/18 ; נספח ד' - UNIDI, OJ 1975 L228/14 ;  
 נספח ו' - BPICA [1983] 2 CMLR 40 ; נספח א' - VIFKA, OJ 1986 L291/463

12. מהפרקטיקה שהתגבשה במדינות הקהילה האירופית בנושא של תערוכות וירידים בהקשר לתחולת סעיף 85 לאמנת ה- EEC (הקובע איסור במניעת תחרות) עולה כי ריכוז תצוגה בירידים משרת בעצם הן את היצרנים והן את הלקוחות ועל כן ניתן להביא את ההגבלות הנוגעות להצגה בירידים בגדרו של סעיף 85(3) לאמנת ה- EEC, הוא סעיף הפטור.

לכוחות, אני מצרף בסוף בקשה זו את הנספחים שפורטו וביניהם מספר החלטות של ה- COMMISSION, בהן הודגשו איפיונים אלו של ההגבלות בנוגע ל"חופש התערוכה" ואשר מהן עולה כי באורו עקרוני לא טברה ה- COMMISSION שאין מקום להטלת הגבלות (ברוח המיגבלה שבהחלטת האיגוד) על הבוחרים להציג בתערוכות.

13. אשר-על-כן אבקשך להפעיל סמכותך לאור האמור בגוף בקשה זו ולקבוע כי החלטת האיגוד אינה הסדר כובל ולחלופין כי המדובר בהסדר המגביל באופן לא משמעותי את התחרות בעסקים ולפטור את האיגוד מהחובה לקבל את אישור בית הדין להסדר.

בכבוד רב ומכורה,

ד"ר א. גולדנברג, עו"ד  
 ש. הורוביץ ושות'

העתק: עו"ד שמואל גרוסמן  
 רחוב מאנה 19 ת"א, 64363

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## Legislation

### Contents

#### I Acts whose publication is obligatory

Commission Regulation (EEC) No 3113/86 of 14 October 1986 fixing the import levies on cereals and on wheat or rye flour, groats and meal .....	1
Commission Regulation (EEC) No 3114/86 of 14 October 1986 fixing the premiums to be added to the import levies on cereals, flour and malt .....	3
Commission Regulation (EEC) No 3115/86 of 13 October 1986 on the supply of a lot of butteroil as food aid .....	5
Commission Regulation (EEC) No 3116/86 of 13 October 1986 on the supply of various lots of butteroil as food aid .....	8
Commission Regulation (EEC) No 3117/86 of 13 October 1986 on the supply of a lot of skimmed-milk powder as food aid .....	13
Commission Regulation (EEC) No 3118/86 of 13 October 1986 on an invitation to tender for the refund on export of wholly milled long grain rice to certain third countries .....	16
Commission Regulation (EEC) No 3119/86 of 13 October 1986 amending Regulation (EEC) No 2848/86 and increasing to 350 000 tonnes the quantity of barley held by the United Kingdom intervention agency for which a standing invitation to tender for export has been opened .....	18
* Commission Regulation (EEC) No 3120/86 of 14 October 1986 concerning the stopping of fishing for blue ling and ling by vessels flying the flag of the United Kingdom .....	20
* Commission Regulation (EEC) No 3121/86 of 14 October 1986 re-establishing the levying of customs duties on superphosphates falling within subheading 31.03 A I, originating in Iraq, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3599/85 apply .....	21
Commission Regulation (EEC) No 3122/86 of 14 October 1986 fixing the import levies on milk and milk products .....	22

## COMMISSION DECISION

of 30 September 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/28.959 — VIFKA)

(Only the Dutch text is authentic)

(86/499/EEC)

## THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty<sup>(1)</sup>, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 2, 4, 6 and 8 thereof,

Having regard to the application for negative clearance submitted on 30 October 1974 by the *Vereniging van importeurs en fabrikanten van kantoormachines* (VIFKA — Association of Office Equipment Importers and Manufacturers), The Hague (The Netherlands), of the Association's rules and standard form agreement with non-members on participation in office equipment exhibitions in the Netherlands,

Having regard to the application submitted on 21 February 1978 by the *Vereniging van importeurs en fabrikanten van kantoormachines* for exemption of its rules and standard form agreement with non-members on participation in office equipment exhibitions under Article 85 (3) of the EEC Treaty,

Having published a summary of the VIFKA rules and agreement<sup>(2)</sup>, pursuant to Article 19 (3) of Regulation No 17,

After consultation with the Advisory Committee on Restrictive Practices and Monopolies,

Whereas :

## I. FACTS

- (1) The *Vereniging van importeurs en fabrikanten van kantoormachines* (Association of Office Equipment Importers and Manufacturers) — hereinafter referred to as 'VIFKA' — is an association under Netherlands law, which was founded in 1950 and has over 200 members. The board of VIFKA can admit as members of the association any person or corporate body that has been carrying on business in the Netherlands for at least two years and that,

during this time, has been exclusively or predominantly :

- (a) manufacturing office equipment, or
- (b) importing and/or dealing in, repairing and maintaining office equipment as the exclusive distributor in the Netherlands for one or more domestic or foreign manufacturers.

Firms that have not yet been in the trade for two years can be admitted as extraordinary members.

About 80 % of VIFKA's members are importers, and about 20 % manufacturers. More than half of all Netherlands importers and manufacturers of office equipment, including some with considerable market shares, are members.

- (2) The articles of associations of VIFKA state that the purpose of the association is to promote the economic and social interests of its members in the broadest sense, as they relate to import of, and dealing in, new office equipment and systems, the repair and maintenance of such equipment, and the supply of spare parts and accessories. The defence of the interests of the members in the broadest sense is also stated to be one of the association's objects.
- (3) Among other activities, VIFKA organizes office equipment exhibitions in the Netherlands, of which the *Efficiencybeurs*, held every even year in Amsterdam, is the most important. In December 1973, VIFKA adopted two sets of rules, the 'Exhibition Rules' and the 'Disciplinary and Appeal Rules', governing members' participation in the *Efficiencybeurs* as well as a standard agreement with non-members wishing to participate.
- (4) VIFKA initially applied to the Commission for negative clearance of the rules and agreement. Subsequently it notified the rules and agreement for the purpose of obtaining an exemption under Article 85 (3) of the EEC Treaty.
- (5) At the Commission's request, VIFKA amended its exhibition rules, its disciplinary and appeal rules, and its standard form agreement with non-members to remove as far as possible their most restrictive elements. The changes were approved by the general meeting and the new text of the exhibition rules was finally adopted by the general meeting on 8 January 1986 and subsequently renotified to the Commission.

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

<sup>(2)</sup> OJ No C 146, 13. 6. 1986, p. 9.

9) The main provisions of the new rules and standard form agreement are as follows:

— Participation at the *'Efficiencybeurs'*, at which office machines, furniture and equipment, copiers and data-processing equipment are exhibited, is open to members and non-members whose applications are accepted by the Exhibition Committee, and who must be manufacturers or suppliers of office equipment,

— Applications are considered in the light of the purpose of the exhibition, which is to show as wide a range of new or improved equipment as possible; participation in previous exhibitions is also an important consideration when space is limited,

— Exhibitors at the *'Efficiencybeurs'* may not participate in any other office equipment fair or exhibition not organised or approved by VIFKA in the same calendar year; 'office equipment fair or exhibition' is here taken to mean any fair or exhibition at which at least 60 % or 10 000 m<sup>2</sup> of the floor space is given over to office equipment, and any fair or exhibition of any size recognized as an office equipment exhibition by the public; 'participation' is taken to include advertising of office equipment undertaken directly or indirectly by the applicant at or in the vicinity of such a fair or exhibition, supplying office equipment to others for showing at such a fair or exhibition, and advertising in publications concerned with the fair or exhibition,

— Firms not exhibiting at the *'Efficiencybeurs'* are free to participate in any other fair or exhibition,

— The Exhibition Committee may waive the ban on participation in other exhibitions for certain exhibitions or categories of product,

— Any applicant refused space at an exhibition may appeal to an Appeals Committee,

— Decisions on alleged breaches of the exhibition rules are taken by a Disciplinary Committee, with a right of appeal to the Appeals Committee; the possible penalties are:

— exclusion from the *'Efficiencybeurs'* or any other VIFKA activity for up to two years,

— fines of up to Fl 5000.

The Appeals Committee is composed of three members, two of whom are from outside the office equipment industry.

7) It is further to be noted that VIFKA has declared that the exhibition rules are limited to exhibitions

in the Netherlands, although that is not specified in the rules.

(8) Under the previous rules governing participation in the *'Efficiencybeurs'*, VIFKA members, whether they exhibited at the *'Efficiencybeurs'* or not, were strictly banned from participating in other office equipment fairs except with a special dispensation from VIFKA.

(9) Non-members wishing to exhibit at the *'Efficiencybeurs'* had to promise not to participate in any other office equipment fair in the two years following signature of the agreement, and had no redress in the event of refusal of admission or of fines imposed by VIFKA.

(10) The Commission did not receive any representations from third parties in response to publication of a summary of the rules and standard form agreement, pursuant to Article 19 (3) of Regulation No 17.

## II. LEGAL ASSESSMENT

### A. Article 85 (1)

(11) 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.

(12) VIFKA, the members of which are undertakings in the office equipment industry, is an association of undertakings within the meaning of Article 85. The decisions taken by the general assembly of VIFKA, adopting the exhibition rules, the disciplinary and appeals rules, and the standard form agreement with non-members, were decisions of an association of undertakings within the meaning of Article 85. The agreement with non-members is an agreement between undertakings and an association of undertakings. Any measure or decision by VIFKA in implementation of the exhibition rules constitutes a decision by an association of undertakings.

The exhibition rules in their present form have as their object or effect the restriction of competition within the common market in the following ways:

(a) Competition between the manufacturers and importers of office equipment exhibiting at the *'Efficiencybeurs'* is restricted or distorted in that, in the years when the VIFKA is holding the *'Efficiencybeurs'*, they are hindered in, or

- presented from, exhibiting and promoting their products to the trade and to the general public in competition with each other at any fair or exhibition not organized or approved by VIFKA;
- (b) Competition between the organizers of exhibitions at which office equipment can be shown is restricted or distorted since they are hindered in, or prevented from, securing the participation of manufacturers and importers in years when the VIFKA is holding the *'Efficiencybeurs'*.
- (13) The above restrictions of competition are liable to affect trade between Member States as follows:
- (a) In years when the *'Efficiencybeurs'* is held, importers of office equipment who participate in the *'Efficiencybeurs'* are prevented entirely or in part from showing office goods manufactured in other Member States at fairs or exhibitions in the Netherlands that are not organized or approved by VIFKA. The result may be that only a limited or incomplete range of office equipment from other Member States can be shown to the trade or to potential customers at such fairs or exhibitions;
- (b) Organizers of fairs and exhibitions which have not been approved by VIFKA are deprived of the opportunity of exhibiting in the Netherlands office equipment manufactured in other Member States during the calendar year in which the *'Efficiencybeurs'* is held. This obstacle to trade in services between Member States provided by organizers of exhibitions is liable to jeopardize freedom of trade between such States in a manner contrary to the objective of creating a single market of all those States.
- (14) In view of the total sales of office equipment represented by the participants in the *'Efficiencybeurs'* these effects upon trade between Member States are far from negligible.
- (15) 85 (1) consequently applies to the VIFKA exhibition rules.
- (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.
- (17) The Commission has, on a number of occasions, confirmed that its policy in the field of fairs and exhibitions is to accept agreements or arrangements — such as the VIFKA exhibition rules — where they achieve rationalization and cost-savings and also present advantages to consumers which objectively outweigh the restrictive elements involved.
- (18) The abovementioned advantages of rationalization and cost-saving are achieved by the VIFKA exhibition rules as follows:
- (a) The *'Efficiencybeurs'* provides the most effective and high-level exposure of the widest possible range of office equipment to potential customers, the general public and the media;
- (b) The costs incurred by manufacturers and importers in participating in office equipment exhibitions in the Netherlands are reduced since they are concentrated on such exhibitions at which the widest available variety of office equipment is exhibited and which are the most effective from a marketing point of view.
- It may therefore be concluded that the exhibition rules contribute to improving the distribution of office equipment in the Netherlands and also to promoting economic progress.
- (19) A fair share of these improvements in distribution and economic progress accrues to consumers. The periodic concentration of the *'Efficiencybeurs'* enables consumers to gain a complete view of the range of products available and to make a better informed choice without having to travel from one exhibition to another in order to see all available products. This conclusion is strengthened by the fact that non-members can also participate in the *'Efficiencybeurs'*. It follows that the range of office equipment exhibited is increased.

