EXCLUSIVITY (ELECTRO-TECHNICAL EQUIPMENT): THE FEG CASE

Subject: Exclusive dealing
Pricing policy
Trade associations
Fines

Industry: Electro-technical equipment
(Implications for other industries)

Parties: Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG) (Dutch Association of Electro-technical Equipment Wholesalers
Technische Unie (TU)

Source: Commission Statement IP/99/803, dated 26 October 1999

(Note. Two classic examples of cartel conduct lie behind this case: first, the protective arrangements for exclusive dealing; and, secondly, the coordination of pricing policy, to secure "stable margins". The cartel consisted mainly of the Dutch trade association; but the biggest member of the association was also fined. In fixing the fine, the Commission took account of the case law on the length of time taken in conducting the proceedings, so that the fines, though heavy, were not as heavy as if the proceedings had been quicker.)

The Commission has fined the Dutch association of electro-technical equipment wholesalers, the Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied (FEG), as well as its biggest member Technische Unie (TU,) for infringing European Union competition rules. The Commission found that FEG and TU restricted competition by operating a system of collective exclusive dealing in combination with a system of price co-ordination on the Dutch wholesale market for electro-technical equipment. The Commission therefore imposed fines of € 4.4 million on FEG and € 2.15 million on TU

The case started as a result of a complaint in 1991 by the UK based wholesaler in electro-technical equipment, City Electrical Factors, and its Dutch subsidiary (CEF). It concerns two infringements of Article 81(1) of the EC Treaty on the Dutch wholesale market for electro-technical equipment, essentially over the period 1986-1994. Electro-technical equipment includes a wide range of electrical products such as cables, plugs, light sources, switches and sockets used for creating an electrical system in buildings, houses and industries.

The Commission has found two separate infringements. The first was that of

operating a collective exclusive dealing arrangement involving the FEG, the association of importers of such products in the Netherlands (NAVEG) and a large number of individual suppliers of such products. Under this agreement FEG prohibited members of the NAVEG and individual suppliers from selling to wholesalers which were not members of FEG. The prohibition deprived these wholesalers of their sources of supply and complicated and delayed the entry to the Dutch market of foreign wholesalers such as the complainant. At the same time, the arrangement prevented suppliers from selling their products on the Dutch market via wholesalers who were not FEG members. As the turnover of especially, the NAVEG members depended for a large part on sales to the FEG members it was difficult for them to ignore the wishes of the FEG.

The arrangement was based on a gentleman's agreement between the FEG and the NAVEG which was joined by individual suppliers. It appeared that until the late fifties the collective exclusive dealing arrangement had been based on a formal written agreement. After its prohibition by the Dutch competition authorities the parties had decided to convert the formal written agreement into the above mentioned more covert gentleman's agreement.

The second infringement was that of interference by FEG in the pricing policy of its members. FEG and its members aimed at lessening price competition among themselves and at creating artificial price stability to ensure healthy margins. In order to achieve these goals FEG and its members had recourse to the following instruments:

- a binding FEG decision prohibiting its members from advertising using specially reduced, or loss leader, prices;

- a binding FEG decision obliging the FEG members to pass on to their customers price increases implemented by the supplier after they have ordered the products;

- discussions among FEG members on prices and discounts during FEG meetings; and

- price recommendations issued by FEG to its members.

The effects of the price arrangements were enhanced by the collective exclusive dealing arrangement. the exclusive collective dealing arrangement deprived potential price cutters such as non-FEG wholesalers from their sources of supply, the artificial price stability created by FEG and its members could not be endangered by outsiders.

Considering that FEG members account for 96% of the Dutch wholesale market for electro-technical equipment, the Commission is of the opinion that the violations have appreciably restricted competition. As between 30 and 50 % of

all electro-technical products sold on the Dutch market are imported, the Commission also considers that trade between Member States has been appreciably restricted.

The decision orders the parties to put an end to the above infringements in so far as this has not yet occurred and imposes fines on both FEG and TU. The Commission has calculated the fines on the basis of its published fining guidelines (published in the Official Journal, C.9 of 14.1.98). In determining the amounts of the fines the Commission has taken into account that the infringements were serious and of long duration.

The Commission has identified FEG as the initiator and controller of both the collective exclusive dealing arrangement and the pricing arrangements. The Commission has also fined FEG's biggest and most important member TU for two reasons, namely for:

- its active and long-term participation in the board of FEG and its committees; and

- its individual behaviour in support of both restrictions in its contacts with individual companies.

The Commission decided not to act against the 6 other members of the FEG which also received the Statement of objections. The information provided by those 6 parties in their written observations to the Statement of Objections and their comments during the hearing showed that in their case the Commission possessed insufficient evidence.

The procedure has gone on for quite a long time since 1991, which is at least partly due to the behaviour of the parties to the agreement. However, the Commission has taken into consideration the case law of both the Court of First Instance and the European Court of Justice and has taken the length of proceedings into account in calculating the amount of fines. (See the judgments of the Court of Justice in case C-185/95P, *Baustahlgewebe* and the Court of First Instance in the joined cases T-213/95 and T-18/96, *SCK and FNK v Commission*.)

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