

COMMISSION REGULATION (EEC) No 2903/77

of 23 December 1977

extending the period of validity of and amending Regulation (EEC) No 2779/72 on the application of Article 85 (3) of the Treaty to categories of specialization agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 87 and 155 thereof,

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices⁽¹⁾, as amended by Council Regulation (EEC) No 2743/72⁽²⁾,

Having published the draft of this Regulation pursuant to Article 5 of Regulation (EEC) No 2821/71⁽³⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 6 of Regulation (EEC) No 2821/71,

Whereas Regulation (EEC) No 2821/71 empowers the Commission to apply Article 85 (3) of the Treaty by Regulation to certain categories of agreements, decisions and concerted practices concerning specialization, including agreements necessary for achieving it, which fall within Article 85 (1);

Whereas Commission Regulation (EEC) No 2779/72 of 21 December 1972 on the application of Article 85 (3) of the Treaty to categories of specialization agreements⁽⁴⁾, is valid until 31 December 1977;

Whereas the validity of this Regulation should be extended by five years; whereas, however, a number of amendments should be made;

Whereas to encourage cooperation between small- and medium-sized undertakings, the limit on market share should be raised to 15 % in a substantial part of the common market and the limit on aggregate turnover raised to 300 million units of account;

Whereas market shares should be defined more tightly to take account not only of the products which

are the subject of the agreement but also of products considered by consumers to be similar by reason of their characteristics, price and use; whereas it should also be established which undertakings are to be taken into account for this purpose;

Whereas a transitional period should be provided for agreements existing when the present Regulation comes into force and which as a result of the amendment of Regulation (EEC) No 2779/72 no longer comply with the conditions for exemption,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2779/72 is hereby amended as follows:

1. In Article 1 (1) the date '31 December 1977' shall read '31 December 1982'.
2. Article 3 (1) shall read:
 1. Article 1 shall apply only:
 - (a) if the products which are the subject of the specialization and other products of the participating undertakings considered by consumers to be similar by reason of their characteristics, price or use do not represent, in a substantial part of the common market, more than 15 % of the market for all such products; and
 - (b) if the aggregate annual turnover of the participating undertakings does not exceed 300 million units of account.
3. Article 4 shall read:
 1. The participating undertakings referred to in Article 3 (1) (a) and (b) are:
 - (a) undertakings which are parties to the agreement;

⁽¹⁾ OJ No L 285, 29. 12. 1971, p. 46.

⁽²⁾ OJ No L 291, 28. 12. 1972, p. 144.

⁽³⁾ OJ No C 194, 13. 8. 1977, p. 3.

⁽⁴⁾ OJ No L 292, 29. 12. 1972, p. 23.

- (b) undertakings in which the undertakings which are parties to the agreement hold :
- at least 25 % of the capital or of the working capital whether directly or indirectly or,
 - at least half the voting rights, or
 - the power to appoint at least half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - the right to manage the affairs of the undertaking ;
- (c) undertakings which hold in an undertaking which is a party to the agreement :
- at least 25 % of the capital or of the working capital whether directly or indirectly, or
 - at least half the voting rights, or
 - the power to appoint at least half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - the right to manage the affairs of the undertaking.

2. The aggregate turnover referred to in Article 3 (1) (b) shall be calculated by adding together the turnover achieved during the last financial year on all products and services by the undertakings specified in paragraph 1. Dealings between undertakings which are parties to the agreement shall be disregarded.'

4. Article 6 is amended as follows :

- the present text becomes paragraph 1 and is numbered '1',
- the following paragraph 2 is added :

'2. The prohibition in Article 85 (1) of the Treaty shall not apply during the period 1 January 1978 to 31 December 1978 to agreements already in existence on 1 January 1978 which comply with the conditions laid down in the original version of Regulation (EEC) No 2779/72.'

Article 2

This Regulation shall enter into force on 1 January 1978.

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

Done at Brussels, 23 December 1977.

For the Commission

Raymond VOUEL

Member of the Commission