#### B. Article 85(3)

- (16) 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:

(1) Commission Decisions in cases: EMO (OJ No L 69, 28.1.1969, p. 13), renewed on 7 December 1978 (OJ No L 11.1.1979, p. 16); Cematex (OJ No L 227, 8.10.1971, p. 21), renewed on 24 May 1983 (OJ No L 140, 31.5.1983, p. 17); UNIDI (OJ No L 228, 29.8.1975, p. 17), renewed on 23 November 1984 (OJ No L 322, 11.12.1984, p. 10); BPICAC (OJ No L 299, 23.11.1978, p. 18), renewed on 30 April 1982 (OJ No L 156, 7.6.1982, p. 16); SMM & T (OJ No C 376, 31.1.1983, p. 1).



20) The restrictions imposed upon exhibitors at the 'Efficiencybeurs', regarding their participation, in even years, in office equipment fairs and exhibitions not organised or approved by VIFKA, can be regarded as indispensable for the attainment of the benefits of rationalization of office equipment exhibitions. The rule for exhibitors at the 'Efficiencybeurs' against participation in other equipment exhibitions not organised or approved by VIFKA during the same year is a necessary condition for the rationalization of the system of fairs and exhibitions of office equipment. It does not go beyond what is necessary for attaining this objective because, in the years when no 'Efficiencybeurs' is held, manufacturers and importers exhibiting at the 'Efficiencybeurs' are free to exhibit at any fair or exhibition they wish. They may also choose not to participate in the 'Efficiencybeurs' in which case they are free to participate in any other fair or exhibition held in the same years as the 'Efficiencybeurs'. This limits the restrictions on participation in other exhibitions to the minimum indispensable for attaining the aims of rationalization. However, it is necessary to ensure that these restrictions are not increased in practice beyond requiring that refusals of admission be brought to the attention of the Commission without delay. The fact that buyers can acquaint themselves not only with the products offered by the members of the VIFKA but also with those of non-members further supports the conclusion that the restrictions of competition are kept within the limits of what is indispensable.

21) The exhibition rules do not eliminate competition between manufacturers and importers of office equipment in the Netherlands or between organizers of exhibitions at which office equipment is, or can be, displayed. The choice to participate in the 'Efficiencybeurs' is free, and participation at exhibitions is not the only way manufacturers and importers of office equipment can attract the attention of the trade or potential customers to their products. A wide range of other advertising and promotion media are also available. Furthermore, their dealers, apart from having direct daily contact with the majority of potential customers, are free to participate in any fair or exhibition they wish, and their promotion activities will ultimately contribute to maintaining a high degree of competition between manufacturers and importers.

22) As far as competition between organizers of exhibitions is concerned, this is only moderately affected by the exhibition rules. Any organizer who wishes to arrange an exhibition in the years when there is

no 'Efficiencybeurs' is free to do so. Even in years when VIFKA holds its own 'Efficiencybeurs' only organizers of exhibitions not approved by VIFKA will be prevented from attracting to their exhibitions manufacturers and importers exhibiting at the 'Efficiencybeurs'.

(23) Since all the requirements of Article 85 (3) are therefore satisfied, it is possible to grant an exemption for the exhibition rules currently applied by the VIFKA.

#### C. Articles 6 and 8 of Regulation No 17

(24) Under Article 8 (1) of Regulation No 17, decisions in application of Article 85 (3) must be issued for a specified period and conditions and obligations may be attached. In addition, under Article 8 (2) of the Regulation, the Commission has a duty to ensure that the requirements of Article 85 (3) continue to be satisfied.

(25) The exemption can only take effect from the date on which the amendments requested by the Commission were introduced. Therefore, the present exemption can take effect on 8 January 1986.

(26) In determining the duration of its Decision under Articles 6 and 8 of Regulation No 17, the Commission must take account of the specific characteristics and needs of the office equipment industry as well as the frequency of the events covered by the exhibition rules. It would therefore seem appropriate to grant exemption for the period from 8 January 1986 to 31 December 1996.

(27) Pursuant to Article 8 (1) of Regulation No 17, obligations may be attached to the Decision enabling the Commission to ensure that the requirements of Article 85 (3) continue to be satisfied during the period of exemption.

VIFKA should therefore be required to inform the Commission immediately of any changes in the exhibition rules, disciplinary and appeal rules, and the standard form agreement with non-members, and of any alteration in the manner in which they are applied.

Furthermore, VIFKA should immediately inform the Commission of any refusal of approval under the exhibition rules of office equipment exhibitions organized in the Netherlands by others.

Any refusal to admit would-be exhibitors to the 'Efficiencybeurs' should also be communicated immediately to the Commission.

Finally, before the end of January of each year in which the 'Efficiencybeurs' is held, VIFKA should submit to the Commission a calendar of all office equipment exhibitions organized or to be organized in the Netherlands 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 exhibition rules, disciplinary, and appeal rules, and the standard form agreement with non-members adopted by VIFKA.

This Decision shall apply from 8 January 1986 until 31 December 1996.

#### Article 2

The following obligations shall be attached to this Decision:

- VIFKA shall immediately inform the Commission of any changes in the exhibition rules, disciplinary and appeal rules, and the standard form agreement with

non-members, and any alteration in the name which they are applied,

- VIFKA shall immediately inform the Commission any refusal of approval, under the exhibition rules, office equipment exhibitions organized in the Netherlands by others,

- VIFKA shall immediately inform the Commission any refusal to admit would-be exhibitors to the 'Efficiencybeurs',

- Before the end of January of each year in which the 'Efficiencybeurs' is held, VIFKA shall submit to the Commission a calendar of all office equipment exhibitions held that year in the Netherlands.

#### Article 3

This Decision is addressed to the *Vereniging van vervaardigers en fabrikanten van kantoormachines*, Scheepsweg 42, 2517 KV The Hague, The Netherlands

Done at Brussels, 30 September 1986.

For the Commission

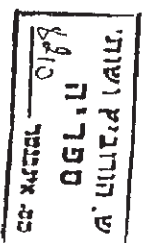
Peter SUTHERLAND

Member of the Commission



Commercial Agreements  
and  
Competition Law:  
Practice and Procedure  
in the UK and EEC

Nicholas Green, LLB, LLM, PhD,  
of the Inner Temple, Barrister



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### 3) Trade Fairs

Trade fairs are commonplace in all Member States. They are invariably run by trade associations of the manufacturers of the relevant exhibited products. A number of restrictions may occur in the rules applicable to the exhibition. First, there may be restrictions on exhibitors participating, either directly or indirectly through representatives or advertising, in other similar exhibitions during a set period prior or subsequent to the exhibition or in other exhibitions not approved by the organising trade association. Secondly, there may be sanctions against persons infringing the first rule which take the form of expulsion from the current main exhibition or the ensuing one, or the granting of a less favourable stand at the main show or the ensuing one.

These trade fair rules may gain Article 85(3) exemption.<sup>144</sup> The Commission have accepted that restrictions may have beneficial consequences. The exclusivity rules encourage traders to concentrate their exhibition activities on one event where almost all the relevant products or services are on show.<sup>145</sup> This is more economical, it intensifies competition between suppliers and enhances technical progress. It is more convenient for users and buyers who can see the whole range of products and services at one time without having to travel around. Moreover, trade fairs and exhibitions are generally only one form of advertising and the restrictions will not, therefore, eliminate a high degree of competition.

However, the exclusivity rule is acceptable only within reason. Thus, a rule which prohibited exhibitors at the annual London International Boat Show from exhibiting in other shows in the UK during a period stretching from 7 months prior to the London show to 12 months after it was found to be unacceptable to the Commission.<sup>146</sup> Similarly, the Commission objected in that case to the size of the discounts given to members of the Ship and Boat Builders National Federation (UK) and required the maximum possible discount to be reduced from 55 per cent to 25 per cent and to be accorded on the basis of the category of space taken by the member and of the seniority of the member within the Federation.

As regards rules governing the allocation of exhibition space (a factor of considerable importance) organisers should consider only objective factors such as: the size and weight of the exhibit; the seniority of the exhibitor within a nationally recognised trade association; the wishes of exhibitors who have occupied the same site in previous years; whether the exhibitor is a manufacturer of the country which hosts the exhibition or is a sole concessionaire for the UK as opposed to a foreign exhibitor, though with regard to this factor care must be taken not to raise unreasonable barriers to foreign exhibitors since this would distort trade between domestic and foreign exhibitors.

Where an association imposes a penalty for breach of the rules, then the procedure for assessing the alleged breach should comply with the rules of natural justice; there

should be adequate appeal procedures for dealers who are aggrieved by the decision; might include recourse to arbitration.<sup>147</sup>

The Commission might include notification obligations in any decision granting exemption under Article 85(3). Thus parties may have to report to the Commission details of all expulsions from the exhibition, other penalties imposed on traders, lists of other exhibitions at which the association allows members to exhibit, correspondence between associations organising trade fairs.

### (4) Advertising restrictions in supplier-dealer relations

It is perfectly legal for suppliers to require dealers to follow the supplier's instructions on advertising,<sup>148</sup> or for dealers to submit advertisements in advance to the supplier for approval.<sup>149</sup> However, the Commission may be suspicious of a requirement that dealers must submit advertisements on prices and terms and conditions for prior approval. Such a requirement could suggest an attempt by the supplier to control vertical prices and terms.<sup>150</sup>

In an exclusive dealing contract the dealer may be prohibited from actively advertising outside of his contract territory, though he should retain the contractual right to satisfy unsolicited orders from outside of his territory. Within his contract territory the dealer may be required to accept advertising obligations, for example, with regard to regularity, format, value (perhaps as a percentage of turnover) etc. The dealer may be required to sell the contract goods under trademarks, or packed and presented as specified by the supplier.<sup>151</sup> The Commission consider that these restrictions do not restrict competition so would not be within Article 85(1).<sup>152</sup> Accordingly, advertising obligations may be accepted by a supplier, for example, with respect to international advertising.

## 2. UK Law

### (1) Legal framework: registrability and dispensation under section 21(2)

(a) *Under the RTPA 1976—distinction between goods and services.* For inexpressible reasons advertising restrictions concerning goods are apparently not registrable whereas advertising restrictions concerning services are. Section 11(2)(d) RTPA 1976 requires the registration of agreements relating to "the form or manner in which designated services are to be made available, supplied or obtained." No equivalent provision exists for goods. The OFT seemingly take the view that an agreement concerning the advertising of services is an agreement within section 11(2)(d). On this view, the advertising of a service is a part of its being made available or supplied. Thus, an agreement between X and Y, two travel agents, not to advertise is an agreement containing a restriction on the form or manner in which travel agency services

<sup>144</sup> e.g. *Cinemo* [1969] CMLR D1; *Cemalex* [1973] CMLR D155; exemption renewed OJ 1983 L 140/27 and notice under Art. 19(3) of Reg. 17/62, OJ 1983 C 20/23; *UNIDI* [1975] 2 CMLR D51 exemption renewed [1985] 2 CMLR 38; *EUROPRINT Bull E.C.* 1973, para. 2108; *SMAT* [1984] 1 CMLR 611; and *BPI/CA* [1983] 2 CMLR 42.

<sup>145</sup> See *SMAT* [1983] 1 CMLR 611 and see also various earlier versions of the agreements in question which the Commission objected to: No. S. 1083 Register of Restrictive Trade Practices (1984) document V.5, (later January 1985) Commission refused exemption until *SMAT* removed clause preventing members from exhibiting during years when there was no show planned.

<sup>146</sup> [1985] 3 CMLR 622. See also *VIZEXA* OJ 1986 C146/9.

