

concerted practices; such period must not be shorter than six months.

Where in any particular case agreements or concerted practices to which a regulation adopted pursuant to Article 1 applies have certain effects which are incompatible with the conditions laid down in Article 85(3) of the Treaty in the territory of a Member State, or in a part thereof, which has all the characteristics of a distinct market, the competent authority in that Member State may on its own initiative or at the request of the Commission or of natural or legal

persons claiming a legitimate interest withdraw the benefit of application of that regulation.'

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Proposal for a Council Regulation (EC) amending Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty

(98/C 365/07)

(Text with EEA relevance)

COM(1998) 546 final — 98/0288(CNS)

(Submitted by the Commission on 20 October 1998)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

(1) Whereas Article 4(2) of Regulation No 17⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, exempts a number of agreements, decisions and concerted practices from the requirement of notification under Article 4(1);

(2) Whereas this exemption relates in particular to agreements, decisions and concerted practices where

the only parties thereto are undertakings from one Member State and the agreements, decisions or practices do not relate either to imports or exports between Member States, or where not more than two undertakings are party thereto, and the agreements only restrict the freedom of one party to the contract in determining the prices or conditions of business upon which the goods he has obtained from the other party to the contract may be resold; whereas this exemption is not therefore such as to cover most agreements or concerted practices between undertakings each at a different stage of the economic process in respect of the supply or purchase, or both, of goods for resale or processing, or in respect of the marketing of services ('vertical agreements'), that are likely to fall within the scope of Article 85;

(3) Whereas on 22 January 1997 the Commission published a Green Paper on vertical restraints in EC competition policy⁽²⁾ which was intended to generate a wide-ranging public debate on the application of Article 85(1) and (3) of the Treaty to vertical agreements; whereas the response from Member States, the European Parliament, the Economic and Social Committee, the Committee of the Regions and interested parties in business and

⁽¹⁾ OJ 13, 21.2.1962, p. 204/62.

⁽²⁾ COM(96) 721 final.

the legal professions has been generally in favour of reform of Community competition policy in this area;

- (4) Whereas any such reform must meet the two requirements of ensuring effective protection of competition and providing adequate legal certainty for firms; whereas, in order to achieve these objectives, the Commission has been empowered by the Council to declare, by regulation and in accordance with Article 85(3) of the Treaty, that Article 85(1) is not applicable to categories of agreements entered into by two or more undertakings, each operating at a different stage of the economic process, in respect of the supply or purchase, or both, of goods for resale or processing, or in respect of the marketing of services, including exclusive distribution agreements, exclusive purchasing agreements, franchising agreements and selective distribution agreements; whereas this class of agreement does not include vertical agreements between actual or potential competitors, unless the agreement is a non-reciprocal one and none of the parties have an annual turnover exceeding ECU 100 million, or is between an association of retailers and its members, or between such an association and its suppliers, and the members of the association are small or medium-size enterprises as defined in the Annex to Commission Recommendation 92/280/EC ⁽¹⁾.
- (5) Whereas the Commission was also called upon to stipulate the circumstances in which, having regard to the economic effects of the relevant agreements, a block exemption Regulation ceases to be applicable; whereas such reform of the regulatory framework applicable to vertical agreements must in addition take account of the need to simplify administrative supervision and as far as possible to reduce the number of notifications of vertical agreements, which are generally considered less dangerous to competition than horizontal restrictive practices; whereas it should no longer be necessary to notify vertical agreements before they can be exempted, so that where a vertical agreement is caught by Article 85(1) and satisfies the tests of Article 85(3) the Commission can exempt it with effect from the date on which it was entered into;
- (6) Whereas the current arrangements impose on firms which are party to vertical agreements an administrative burden which, given their effect on competition, has proved in most cases to be excessive;

- (7) Whereas the agreements referred to in Article 4(2) of Regulation No 17 are dispensed from the requirement of notification prior to exemption; whereas the purpose of this dispensation is to reduce the number of notifications, which enables the Commission to concentrate its efforts on supervising those restrictive agreements which are the most damaging to competition; whereas, therefore, this amendment does not entail any relaxation in the supervision which the Commission has a duty to exercise under Article 89(1);
- (8) Whereas the scope of Article 4(2) of Regulation No 17 should therefore be extended, and all agreements entered into by two or more undertakings, each operating at a different stage of the economic process, in respect of the supply or purchase, or both, of goods for resale or processing, or in respect of the marketing of services, should be exempted from the requirement of prior notification,

HAS ADOPTED THIS REGULATION:

Article 1

Point 2 of Article 4(2) of Regulation No 17 is replaced by the following:

- ‘(2) the agreements or concerted practices relate to the supply or purchase, or both, of goods for resale or processing, or to the marketing of services, and the agreements or concerted practices are between two or more undertakings each operating at a different stage of the economic process;
- (2a) not more than two undertakings are party thereto, and the agreements only impose restrictions on the exercise of the rights of the assignee or user of industrial property rights — in particular patents, utility models, designs or trade marks — or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes;’.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

⁽¹⁾ OJ L 107, 30.4.1996, p. 4.