<sup>147</sup> *UNIDI* No. 2 [1985] 2 CMLR 38 at p. 41, para. 10; *London International Boat Show* [1985] 3 CMLR 622; *VIZEXA* OJ 1986 C146/9.

<sup>148</sup> *BMW* [1975] 1 CMLR D44 (Commission decision).

<sup>149</sup> *IBM Personal Computer* [1984] 2 CMLR 342 at p. 346, para. 10(4).

<sup>150</sup> e.g. *Hasselblad v Commission* (Case 86/82) [1984] ECR 883 at para. 48, 49 of the judgment.

<sup>151</sup> See Reg. 83/83/EEC, on block-exemption for exclusive dealing OJ 1983 L 173/1, Art. 2(c)(c), and Art. 2(3). See also Reg. 84/83/EEC on block-exemption for exclusive purchasing OJ 1983 L 173/5 Art. 2(3)(d).

<sup>152</sup> e.g. *Avrigny* OJ 1980 L 120/26 at p. 28, para. 15 advertising restrictions technically within Art. 83(1) but are excluded on a *de minimis* basis.

# Competition Law of the EEC

Second Edition

Ivo Van Bael  
Jean-François Bellis  
*Members of the Brussels bar*



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of their competitors is particularly strong in oligopolistic markets [since the] improved knowledge of market conditions aimed at by information agreements strengthens the connection between the undertakings, in that they are enabled to react very efficiently to one another's actions, and thus lessens the intensity of competition.<sup>33</sup>

## TRADE FAIRS AND EXHIBITIONS

### §711 Purpose and treatment

Trade fairs and exhibitions are generally seen to contribute to the development of trade and to promote distribution and economic progress. By bringing together manufacturers from a given industrial sector, trade fairs benefit manufacturer and customer alike. For manufacturers, they provide a stimulus in that manufacturers are given the opportunity to compare competing products, and permit a greater number of transactions with the minimum of promotional effort. Customers are provided with more information and better guidance, and are permitted, because of the concentration of supply in a single place, to obtain a complete overview of the market without the need to make several trips.

Nevertheless, regulations relating to trade fairs and exhibitions may present problems in competition law. As the Commission has noted, '[t]he regulations on exhibitions often restrict the freedom of exhibitors to take part, either directly or indirectly, for a given period in activities of this kind other than those organised periodically by the association itself.<sup>34</sup>

Numerous decisions have held that restrictions on the participation of exhibitors in other fairs constitute infringements of Art. 85(1).<sup>35</sup> Nevertheless, exemptions have been granted under Art. 85(3) because such restrictions contribute to concentrating fairs in the interest of manufacturers and consumers alike.<sup>36</sup> The Commission's approach to the problem has been to seek to

strike a balance between the period of restriction and the period of freedom to exhibit. The Commission considers that the proliferation of fairs is to be discouraged and that a rationalisation of participation is beneficial.<sup>36</sup> By limiting the number of fairs, not only are exhibition costs kept to a minimum, allowing the resulting price advantages to be passed on to consumers, but a full range of products are presented.<sup>37</sup>

Although restrictions on participation have been granted exemptions, excessive (e.g., a permanent bar to participation in other trade fairs) or discriminatory (e.g., those that may have a protectionist effect) restrictions will not qualify. *UNIDI*<sup>38</sup> involved an exhibition, Expo Dental, organised by the trade association representing most of the manufacturers of dental equipment in Italy. The conditions governing admission for exhibitors stated that all manufacturers, representatives of foreign suppliers and dealers wishing to exhibit were to refrain from exhibiting their products at other similar events in Italy during the 12 months preceding Expo Dental. Because Expo Dental was an annual event, these conditions effectively barred the showing of dental equipment at other exhibitions in Italy. Following Commission intervention, UNIDI amended its rules to provide that Expo Dental would be held every 18 months and that manufacturers and their agents would be allowed to exhibit their goods throughout Italy during the nine months following Expo Dental. The Commission considered that a restriction for the

together and compared, which has the effect of stimulating technical progress, giving better guidance to the consumer through the presentation of a full up-to-date display of the products of the relevant industry, while providing favourable circumstances for the negotiation and conclusion of business transactions. These benefits more than offset the disadvantage to fair organizers posed by the restriction on the freedom of manufacturers to display their vehicles. But it must be remembered that this restriction itself concerns only international exhibitions.

(b) It also promotes the marketing of motor vehicles. Since exhibitors may display their motor vehicles only at events authorized by BPRCA - which are considered important enough to necessitate participation even though the expense involved is high - the prohibition on participation in all other international events results in a considerable reduction in the costs of taking part in fairs and exhibitions; this in turn reduces the cost price of each motor vehicle.

It can therefore be concluded that the BPRCA regulations contribute to improving the distribution of the relevant products and to promoting economic progress, so that they satisfy the first condition for the application of Article 85(3) of the Treaty.

2. It may also be concluded that a fair share of this improvement in distribution and economic progress accrues to the consumer. The periodic concentration of supply enables prospective purchasers to gain a full picture of the range of products available and to decide on what they will buy without having to travel about; furthermore, in view of the keen competition existing in the motor industry, it is likely that the manufacturers' selling prices will, to some extent at least, reflect the savings made as a result of their participation in a smaller number of events. In any case, motor vehicles may be displayed at national, regional, local and special exhibitions.

The regulations consequently satisfy the second condition for the application of Article 85(3).<sup>39</sup>

<sup>36</sup> *First Report on Competition Policy*, Nos. 42-43. See *VIFKA*, OJ 1986 L291/46 (office equipment), where the Commission exempted a restriction against exhibitors participating at other exhibitions not organised or approved by VIFKA during the same year (VIFKA fairs being held every other year) as a necessary condition for the rationalisation of fairs and exhibitions for office furniture.

<sup>37</sup> *BPRCA*, OJ 1977 L299/18, extended; OJ 1982 L156/6 (automobiles).

<sup>38</sup> *UNIDI*, OJ 1975 L28/17, extended; OJ 1984 L22/10, on appeal. *Associazione Nazionale Commercianti Internazionali Dental e Sanitari v EC Commission* [1987] ECR S151 (dental equipment).

<sup>33</sup> *Seventh Report on Competition Policy*, No. 7.

<sup>34</sup> *First Report on Competition Policy*, Nos. 42-43.

<sup>35</sup> *VIFKA*, OJ 1986 L291/46 (office equipment); *SM&LT*, OJ 1983 L576/3 (motor vehicles, freight containers and motor goods); *BPRCA*, OJ 1977 L299/18, extended; OJ 1982 L156/16 (automobiles); *UNIDI*, OJ 1975 L28/17, extended; OJ 1984 L22/10, on appeal. *Associazione Nazionale Commercianti Internazionali Dental e Sanitari v EC Commission* [1987] ECR S151 (dental equipment); *EUMA PRINT*, *Third Report on Competition Policy*, No. 57 (printing and papermaking machinery); *CEMA TEEX*, JO 1971 L27/26, extended; OJ 1983 L140/27 (textile machinery); *European Machine Tool Exhibitions*, JO 1969 L59/13, extended; OJ 1979 L11/16 (machines for metalworking).

<sup>36</sup> *First Report on Competition Policy*, Nos. 42-43. For example, in *BPRCA*, OJ 1977 L299/18, extended; OJ 1982 L156/16 (automobiles) the Commission stated:

1. The need for the rationalization of international fairs and exhibitions already alluded to by the Commission entails the concentration of international events where motor vehicles are displayed: the advantages of this type of concentration are as follows:  
(a) The full range, or nearly the full range, of supply from the motor vehicle industry can be brought



5712

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Volume 18 No L 228  
29 August 1975

English Edition

Legislation

Contents

I Acts whose publication is obligatory

.....

II Acts whose publication is not obligatory

Commission

75/495/EEC :

- \* Commission Decision of 15 May 1975 authorizing the French Republic not to apply Community treatment to natural honey falling within heading No 04.06 of the Common Customs Tariff, originating in Czechoslovakia and in free circulation in the other Member States . . . . . 1

75/496/EEC :

- \* Commission Decision of 19 June 1975 authorizing the Italian Republic not to apply Community treatment to footwear with outer soles of leather or composition leather ; footwear (other than footwear falling within heading No 64.01) with outer soles of rubber or artificial plastic material falling within heading No 64.02 of the Common Customs Tariff, originating in the Chinese People's Republic and in free circulation in the other Member States . . . . . 2

75/497/EEC :

- \* Commission Decision of 15 July 1975 relating to a proceeding under Article 85 of the EEC Treaty (IV/27.000 — IFIRA rules for producers of virgin aluminium) . . . . . 3

75/498/EEC :

- \* Commission Decision of 17 July 1975 relating to a proceeding under Article 85 of the Treaty establishing the EEC (IV/28.775 — UNIDI) . . . . . 14

75/499/EEC :

- Commission Decision of 23 July 1975 fixing the maximum price of white sugar to be supplied to UNRWA for the second partial invitation to tender referred to in Regulation (EEC) No 1071/75 . . . . . 20

(Continued overleaf)

## COMMISSION DECISION

of 17 July 1975

relating to a proceeding under Article 85 of the Treaty establishing the EEC

(IV/28.775 — UNIDI)

(Only the Italian text is authentic)

(75/498/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<sup>(1)</sup> of 6 February 1962, and in particular Articles 2, 4, 6 and 8 thereof;

Having regard to the application for negative clearance and the notification submitted on 21 December 1973 pursuant to Articles 2 and 4 of Regulation No 17 by the Unione Nazionale Industrie Dentarie Italiane (UNIDI) of Milan in respect of its decision in which the rules and regulations were laid down for the national and international dental equipment exhibitions (Expo Dental), organized by UNIDI at intervals of 18 months and held in various cities in Italy;

Having regard to the application submitted on 16 April 1974, pursuant to Article 3 of Regulation No 17, on behalf of Dentaurum HP of Pforzheim Ispringen, Federal Republic of Germany, and its Italian representative Compagnia Internazionale Prodotti Dentali (CIPD) of Bologna, to which Risen of Turin, the Italian representative of Rocky Mountain, USA, and Unital of Milan, the representative of Unitek Corporation, Federal Republic of Germany, were both joined on 30 April 1974;

Having regard to the summary of the above Decision published, as required by Article 19 (3) of Regulation No 17, in *Official Journal of the European Communities* No C 103 of 7 May 1975;

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 25 June 1975,

Whereas:

1. UNIDI is a private association formed in Milan on 27 May 1969 under Italian law. The current membership consists of 77 dental equipment manufacturers established in Italy. Membership of the association is open to all those industrial undertakings manu-

facturing products for use by dentists which are enrolled in Italy with a Chamber of Commerce for Industry, Craft Trades and Agriculture. Decisions with regard to the acceptance or rejection of applications for new membership are taken by a board of management. There are only two or three dental equipment manufacturers established in Italy which are not members of UNIDI.

The main objects of the association are to advertise, both in Italy and elsewhere, the products of men firms and to promote their sales through approaches made to public or other official bodies, and by means of fairs and national and international exhibitions. It can engage in any activity which the board of management considers necessary in order to achieve these objects.

In accordance with these objects, the board of management formed a committee on 8 January 1971 to organize national and international dental equipment exhibitions in Italy under the name of Expo Dental. It was this committee which had taken the decision later notified to the Commission in respect of the conditions for taking part in the exhibitions, and which had also decided that these conditions should be incorporated in the Expo Dental rules drawn up before each exhibition.

UNIDI is also associated with ANCIDES (Associazione Nazionale Commercianti Internazionali Dentali e Sanitari), an association of dental equipment importers and wholesalers, and ANCAD (Associazione Nazionale Commercianti Articoli Dentali), an association of dental equipment dealers, in the organization of Expo Dental. However, UNIDI alone is responsible for this organization, and it is UNIDI which lays down the general policy to be followed.

2. The main points of the latest Expo Dental rules are as follows:

— The following may be exhibited at Expo Dental: tools for dental technicians, expendable products required by dental technicians, expendable products and equipment required for dental surgery, pharmaceutical products, dental laboratories, precious metal alloys for dental surgery, and specialist technical and scientific publications (Article 5);

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



- Italian and foreign manufacturers, representatives of foreign firms and dental equipment dealers may present exhibits. Publishers of technical, scientific and periodical publications, and organizations, associations, institutes, etc., which promote, support, or themselves engage in the main activities connected with or relating to the types of goods exhibited and the particular features of the exhibition may also take part (Article 6);
  - The price per square metre for a stand at an Expo Dental exhibition varies by some 20 %, depending whether the exhibitor is or is not a member of one of the associations involved in organization (Article 9);
  - Exhibitors may not conclude on-the-spot sales with the public or require immediate payment. Sales may be made only on orders for future delivery (Article 10);
  - The organizing committee of Expo Dental is responsible for considering applications from potential exhibitors and for allocating stands (Article 10);
  - Any firm wishing to take part in an Expo Dental exhibition is warned that it will not be allowed to exhibit, and the advance payment of admission fees will not be reimbursed, if, during that period next before the opening of the Expo Dental which corresponds to half the interval between the preceding and the present Expo Dental (in other words within the previous nine months), it takes part in any other exhibitions of dental equipment. An exhibition is defined as the presentation, either physical or through advertising, of competing dental products in Italy or San Marino where more than one firm take part. Participation in an exhibition is defined as the presentation of dental products by the manufacturer, by the importer or by an Italian or foreign representative, whether on his own behalf or through a third party (Article 22);
  - There is complete freedom to exhibit, however, either at any 'open house' exhibition organized by a single firm (manufacturer, importer or dealer), provided it is not ancillary to a professional or trade congress, or at exhibitions connected with conferences or congresses of associations of specialists on, for example, orthodontics or implantology (Article 22);
  - Where an exhibitor is liable to be excluded by virtue of this provision after his application has already been accepted, the organizer is required to decide whether to exclude the applicant within 30 days of the date he discovered the facts warranting such exclusion. Where the Expo Dental has already begun, the organizer may either order the exhibitor concerned to leave immediately or order his exclusion from the next exhibition (Article 22).
3. Between 1971 and 1974, Expo Dental was held every year: in Genoa in 1971, in Milan in 1972, in Rome in 1973 and again in Genoa in 1974. On 25 July 1974 the Expo Dental organizing committee decided that future exhibitions would be held only every 18 months and that the next Expo Dental would be at Bologna in the spring of 1976.
4. In considering this case, account must be taken of the following matters which have the most influence on the Italian dental industry and exhibitions of dental equipment in particular:
- This sector consists of dental equipment producers, representatives and dealers, whose customers are primarily practitioners and dental technicians. It does not include manufacturers of or dealers in toothpaste, toothbrushes and such other dental products which are sold to the public at large;
  - At the present time there are new developments both in general dentistry as in more specialized fields, such as implantology and orthodontics. It is of interest to note that there are at present some 150 dentists in Italy practising orthodontics, using the products of four manufacturers which are directly or indirectly in business on the Italian market;
  - Apart from normal sales methods, such as the use of brochures and representatives, there are three forms of specialized activity in promoting dental equipment:
    - (a) general exhibitions and fairs, such as the Milan Fair;
    - (b) local events known as 'open houses' held at the premises of a manufacturer, or a representative or dealer, or even at an hotel, where potential customers are invited to inspect the range of products manufactured by a particular firm;

- (c) specialized congresses and exhibitions, which either cover the whole range of dental equipment or are limited to those products used by particular specialists.

The present trend is against the use of events of type (a) above, in favour of those of types (b) and (c);

- The increase in the number of events of type (c) during the 1960's, organized on behalf of dentists' associations, involved manufacturers in considerable expense, while the number of visitors dropped steadily. This is the reason which caused the manufacturers to set up UNIDI to organize an exhibition of interest to the profession as a whole.
- Dental associations from other Member States frequently organize congresses in Italy which include exhibitions.

At present Expo Dental is the only exhibition in Italy covering the whole dental industry, attracting attendance from all branches of the profession. Each Expo Dental is visited by approximately 60 % of all practitioners and dental technicians, who are the potential customers.

5. The original version of the UNIDI decision on the Expo Dental rules restricted the freedom of exhibitors to take part in other similar exhibitions in Italy to a much greater extent. The prohibition in fact applied to the 12 months preceding each Expo Dental which was, moreover, an annual event. Furthermore, there was no exception for those exhibitions connected with specialized congresses.

As a result of that provision, some of the firms wishing to exhibit at the Expo Dental which was to take place at Genoa in October 1974 were prevented from taking part in the exhibition attached to the congress organized by the European Begg Society of Orthodontics and held at Santa Margherita Ligure, Italy, in May 1974.

In a circular to its members dated February 1974, UNIDI explicitly reminded them that the rules notified to the Commission were still in force for the time being and that any member who wished to take a different line would be excluded from the Expo Dental at Genoa.

In April 1974 one German firm and three Italian firms, who had all wanted to take part in both exhibi-

tions, made application under Article 3 of Regulation No 17 in respect of the Expo Dental rules, and in particular Article 22 thereof.

In response to the representations of the Commission, UNIDI decided to permit the firms in question to take part in both exhibitions and on 25 July 1974 amended the rules governing future Expo Dentials, particularly Article 22, to the form set out in paragraphs 1 and 2 above.

No observations were received from any interested third parties following the publication of a summary of the UNIDI decision in the *Official Journal of the European Communities*.

## II

1. The UNIDI decision in which the Expo Dental rules are drawn up is a decision by an association of undertakings.

2. The present Expo Dental rules contain provisions which have as their object or effect a restriction of competition within the common market. These provisions which are to be found in Article 22, are as follows:

- The prohibition on participation by Expo Dental exhibitors, during the nine months preceding the Expo Dental, in other similar dental exhibitions in Italy. The prohibition covers both the actual exhibition of products and any other form of publicity whether directly by the manufacturers or indirectly by a manufacturer's Italian or foreign representative;

- The refusal to admit those exhibitors in breach of the provision referred to in the preceding paragraph to the current Expo Dental, or their expulsion therefrom, or exclusion from the next Expo Dental.

3. These provisions substantially restrict competition both on the market for the services provided by those organizing dental equipment exhibitions as well as on the actual market for such equipment.

- With regard to the organization of dental exhibitions, the fact that most manufacturers of the relevant products on the Italian market, or their distributors, usually participate in Expo Dental exhibitions means that other organizers of such

exhibitions, and particularly Italian and foreign dental associations wishing to organize exhibitions in Italy, whether or not attached to a Congress, cannot invite these exhibitors to take part in their own exhibitions.

— Although dental equipment manufacturers have the choice whether to present their products either at Expo Dental or at other exhibitions, competition is restricted between them, since it has become necessary for all manufacturers doing business on the Italian market or wishing to enter that market to take part in Expo Dental, since it is the most popular dental exhibition and is attended by all the professional groups concerned. However, if they do present their products at Expo Dental, they will be unable to take part in other exhibitions in Italy, such as regional exhibitions.

— Competition is furthermore restricted between these dental equipment producers' commercial agents, since distributors of competing products are placed on a different competitive footing depending on whether the dental equipment manufacturer prefers to exhibit at Expo Dental or at other exhibitions.

4. Competition could further be restricted by Article 10 (1) of the rules, which requires applications for admission to Expo Dental to be submitted to the organizing committee for decision, since refusal to admit products of a manufacturer to the only exhibition of this scale organized every 18 months in Italy would place the manufacturer or his distributor in a disadvantageous position compared with his competitors. In the past, however, this rule has never been applied arbitrarily. It is nevertheless necessary to ensure that for the future also the exercise of this prerogative by the Expo Dental organizing committee, which they do not have to justify and against which there is no appeal, will not lead to restrictive conduct.

5. On the other hand, competition is not restricted by Article 9, which provides for a scale of fees for exhibitors varying by approximately 20 % depending on whether or not they are members of the associations involved in organizing Expo Dental. Such disparity appears to be justified in view of the cost involved in preparing and organizing the exhibition, which is met from contributions from members of the

organizing associations. As long as the scale is confined within such limits it will not constitute discrimination against exhibitors who are not members of these associations.

6. The restrictions on competition referred to above may affect trade between the Member States in respect of both the provision of services by the organizers of exhibitions in the various Member States and the conditions for marketing dental products within the Community.

With regard to the provision of services, organizers of dental exhibitions in other Member States wishing to organize exhibitions in Italy other than of a specialist nature would be unable to invite a manufacturer who wanted to exhibit at Expo Dental during the period in which such manufacturer was prevented from taking part in other exhibitions. In this context, participation in any exhibition other than Expo Dental means the presentation of the dental products concerned not only by a manufacturer or distributor but also by any other Italian or foreign commercial agent. Therefore, a manufacturer wishing to exhibit at Expo Dental would have to ensure that his products were not exhibited by any person at any other exhibition in Italy, irrespective of the organizer.

It is also the case that all manufacturers in other Member States wishing to sell their products in Italy are obliged to comply with the Expo Dental rules because the exhibition is an important venue for marketing their products. In addition, Italian manufacturers cannot, during the period of prohibition, exhibit their products at exhibitions in Italy held by associations in the sector of dental products from other Member States, which deprives the Italian manufacturers of the opportunity of bringing these products to the attention of potential customers in other common market countries.

These restrictions therefore could prejudice the freedom of trade between Member States to such an extent that the attainment of a single market between the Member States might be jeopardized.

7. Accordingly, Article 8.5 (1) is applicable to the UNIDT decision and the application for negative clearance cannot, therefore, be granted.



## III

1. The UNIDI decision must therefore be considered with regard to the provisions of Article 85 (3).

2. The fact that it has become necessary to rationalize the organization of and participation in fairs and exhibitions, as already noted by the Commission in a number of other industries<sup>(1)</sup>, has caused exhibitions of dental equipment, in particular, to become concentrated, if not at Community level<sup>(2)</sup>, at least at national level, as in this case in Italy. This has the following advantages:

- a) by displaying together most of the products available on the Italian market at one time, competition between manufacturers is stimulated and incentives for technical progress arise. It also means that not only can consumers, in this case the dental profession, have a more complete range of information and guidance, but also more business can be done;
- b) it promotes the marketing of the products in that, nine months out of 18, the costs borne by exhibitors are reduced and consequently the cost price of their products, while for the other nine months they are free to exhibit their products as they wish.

Accordingly the decision contributes to improving the distribution of goods and to promoting economic progress.

3. Consumers are allowed a fair share of the resulting benefit. The periodic concentration of supplies in a single Italian city, which is not always the same, gives consumers a complete indication of the market situation and enables them to make direct contact with all producers or distributors on this market, without having to travel frequently from place to place.

The consumer is therefore allowed a fair share of the benefit resulting from the rationalization brought about by Expo Dental.

4. The decision as notified imposes no restriction which is not indispensable to the attaining of its objectives. Manufacturers and distributors of dental products have a reasonable period when they are not required to bear the cost of taking part in other exhibi-

tions and when they are able to concentrate on Expo Dental. Having regard to the fact that Expo Dental is held every 18 months and to the rate at which technical progress is made in the relevant products together with the exceptions allowed for open-house type exhibitions and exhibitions connected with specialized congresses, the period of nine months prohibition out of every 18 can reasonably be regarded as indispensable.

5. The UNIDI decision does not eliminate competition between organizers of exhibitions of dental equipment nor between manufacturers and distributors of such equipment.

Organizers of exhibitions other than Expo Dental can, during nine months out of every 18, organize exhibitions at which any interested party can exhibit, and during the other months they are free to hold exhibitions with the participation of firms who do not take part in Expo Dental. Furthermore, as far as Commission is aware, it is only associations of specialists which have hitherto organized such exhibitions. Such associations remain free to organize exhibitions in connection with specialized congresses or symposia at which all manufacturers and their representatives are free to exhibit.

With regard to competition between manufacturers and distributors of dental products, participation in specialized exhibitions is, as can be seen from Part I above, only one of the various methods of marketing. The fact that during nine months out of every 18 they are obliged to adopt other methods does not result in the elimination of competition between them.

6. Accordingly, all the tests for exemption under Article 85 (3) are satisfied.

## IV

1. The original version of the UNIDI decision did not qualify for exemption under Article 85 (3). The prohibition on participation in other similar exhibitions was in effect valid for 12 months out of every 12, which gave UNIDI a virtual monopoly of dental exhibitions in Italy. Furthermore, since it made no exceptions for exhibitions connected with specialized congresses or symposia, the result was that firms

(1) Commission Decision of 13 March 1969 in Case IV/93 — Exposition européenne de la Machine-outil (EEMO); OJ No L 69, 20. 3. 1969, p. 13; Commission Decision of 24 September 1971 in case IV/181 — CEMATEX; OJ No L 227, 8. 10. 1971, p. 26.

(2) The Commission reserves the right to consider whether similar rules in other Member States are compatible with the rules on competition in the Treaty.

manufacturing either general or specialized dental equipment could not present their product ranges on these two distinct markets. Competition, therefore, between the organizers of exhibitions and the manufacturers and distributors of dental equipment was restricted to an extent which the benefits of the Expo Dental scheme could not justify.

As stated in Part I above, UNIDI adopted a decision on 25 July 1974 in response to representations by the Commission by which the rules governing future Expo Dental exhibitions, in particular Article 22, were amended to comply with Article 85 (3). It is, therefore, only from that date that the tests for exemption under Article 85 (3) have been satisfied.

2. In determining the period of validity of this decision, as required by Article 8 (1) of Regulation No 17, account must be taken of the nature of the case and, in particular, of the fact that Expo Dental is held every 18 months. A period of nine years is accordingly considered to be appropriate.

3. In view of the comment made in paragraph 2 of Part II above, it would also seem appropriate to attach an obligation to this decision, pursuant to Article 8 (1) of Regulation No 17, to enable the Commission to be kept informed of any case in which the Expo Dental organizing committee, in agreement with UNIDI, refuses to admit an exhibitor. For this purpose UNIDI should be required to furnish copies of the correspondence in which either UNIDI itself or the Expo Dental organizing committee has informed a firm that its application for admission cannot or can no longer be accepted.

HAS ADOPTED THIS DECISION:

*Article 1*

Pursuant to Article 85 (3) of the Treaty establishing the European Economic Community, the provisions of Article 85 (1) of the Treaty are hereby declared inapplicable to the UNIDI decision setting out the rules governing Expo Dental exhibitions.

*Article 2*

UNIDI shall immediately inform the Commission of any refusal to admit an exhibitor to any Expo Dental exhibition.

*Article 3*

This Decision shall take effect from 25 July 1974 and shall remain valid until 31 December 1983.

*Article 4*

This Decision is addressed to Unione Nazionale Industrie Dentarie Italiane (UNIDI), via Fratelli Ruffini 9, Milan, Italy.

Done at Brussels, 17 July 1975.

*For the Commission*

*The President*

François-Xavier ORTOLI

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English Edition

# Official Journal

## of the European Communities

### Legislation

#### Contents

#### I Acts whose publication is obligatory

- ★ Council Regulation (EEC) No 2561/77 of 21 November 1977 opening, allocating and providing for the administration of a Community tariff quota for liqueur wines falling within subheading ex 22.05 C of the Common Customs Tariff, originating in Cyprus and marketed under the label of 'Cyprus sherry', and introducing subsidies for similar wine products produced in the Community (1977) 1
- Commission Regulation (EEC) No 2562/77 of 22 November 1977 fixing the import levies on cereals and on wheat or rye flour groats and meal . . . . . 5
- Commission Regulation (EEC) No 2563/77 of 22 November 1977 fixing the premiums to be added to the import levies on cereals, flour and malt . . . . . 7
- ★ Commission Regulation (EEC) No 2564/77 of 22 November 1977 amending Regulation (EEC) No 1351/72 on the recognition of producer groups for hops 9
- ★ Commission Regulation (EEC) No 2565/77 of 22 November 1977 authorizing the Kingdom of Denmark to abolish the customs duties applicable to dessert apples in trade between Member States . . . . . 10
- ★ Commission Regulation (EEC) No 2566/77 of 22 November 1977 authorizing the Kingdom of Denmark to apply in full the Common Customs Tariff to dessert apples imported from third countries . . . . . 11
- ★ Commission Regulation (EEC) No 2567/77 of 21 November 1977 reimposing the levying of customs duties applicable to third countries on certain products originating in Sweden . . . . . 12
- ★ Commission Regulation (EEC) No 2568/77 of 22 November 1977 re-establishing the levying of the customs duties on thread of asbestos, falling within subheading 68.13 B 1, originating in Venezuela to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3021/76 apply . . . . . 13

(Continued overleaf)



## COMMISSION DECISION

of 7 November 1977

relating to a proceeding under Article 85 of the EEC Treaty (IV/417 — BPICA)

(77/722/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 Regulation No 17 of 6 February 1962<sup>(1)</sup>, and in particular Articles 2, 5, 6, 7 and 8 thereof,

Having regard to the application for negative clearance and the notification made in connection therewith on 29 October 1962, as required by Regulation No 17, by Mr. P. Lemaigre, Chairman of the International Permanent Bureau of Motor Manufacturers (BPICA), Paris, concerning the regulations governing the display of motor vehicles at international exhibitions,

Having regard to the publication of a summary of the notification, in accordance with Article 19 (3) of Regulation No 17, in Official Journal No C 72 of 23 March 1977,

Having regard to the opinion delivered on 13 July 1977 by the Advisory Committee on Restrictive Practices and Dominant Positions in accordance with Article 10 of Regulation No 17,

Whereas:

## I. The facts

The facts are the following:

## A.

1. BPICA is a non-profit-making association which was formed in 1919 in accordance with the French Law of 1 July 1901. The following national associations are currently members:

Verband der Automobilindustrie e.V. (VDA), Westendstraße 61, 6000 Frankfurt/Main 17 (Federal Republic of Germany);

Fachverband der Fahrzeugindustrie Österreichs, Lugeck 1/1/32, 1011 Wien 1 (Austria);

Fédération Belge des Industries de l'Automobile et du Cycle (FEBIAC),

Boulevard de la Woluwe 46, 1200 Bruxelles (Belgium);

Sammenslutningen af Automobil-Fabrikanter og Importører,

Ryvangs Allé 68, 2900 Hellerup (Denmark);

Agrupacion Nacional de Fabricantes de Automoviles Camiones (ANFAC),  
Cea Bermudez 6, Madrid 3 (Spain);

Motor Vehicle Manufacturers Association of United States, Inc. (MVMA),  
320 New Center Building, Detroit, Michigan 482 (United States);

Chambre Syndicale des Constructeurs d'Automobile (CSCA),  
2, Rue de Presbourg, 75008 Paris (France);

MOGURT, Société Hongroise pour le Commerce d'Automobile,  
Benczur U 13, Budapest VI (Hungary);

Associazione nazionale fra industrie automobilistiche (ANFIA),  
Corso Galileo Ferraris 61, Torino (Italy);

Japan Automobile Manufacturers Association (JAMA),  
Otemachi Building 6—1, Otemachi, 1-chon Chiyoda-ku, Tokyo 100 (Japan);

Automobilimportørens Forening,  
Hauchsgt. 1, Oslo 1 (Norway);

Nederlandse Vereniging de Rijwiel- en Automobiel Industrie (RAI),  
Europaplein 2, Amsterdam 1010 (Netherlands);

The Society of Motor Manufacturers & Traders Ltd (SMMT),  
Forbes House, Halkin Street, London SW1X 7L (United Kingdom);

Sveriges Bilindustri- och Bilgrossistförening,  
Industrihuset, Storgaten 19, S 114 85 Stockholm (Sweden);

Chambre Syndicale Suisse de l'Automobile et de ses branches annexes,  
18, Quai Ernest Ansermet, 1211 Genève 4 (Switzerland);

MOTOKOV<sup>(2)</sup>,  
Olsanska 1, 130 81 Praha 3 (Czechoslovakia);

V.O. AVTOEXPORT<sup>(2)</sup>,  
Volkhonka ul. 14, 119902 Moscow G—19 (USSR);

Biro Proizvodaja Motornih Vozila,  
Bulevar Vojvode Misica 14, Beograd (Yugoslavia);

Polmo,  
ul. Stalingradzka 23, 00—987 Warszawa (Poland);

Autotuojat r.y.,  
Annankatu 31—33 d 59, 00100 Helsinki 10 (Finland)

<sup>(2)</sup> Motokov and V.O. Avtoexport are the official bodies responsible in Czechoslovakia and the USSR respectively for external trade in motor vehicles.

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

2. The national associations include among their members all the motor vehicle manufacturers within their respective countries. In certain cases assemblers and importers are also represented. Associations representing manufacturers and assemblers are admitted to full membership. Those representing only importers may belong to BPICA only if their country has no association representing manufacturers and assemblers; but they will only be associate members of BPICA, unless the general assembly decides to admit them, at their own request, as full members. Associations representing manufacturers and assemblers who feel that BPICA does not really concern them directly, for example because of their geographical distance, may, if they so request, be admitted as correspondent members. Only one association per country is admitted. Full members each have one vote. Associate members have no more than a consultative function, though they may vote on resolutions concerning exhibitions organized in their own country. Applications for admission to membership are brought before the assembly, which decides by a majority of two-thirds of the votes of the full members<sup>(1)</sup>.

3. The principal objects of BPICA, as set out in its statutes, are :

- to collect and circulate among members all information on matters of common interest in the development of the motor industry and to promote joint studies on such matters,
- to work out the most appropriate line of conduct in relation to such matters and to address recommendations to members,
- to represent and defend the interests of the motor industry on all occasions and before all bodies where joint action is felt to be appropriate,
- to regulate the display of motor vehicles at shows and exhibitions, in accordance with regulations approved by the assembly.

The application for negative clearance and notification presented by BPICA relates to the last of these objects and to the regulations adopted in pursuance thereof. The present proceeding is without prejudice to any assessment which the Commission may make within the framework of EEC rules on competition, of any measures taken or arrangements made by BPICA for the purpose of achieving the objectives set out in its statutes.

<sup>(1)</sup> Certain countries are not represented in BPICA, the trade associations in those countries not having applied for membership (Luxembourg and Ireland are two cases in point).

## B.

4. The 'regulations concerning the display of motor vehicles at international exhibitions' (hereinafter referred to as 'the regulations'), in the form currently in force, were adopted on 17 May 1976. They are broadly the same as the original regulations of 1960, amended in 1971, which were the subject of the application for negative clearance and of the notification.

5. The main points of the current regulations are as follows :

- They apply to any display of motor vehicles at international motor exhibitions (motor shows), international fairs and international specialized exhibitions including racing and sports car shows (Article 1 (1)). No BPICA authorization is necessary for the display of motor vehicles at national sections within a universal exhibition or at national exhibitions in a foreign country (Article 1 (2)), nor for national, regional and local exhibitions, which fall under the responsibility of the national associations (Article 1 (3)).

- BPICA recognizes as international exhibitions all those recognized as such by the respective governments and/or those fairs in membership with UFI (Union of International Fairs) and all exhibitions generally recognized as international, in consideration of the location of the exhibition and/or the number of exhibitors and/or the countries of origin and/or the number of visitors (Article 2 (1)).

BPICA recognizes as international specialized exhibitions those international exhibitions where equipment for a special purpose or specific type of motor vehicles are displayed (Article 2 (2)).

It recognizes as universal exhibitions those exhibitions designed for the presentation on a national basis of the products of several nations (Article 2 (3)).

BPICA recognizes as national exhibitions in another country those exhibitions the purpose of which is to publicize the products of the nation concerned in another country (Article 2 (4)).

BPICA recognizes as national, regional and local exhibitions those exhibitions in which the interests of exhibitors and visitors concern respectively those of a country, a region or a locality and its neighbouring area (Article 2 (5)).

- The regulations apply to international exhibitions held in all European countries, whether or not they are represented in BPICA<sup>(1)</sup> (Article 3 (1)). They apply, through the national associations, to motor vehicle manufacturers and through the latter to their representatives (Article 3 (2)). They apply to new motor vehicles designed for normal operation on public roads and — provided no contrary national legal provisions exist — to motor vehicles registered for less than six months (Article 3 (3)).
  - The authorization to display motor vehicles at international specialized exhibitions is only granted for the display of special purpose motor vehicles, corresponding to the type of exhibition concerned (Article 4).
  - Each year the BPICA secretariat, with the support of the national associations, prepares a list of the international exhibitions for which BPICA authorization is required (Article 5). From this list the assembly annually approves the calendar of international exhibitions for which participation of motor vehicles is authorized for the following year (Article 6).
  - Applications for authorization to display at international exhibitions are submitted to the BPICA secretariat, either by the member association in the country concerned, or failing this, by the association representing automobile construction and/or trade in that country, or by the member association of another country, or by the organizers of the relevant exhibition (Article 7). The secretariat informs those concerned of the outcome of their application (Article 8 (2)).
  - The secretariat circulates the calendar of international exhibitions at which the display of motor vehicles is authorized for the member associations (Article 8 (1)); the associations communicate the calendar to their members (Article 9 (1)). Each association is required to give adequate publicity to BPICA decisions so that those concerned cannot claim to be unaware of them (Article 9 (2)).
  - In the event of infringement of the regulations by a manufacturer, BPICA decides what sanctions will be imposed. These sanctions may consist in the allotment of less favourable or reduced stands at the motor show of the country where the infringement has been reported (Article 10). No sanction has ever been applied.
6. On 21 November 1960 additional provisions were added to the BPICA regulations, dealing with the display of specialized vehicles at international exhibitions. The main provisions are as follows:
- The vehicles and exhibitions concerned are those governed by the BPICA regulations (Article 1).
  - Specialized vehicles are taken to mean vehicles which are designed and constructed or fitted with special equipment in such a way that they can be used only for special purposes (Article 2 (1)).
  - International specialized exhibitions are taken to mean exhibitions where only the products of one industry or of one field of activities are displayed. Specialized sections within international fairs are regarded as international specialized exhibitions (Article 3).
  - Specialized vehicles may be displayed only at international specialized exhibitions authorized by BPICA (Article 5 (1)).
- Specialized vehicles displayed at an international specialized exhibition or at a specialized section within an international fair may also be exhibited in motor shows authorized by BPICA (Article (2)).
- Three categories of specialized exhibitions (or specialized sections at international fairs) were determined at the time these provisions were adopted:
    - (a) public works and building exhibitions;
    - (b) municipal exhibitions;
    - (c) fire protection exhibitions (Article 4).
- Other categories of international specialized exhibitions were subsequently included, thus extending the number of events at which motor vehicles may be displayed.

## C.

7. The national associations organize the motor shows held in their respective countries.

Each year several motor shows are held at which cars and/or trucks and buses and the like are displayed. They are generally held in Amsterdam, Barcelona, Belgrade, Brussels, Copenhagen, Frankfurt, Geneva, London, Paris and Turin.

The international fairs where BPICA authorizes display of motor vehicles are those held each year in Brno, Budapest, Izmir, Leipzig, Poznan and Plovdiv.

<sup>(1)</sup> Of the EEC countries, Ireland and Luxembourg are not represented in BPICA (see footnote on page 19 of this Official Journal).



8. International specialized exhibitions are normally organized by fair organizers or by the relevant trade associations.

It must be remembered that the vehicles which may be displayed at these exhibitions are specialized vehicles corresponding to the relevant type of exhibition (Article 4 of the BPICA regulations).

The main international specialized exhibitions currently recognized by BPICA are the following:

- public works and building exhibitions<sup>(1)</sup>. These are generally held twice a year in the Community. The main centres are Brussels, Hanover, Luxembourg, Munich and Paris-Le Bourget in the EEC, and Basle, Madrid and Vienna outside the EEC;
- municipal exhibitions<sup>(2)</sup>. These are generally held twice annually in the Community, chiefly in Amsterdam, Brussels, London and Paris;
- camping exhibitions<sup>(3)</sup>, which are usually held annually, at Amsterdam and Essen;
- fire-fighting exhibitions<sup>(4)</sup>. These were held at Amsterdam in 1970, Frankfurt in 1972, and Amsterdam and London in 1975<sup>(6)</sup>;
- container exhibitions were held at Genoa and Munich in 1970, London, Paris and Rotterdam in 1971, Hamburg in 1972 and Munich in 1974<sup>(6)</sup>;
- racing and sports car shows<sup>(5)</sup> are generally held annually, at Paris, Brussels and/or London, Copenhagen, Malmö, Göteborg and Stockholm;
- airport equipment exhibitions were held at Paris-Le Bourget in 1971, Geneva in 1972 and Brussels in 1975<sup>(6)</sup>.

<sup>(1)</sup> The vehicles displayed include site and quarry skips, concrete mixers, mobile crushing and screening plant, cranes, excavators, dumpers, spreaders, bitumen heaters and grit spreaders. This list is not exhaustive.

<sup>(2)</sup> The vehicles displayed include vehicles for emptying and cleaning sewers, refuse collection vehicles, sprayers, road sweepers, snow ploughs, ambulances, etc. The list is not exhaustive.

<sup>(3)</sup> The vehicles displayed consist solely of powered caravans.

<sup>(4)</sup> The vehicles displayed include tankers, fire engines, pump wagons, airport fire engines, emergency rescue vehicles, mechanical ladders, forestry fire-fighting tankers, emergency breakdown vehicles and ambulances. The list is not exhaustive.

<sup>(5)</sup> The cars displayed are formula racing cars and sports cars having won a race in the preceding year.

<sup>(6)</sup> Includes only exhibitions held between 1970 and 1975.

D.

9. Either at the Commission's request or of its own accord, BPICA has made the following changes to the regulations earlier in force:

- The field of application of the regulations has been defined more clearly; it is now stated that they apply to any display of motor vehicles at international exhibitions.
- The clause which gave BPICA almost total freedom to decide whether an exhibition was international or not and to authorize or prohibit the display of motor vehicles there has been deleted. The international exhibitions currently concerned by the BPICA regulations are those exhibitions which are recognized as international by the appropriate national authorities, those which are members of UFI and those which are generally recognized as international. BPICA will no longer be able to declare arbitrarily that a purely national or regional exhibition is to be considered as international, and to enter it on the list of international exhibitions at which it prohibits the display of motor vehicles.
- No authorization is now required from BPICA for the display of motor vehicles at national exhibitions held in foreign countries.
- The clause under which applications for authorization for international exhibitions organized in a country represented in BPICA had to be submitted to the BPICA secretariat solely by the member association in the relevant country has been so amended that such applications may also be submitted by the member association in another country or by the organizers of the relevant exhibition.
- The clause which required BPICA authorization to display vehicles as 'supports' of other materials or of other products at international exhibitions not included in the calendar has been deleted.

— BPICA has also deleted the clause under which it was generally prohibited, unless so authorized by the relevant national association, to hold several specific exhibitions at the same time in the same place<sup>(7)</sup>; to organize special exhibitions in countries which had a motor show, during a period beginning two months before that motor show

<sup>(7)</sup> 'Special exhibitions' are events organized outside his normal business premises by a manufacturer or his representative for the display of vehicles of the make or makes which he manufactures, assembles, represents or distributes.

and ending at the same time as it; to display vehicles of different manufacture at the same special exhibition.

- The penalties imposed for breaches have been reduced. A person in breach may no longer be excluded from one or more exhibitions but may be given less favourable or reduced stands at the motor show in the country where the breach was committed.

#### • E.

10. In assessing this case account must be taken of certain factors which are characteristic of fairs and exhibitions in general; these were highlighted by the Commission in Cases IV/93 (European Machine Tool Exhibition — EEMO)<sup>(1)</sup> and IV/181 (European Committee of Textile Materials Manufacturers — CEMATEX)<sup>(2)</sup>; they concern:

- the importance of fairs and exhibitions as a source of market information both in respect of suppliers and in respect of actual or potential customers;
- the preference for specialized exhibitions over general exhibitions. This is due, first, to the requirements both of exhibitors and of visitors that there be the broadest and fullest range of products of an industry on display and, secondly, to the fact that non-specialized exhibitions are finding it increasingly difficult to display an adequately representative range products in the space available.

It should also be noted that, of the 400 or so international fairs held each year within the EEC, the vast majority are specialized events dealing with the goods of specific industries. Only 30 or so are general international fairs, most of which take place in France and Italy (about 10 per year in each country). In the United Kingdom and Denmark, on the other hand, these exhibitions are not normally held. In the other EEC countries they are generally divided as follows: five in the Federal Republic of Germany, three in Belgium, two in the Netherlands, one in Ireland and one in Luxembourg. These general international fairs might entail the display of motor vehicles in the absence of a prohibition in the BPICA regulations. However, most of them either have no interest in including the motor industry among those represented or else do not have the space to display a full

range of motor vehicles in addition to the products already exhibited. Hence the motor industry would be inadequately represented and this would harm the manufacturers and the consumer.

11. Turning to the specific example of vehicle exhibitions, where the customers consist of private individuals for cars and of trade associations and/or public authorities for most of the vehicles displayed at specialized exhibitions, the following points must be considered:

- in addition to the motor shows and international specialized exhibitions set out in the BPICA calendar, motor vehicles may be presented at the following exhibitions, where no BPICA authorization is required:

- (a) national sections in universal exhibitions, national exhibitions held in foreign countries and national exhibitions. Such exhibitions are, however, rather infrequent;
- (b) regional and/or local or special exhibitions. There are large numbers of these in the various countries;
- (c) international exhibitions not entered in the BPICA calendar, when the vehicle is displayed as 'support' for other material or other products;

- BPICA does not prohibit manufacturers or their representatives from advertising their products at international exhibitions not entered in the BPICA calendar;

- the mass-circulation and specialized press have particular importance as a source of advice and information to consumers, particularly in regard to private cars, and is in a position to ensure the consumer adequately informed both of the models which will be placed on the market and of the technical improvements made to existing vehicles.

#### F.

12. A notice summarizing the contents of the BPICA calendar and inviting comments from third parties was published in the *Official Journal of the European Communities* pursuant to Article 19 (3) of Regulation No 17. The comments received concerned in particular the fact that, by forbidding manufacturers or their representatives to display motor vehicles at international exhibitions not authorized by BPICA,

(1) OJ No L 69, 20. 3. 1969, p. 13.

(2) OJ No L 227, 8. 10. 1971, p. 26.



regulations restrict the freedom of these manufacturers to take part in such exhibitions and thereby deprive the exhibitors of the added bonus of motor vehicles as a means of attracting visitors. As the essential contents of these observations had already been made known to the Commission in the course of its investigation, the assessment of the BPICA regulations remains unchanged.

— As regards the organization of fairs and exhibitions, the fact that motor shows and international specialized exhibitions authorized by BPICA are attended by most if not all motor vehicle manufacturers in the Community and elsewhere and by their representatives means that other international fairs and exhibitions cannot display motor vehicles as a means of attracting visitors. The result is a restriction of competition in a service industry, namely the organization of fairs and exhibitions.

### G.

13. This proceeding does not cover the regulations concerning the display of motor vehicles at national, regional and local exhibitions, nor the rules of procedure for motor shows and international specialized exhibitions.

— Competition between motor manufacturers is also restricted for they are confined to events authorized by the BPICA. While it is true that such events, and especially motor shows, are important enough for the manufacturers to regard participation as essential, the fact remains that they cannot display their vehicles at other international fairs or exhibitions.

## II. 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.

— Competition between intermediaries in the motor industry is also restricted, for they cannot take part in any international event which is not authorized by BPICA, even though it would be advantageous for them to display their vehicles at least at those events which take place in their area of activity.

1. The BPICA regulations constitute a decision by an association of associations of undertakings, in that BPICA represents the national federations, which in their turn represent the manufacturers, assemblers or importers of motor vehicles.

4. These restrictions of competition are liable to affect trade between Member States, for on the one hand the organizers of international fairs and exhibitions not authorized by BPICA cannot display motor vehicles as a means of attracting visitors and, on the other hand, the motor manufacturers and their commercial intermediaries cannot freely exercise their advertising and sales activity by taking part in such fairs and exhibitions.

2. The BPICA regulations currently in operation extended solely to international exhibitions held in Europe and contain the following provisions which have the object or effect of restricting competition within the common market:

— the manufacturers of motor vehicles and, through them, their representatives are prohibited from taking part in international exhibitions and fairs which are not in the BPICA calendar;

— the author of an infringement may be given a less favourable or reduced stand at the motor show in the country where the breach was committed.

These obstacles to trade in services by organizers of fairs and exhibitions and to dealings in motor vehicles between EEC countries are liable to jeopardize freedom of trade between Member States and to impede the objective of creating a single market for all those States.

3. These provisions cause the following restrictions on competition within the common market:

5. Article 85 (1) is consequently applicable to the BPICA regulations and the negative clearance applied for by BPICA cannot be given.



### III. Applicability of Article 85 (3)

Under Article 85 (3), 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 economical 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.

1. The need for the rationalization of international fairs and exhibitions already alluded to by the Commission<sup>(1)</sup> entails the concentration of international events where motor vehicles are displayed; the advantages of this type of concentration are as follows:

- (a) The full range, or nearly the full range, of supply from the motor vehicle industry can be brought together and compared, which has the effect of stimulating technical progress, giving better guidance to the consumer through the presentation of a full, up-to-date display of the products of the relevant industry, while providing favourable circumstances for the negotiation and conclusion of business transactions. These benefits more than offset the disadvantage to fair organizers posed by the restriction on the freedom of manufacturers to display their vehicles. But it must be remembered that this restriction itself concerns only international exhibitions.
- (b) It also promotes the marketing of motor vehicles. Since exhibitors may display their motor vehicles only at events authorized by BPICA — which are considered important enough to necessitate participation even though the expense involved is high — the prohibition on participation in all other international events results in a considerable reduction in the costs of taking part in fairs and exhibitions; this in turn reduces the cost price of each motor vehicle.

It can therefore be concluded that the BPICA regulations contribute to improving the distribution of the

relevant products and to promote economic progress, so that they satisfy the first condition for the application of Article 85 (3) of the Treaty.

2. It may also be concluded that a fair share of this improvement in distribution and economic progress accrues to the consumer. The periodic concentration of supply enables prospective purchasers to gain a full picture of the range of products available and to decide on what they will buy without having to travel about; furthermore, in view of the keen competition existing in the motor industry, it is likely that the manufacturers' selling prices will, to some extent at least, reflect the savings made as a result of their participation in a smaller number of events. In any case, motor vehicles may be displayed at national, regional, local and special exhibitions.

The regulations consequently satisfy the second condition for the application of Article 85 (3).

3. The BPICA regulations impose no restrictions which are not indispensable to the attainment of these objectives. The restriction which flows from the obligation for motor manufacturers and their representative to refrain from taking part in international exhibition other than those authorized by BPICA may be regarded as indispensable to the attainment of the benefit achieved through rationalization of the display of motor vehicles at such events.

The regulations consequently satisfy the third condition for the application of Article 85 (3).

4. The BPICA regulations do not eliminate competition between fair organizers, for they are entitled to seek the participation of motor manufacturers at exhibition other than those which are not authorized by BPICA. In any case, the display of motor vehicles at an exhibition is only one form of attraction among many others.

The regulations do not eliminate competition between manufacturers or distributors of motor vehicles the display of a product at an exhibition is only one of many methods of marketing. In order to promote sales for manufacturers of motor vehicles and their representatives have at their disposal all the facilities of the mass media for attracting the largest possible number of consumers, not to mention the additional promotion made by the manufacturers' representatives in their direct contact with potential customers.

<sup>(1)</sup> Commission Decisions in EEMO and CEMATEX (cited in this Official Journal) and Commission Decision of 17 July 1975 in case IV/28.775 — UNIDI (OJ No L 228, 29. 8. 1975, p. 17).

In the present case the following points must be borne in mind:

- several motor shows are held each year in the EEC;
- the main international specialized exhibitions currently on the BPICA calendar are generally held once or twice yearly in the Community territory. If some of them are held at longer intervals, this is chiefly because the manufacturers themselves or the fair organizers are not interested in organizing them annually as the BPICA regulations would allow. It must also be borne in mind that 'specialized' vehicles may also be displayed at ordinary motor shows;
- manufacturers and their representatives may take part in national, regional, local and special exhibitions, and do not require BPICA authorization to do so.

The regulations consequently satisfy the fourth condition for the application of Article 85 (3), so that all the tests for exemption are satisfied.

#### IV. Applicability of Articles 6, 7 (1) and 8 (1) of Regulation No 17

1. The version of the BPICA regulations which operated until 17 May 1976 did not qualify for exemption under Article 85 (3), for BPICA's discretionary power to decide whether this or that event was international or not, with the corollary power to authorize or prohibit the displays of motor vehicles there, gave it the possibility of deciding that events which were in reality national or regional only were to be regarded as international and to prohibit the display of motor vehicles at such events. This placed it in a position to prevent the organizers of fairs and exhibitions in general from displaying motor vehicles, and competition between these organizers was therefore liable to be eliminated.

In response to Commission objections the regulations were so amended on 17 May 1976 that BPICA no longer has absolute discretionary power to declare that a given fair or exhibition is international. The anti-competitive clauses which excluded the operation of Article 85 (3) were dropped and the exemption under that paragraph may therefore have effect from 17 May 1976.

2. Article 7 (1) of Regulation No 17 requires the Commission to determine the period during which the prohibition in Article 85 (1) of the Treaty is to be applicable. The conditions precedent to the application of that Article are met in this case, for the BPICA regulations were adopted before Regulation No 17 came into force and were notified within the time limits set by Article 5 (1) of that Regulation. Since the regulations gave BPICA full discretionary power to decide whether an event was international or not, they did not qualify for Article 85 (3) exemption; but they were amended to satisfy the requirements of Article 85 (3) within a reasonable period in response to Commission objections. The prohibition in Article 85 (1) of the Treaty should therefore be inapplicable as from 13 March 1962, when Regulation No 17 entered into force, to 17 May 1976, when the new BPICA regulations came into force.

3. In determining the duration of its decision under Article 8 (1) of Regulation No 17, the Commission must take account of the specific nature of the area covered by this case and of the frequency of the events authorized by BPICA; a period of six years would seem appropriate.

4. Conditions must be attached to this Decision pursuant to Article 8 (1) of Regulation No 17, so as to enable the Commission to verify whether, as a result of any change in the facts which were basic to the making of the Decision, the exemption should be revoked under Article 8 (3) of Regulation No 17, or whether specific acts on the part of those concerned should be prohibited. To this end, BPICA must be required to send to the Commission each year the calendar of fairs and exhibitions which it regards as international and of those where the display of motor vehicles is authorized, together with copies of the requests for authorization of international specialized exhibitions lodged with the BPICA secretariat and copies of the letters from that secretariat refusing such requests.

HAS ADOPTED THIS DECISION:

#### Article 1

It is hereby declared, pursuant to Article 85 (3) of the Treaty establishing the European Economic Community, that the provisions of Article 85 (1) are inapplicable to the BPICA regulations.

*Article 2*

This Decision shall have effect from 17 May 1976 until 17 May 1982. The prohibition in Article 85 (1) of the Treaty is declared inapplicable for the period from 13 March 1962 to 17 May 1976.

*Article 3*

Each year BPICA shall furnish to the Commission :

- a list of the international exhibitions at which the display of motor vehicles is subject to its authorization ;
- the calendar of international exhibitions at which the display of motor vehicles is authorized ;
- copies of requests for authorization of international specialized exhibitions addressed to the BPICA secretariat and copies of all the letters whereby BPICA informs the applicant organizations that their request is refused.

*Article 4*

This Decision is addressed to the International Permanent Bureau of Motor Manufacturers (BPICA), 4, rue de Berri, Paris, France, and to the following member national associations, to which BPICA is required to forward the Decision :

Verband der Automobilindustrie E.V. (VDA), Westendstraße 61, 6000 Frankfurt/Main 17 (Federal Republic of Germany);  
 Fachverband der Fahrzeugindustrie Österreichs, Lugeck 1/1/32, 1011 Wien 1 (Austria);  
 Fédération Belge des Industries de l'Automobile et du Cycle (FEBIAC), Boulevard de la Woluwe 46, 1200 Bruxelles (Belgium);  
 Sammenslutningen af Automobil-Fabrikanter og Importører, Ryvangs allé 68, 2900 Hellerup (Denmark);  
 Agrupación Nacional de Fabricantes de Automoviles y Camiones (ANFAC), Cea Bermudez 6, Madrid 3 (Spain);  
 Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), 320 New Center Building, Detroit, Michigan 48202 (United States);

Chambre Syndicale des Constructeurs d'Automobiles (CSCA), 2, rue de Presbourg, 75008 Paris (France);  
 MOGURT, Société Hongroise pour le Commerce d'Automobile, Benczur U13, Budapest VI (Hungary);  
 Associazione nazionale fra industrie automobilistiche (ANFIA), Corso Galileo Ferraris 61, Torino (Italy);  
 Japan Automobile Manufacturers Association (JAMA) Otemachi Building 6—1, Otemachi, 1—chome Chiyoda-ku, Tokyo 100 (Japan);  
 Automobilimportørenes Forening, Hauchsgt. 1, Oslo 1 (Norway);  
 Nederlandse Vereniging de Rijwiel- en Automobiel Industrie (RAI), Europaplein 2, Amsterdam 1010 (Netherlands);  
 The Society of Motor Manufacturers & Traders Ltd (SMMT), Forbes House, Halkin Street, London SW1X 7L (United Kingdom);  
 Sveriges Bilindustri- och Bilgrossistförening, Industrihuset, Storgatan 19, S 114 85 Stockholm (Sweden);  
 Chambre Syndicale Suisse de l'Automobile branches annexes, 18, Quai Ernest Ansermet, 1211 Genève 4 (Switzerland);  
 MOTOKOV, Olsanska 1, 130 81 Praha 3 (Czechoslovakia);  
 V.O. AVTOEXPORT, Volkhonka ul. 14, 119902 Moscow G—19 (USSR);  
 Biro Proizvodaja Motornih Vozila, Bulevar Vojvode Misica 14, Beograd (Yugoslavia);  
 Polmo, ul. Stalingradzka 23, 00-987 Warszawa (Poland);  
 Autotuojat r.y. Annankatu, 31-33 d 59, 00100 Helsinki 10 (Finland).

Done at Brussels, 7 November 1977.

*For the Commission*

Raymond VOUEL

*Member of the Commission*



1ST CASE of Level 1 printed in FULL format.

Re the Regulations of the International Permanent Bureau of  
Motor Manufacturers (BPICA) (82/349/EEC)

COMMISSION OF THE EUROPEAN COMMUNITIES

[ 1983] 2 CNLR 40

30 APRIL 1982

PANEL: Mr Commissioner Andriessen

HEADNOTE:

Restrictive practices. Trade fairs. A ban imposed on manufacturers of motor vehicles and, through them, on their representatives, from taking part in international exhibitions and fairs which are not in the calendar of their international trade association, and the penalty on infringers consisting in a less favourable stand at the motor show in the country where the breach was committed, both infringe Article 85(1) EEC.

The Commission held that the rules of the international motor manufacturer trade association relating to motor shows continued to restrict competition under Article 85(1) EEC, but extended for a further 10 years the Article 85(3) exemption which it had granted in 1977.

DECISION:

The Commission of the European Communities, in the light of the Treaty establishing the European Economic Community (especially Article 85), of Regulation 17 of 6 February 1962 (especially Articles 6 and 8) and of the Commission decision of 7 November 1977 ([1977] OJ L299/18, [1977] 2 CNLR D43) under Article 85(3) of the Treaty relating to the regulations of the International Permanent Bureau of Motor Manufacturers (BPICA), applicable on 17 May 1982, has received an application made on 22 June 1981 by the BPICA Chairman for renewal of this decision.

A summary of the BPICA regulations was published, in accordance with Article 19(3) of Regulation 17, in the Official Journal of the European Communities C316 on 4 December 1981 ([1981] OJ C316/2, [1982] 1 CNLR 123).

The opinion of the Advisory Committee on Restrictive Practices and Dominant Positions was delivered on 18 February 1982 in accordance with Article 10 of Regulation 17.

I

1. BPICA is a non-profit-making association established in 1919. One of its objects is to regulate the display of motor vehicles at shows and exhibitions both the application for negative clearance and notification submitted on 2 October 1962 and the application for renewal of the exemption Decision adopted by the Commission pursuant to Article 85(3) of the Treaty on 7 November 1977 concerned only with this object and the regulations adopted in pursuance thereof.

2. BPICA's membership includes the following national associations, which represent all motor vehicle manufacturers within their respective countries; in certain cases also assemblers and/or importers:

119831 2 CMLR 40

Verband der Automobilindustrie EV (VDA)

Westendstrasse, 61, 6000

Frankfurt/Main 17 (Federal Republic of Germany),

Fachverband der Fahrzeugindustrie Österreichs

Lugeck 17/1/32, 1011 Wien 1

(Austria),

Federation belge des industries de l'automobile et du cycle (FEBIAC)

Boulevard de la Woluwe 46,

1200 Bruxelles (Belgium),

Automobil-Importørernes Sammenslutning

Ryvangs Alle 68, 2900 Hellerup (Denmark),

Asociacion Espanola de Fabricantes de Automoviles, Camiones, Tractores  
Motores (ANFAC)

Calle Fray Bernardino Sahagun 24, Madrid 16 (Spain),

Motor Vehicle Manufacturers Association of the United States, Inc (M

1919 K Street, NW, Suite 300,

Washington, DC 20006

(United States),

Japan Automobile Manufacturers Association (JAMA)

Otemachi Building 6-1,

Otemachi, 1-chome, Chiyoda-ku

Tokyo 100 (Japan),

Bilimportørenes

Landsforening

Hauchsgt 1, Oslo 1 (Norway),

Nederlandse Vereniging de Rijwielen-Automobielen-Industrie (RAI)

Europaplein 2, 1078 GZ

Amsterdam (Netherlands),

[1983] 2 CMLR 40

Union de l'industrie automobile polonaise (Polmo)

ul Stalingradzka 23, 03-468

Warszawa (Poland),

The Society of Motor Manufacturers & Traders Ltd (SMMT)

Forbes House, Halkin Street,

London SW1X 7DS (United Kingdom),

Sveriges Bilindustrier- och Bilgrossistforening Industrihuset,

Storgatan 19,

S 114 85 Stockholm (Sweden),

Autoluojat ry Foreningen Bilimportorererna

Annankatu 31-33 D 59, SF

00100 Helsinki 10 (Finland),

Chambre syndicale des constructeurs d'automobiles (CSCA)

2, rue de Presbourg, 75008

Paris (France),

Mogunt

Dorcskai ut 77-79, H 1113

Budapest XI (Hungary),

Associazione nazionale fra industrie automobilistiche (ANFIA)

Corso Galileo Ferraris 61,

Torino (Italy),

Chambre syndicale suisse de l'automobile et branches annexes

Case postale 112, CH 1218

Grand-Saconnex/Geneve (Switzerland),

Motokov

Na Strzi 63, 140 62 Praha 4

(Czechoslovakia),



[1983] 2 CNLR 40

VO Avtoexport

Volkhonka ul 14, 119902

Moskva G-19 (USSR).

Poslovna Zajednica Proizvodjaca Motornih Vozila

Bulevar Vojvode Misica 14,

11000 Beograd (Yugoslavia):

3. Neither the statutes of BPICA nor its regulations on the display of motor vehicles at international exhibitions have been amended since the Decision of November 1977. Reference should therefore be made to the latter for the basic features of the said statutes and regulations.

4. The national associations organize the motor shows in their respective countries. Each year several motor shows are held at which cars and/or trucks or buses and the like are displayed. They are generally held in Amsterdam, Barcelona, Belgrade, Birmingham, Brussels, Frankfurt, Geneva, Paris, Reykjavik and Turin. BPICA also authorizes the display of motor vehicles at the international fairs held each year in Brno, Budapest, Izmir, Leipzig, Poznan, Plovdiv and Thessaloniki.

5. International specialized exhibitions are normally organized by fair organizers or by the relevant trade associations; to qualify for display specialized vehicles must correspond to the relevant type of exhibition. The main international specialized exhibitions recognised by BPICA are the following:

-- public works and building exhibitions, now mainly held in Basle, Budapest, Hannover, Munich, Verona and Vienna: (The vehicles displayed include site and quarry skips, concrete mixers, mobile crushing and screening plants, cranes, excavators, dumpers, spreaders, bitumen heaters and grit spreaders. This list is not exhaustive.)

-- municipal exhibitions, generally held in Amsterdam, Birmingham, Munich, Vienna: (The vehicles displayed include vehicles for emptying and cleaning sewers, refuse-collection vehicles, sprayers, road sweepers, snow ploughs and ambulances. This list is not exhaustive.)

-- camping exhibitions, usually held in Amsterdam, Essen and Turin: (The vehicles displayed consist solely of powered caravans.)

-- fire-fighting exhibitions: the most recent was held in Amsterdam in 1981. (The vehicles displayed include tankers, fire engines, pump wagons, airport engines, emergency rescue vehicles, mechanical ladders, forestry fire-fight tankers, emergency breakdown vehicles and ambulances. This list is not exhaustive.)

-- racing and sports car shows, generally held annually in Paris: (The vehicles displayed are formula racing cars and sports cars having won a race in the preceding year.)

[1983] 2 OMLR 40

-- airport equipment exhibitions: the most recent was held in Hamburg in 1981;

-- security exhibitions, which since 1979 have been held in Utrecht in 1979, Essen and Geneva in 1980 and Utrecht in 1981. (The vehicles displayed are vehicles designed to protect persons and goods during transport and armoured vehicles used by the police.)

6. Some of these international specialised exhibitions cannot always be held in the same place or at regular intervals: this is partly due to the very nature of the vehicles displayed, but above all to the fact that producers and fair organisers have a joint interest in meeting their potential customers half without any substantial increase in the costs of distributing -- and consequently selling -- the vehicles concerned by organising exhibitions (whose success cannot be taken for granted) too frequently.

7. In accordance with Article 3 of the Decision of 7 November 1977, each BPICA had to furnish to the Commission inter alia copies of all the letters which it informed the applicant organisations that their request for authorisation of international specialised exhibitions was refused. The Commission has not learned of any such refusals by BPICA since the decision of 7 November 1977 was adopted, apart from that concerning a camping tourism exhibition to be held in Stuttgart from 21 to 29 January 1978, for which the application for authorisation was sent to BPICA on 23 December 1977 after it circulated on 16 December 1977 the definitive calendar for 1978 of international exhibitions where display of motor vehicles was authorised, which it had adopted on 18 November 1977.

8. The Decision of 7 November 1977 referred to certain features, on the one hand, of fairs and exhibitions in general and, on the other, of motor shows in particular. These features, which still distinguish both of the above types of exhibitions, may be summarised as follows:

- the importance of fairs and exhibitions as a source of market information;
- the preference for specialised exhibitions over general exhibitions which, on account of shortage of space, it is increasingly difficult to display a wide range of products from all fields. As a result, if motor vehicles were displayed in addition to the usual products, they could be represented on a limited range of types and makes and this would harm both the manufacturers and the consumer;
- the fact that motor vehicles may be displayed at a number of other exhibitions (national, regional, local, special) in addition to the shows and exhibitions authorised by BPICA and as 'supports' for other equipment in exhibitions authorised by BPICA and as 'supports' for other equipment in international exhibitions not authorised by BPICA. Moreover, BPICA does not prohibit advertising for motor vehicles at such international exhibitions;
- the role which the mass-circulation and specialised press play in advertising and in keeping the consumer informed.

9. Following publication of the Notice pursuant to Article 19(3) of Regulation 17, the Commission has received no new comments from third parties which might alter its assessment of the BPICA regulations.

[1983] 2 CMLR 40

## II

10. For the reasons outlined in the Decision of 7 November 1977, to which reference should be made, the following provisions of the BPICA regulations.

-- the ban imposed on manufacturers of motor vehicles and, through them, on their representatives, from taking part in international exhibitions and fairs which are not in the BPICA calendar,

-- the penalty which may be imposed on the author of an infringement: a less favourable or reduced stand at the motor show in the country where the breach was committed,

have as their object or effect the restriction of competition within the Common Market between persons providing a service (the organisers of fairs and exhibitions), between motor vehicle manufacturers and between their commercial intermediaries. They are also liable to affect trade between member-States in that they impede trade in services by organisers of fairs and exhibitions and dealings in motor vehicles between the member-States.

## III

11. The Commission is not aware of any new elements of fact or of law which could alter its view on this matter. In these circumstances the exemption Decision adopted on 7 November 1977 may be renewed under Article 8(2) of Regulation 17 since the tests for application of Article 85(3) of the Treaty are still satisfied.

12. The BPICA regulations continue to improve the distribution of motor vehicles and to promote economic progress. The concentration of international events which it achieves -- and which satisfies the need to rationalise international fairs and exhibitions -- is the least expensive way in which a full range, or nearly the full range, of motor vehicles can be brought together and compared. This has the effect of stimulating technical progress and giving better guidance to the consumer through the presentation of a full, up-to-date display of products, while providing favourable circumstances for the negotiation and conclusion of business transactions.

13. It may be concluded that a fair share of this improvement in distribution and economic progress accrues to the consumer. The periodic concentration of supply enables prospective purchasers to gain a full picture of the range of products available and to decide on what they will buy without having to travel about.

14. The BPICA regulations impose no restrictions which are not indispensable to the attainment of these objectives. The restriction which flows from the obligation upon motor manufacturers and their representatives to refrain from taking part in international exhibitions other than those organised by BPICA be regarded as indispensable to the attainment of the benefit achieved through rationalisation of the display of motor vehicles at such events.

15. The BPICA regulations do not eliminate competition between fair organisers, since the latter are entitled to seek the inclusion of motor vehicles in any exhibition other than those which are not authorised by BPICA and also since motor vehicles are only one form of advertising among many

[1983] 2 CMLR 40

others at their disposal. The regulations do not eliminate competition between manufacturers or distributors of motor vehicles, for the display of a product at an exhibition is only one of the many methods of marketing. In order to promote sales, manufacturers of motor vehicles have at their disposal all the facilities of the mass media for attracting the largest possible number of consumers, not to mention the additional promotion carried out by manufacturers' representatives in their direct contact with potential customers. It must be borne in mind that motor manufacturers and/or their representatives may take part in national, regional, local and special exhibitions not requiring BPICA authorisation, in addition to the numerous events organised by BPICA.

16. In these circumstances a favourable response may be given to BPICA's application for renewal of the Commission Decision of 7 November 1977, which is renewed for a period of 10 years.

17. For the reasons previously outlined in the Decision of 7 November 1977 the conditions attaching to the said Decision of 7 November 1977 must also form an integral part of this Decision.

THE COMMISSION, for these reasons, HAS ADOPTED THIS DECISION:

#### Article 1

The Decision adopted by the Commission on 7 November 1977 under Article 85 of the Treaty establishing the European Economic Community relating to the BPICA regulations is hereby renewed until 17 May 1992.

#### Article 2

Each year BPICA shall furnish to the Commission:

- a list of the international exhibitions at which the display of motor vehicles is subject to its authorisation,
- the calendar of international exhibitions at which the display of motor vehicles is authorised,
- copies of all the letters whereby the BPICA secretariat informs the applicant organisations that their request for authorisation of international specialised exhibitions is refused.

#### Article 3

This Decision is addressed to the International Permanent Bureau of Motor Manufacturers (BPICA), 4 rue de Perri, 75008 Paris, France and to the following member national associations, to which BPICA is required to forward the Decision:

(There then follows a list of names and addresses identical to that set out in paragraph 2 above.)