

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 December 1983

relating to a proceeding under Article 85 of the EEC Treaty
(IV/30.099 — Schlegel/CPIO)

(Only the English and French texts are authentic)

(83/622/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 ⁽¹⁾, as last amended by
the Act of Accession of Greece, and in particular
Articles 2, 4, 6 and 8 thereof,

Having regard to the application for negative clearance
pursuant to Article 2 of Regulation No 17 made to the
Commission on 16 February 1983 by Schlegel Corpo-
ration of New York (Schlegel) and Compagnie des
produits industriels de l'ouest SA of Nantes (CPIO)
concerning a Know-How Communication Agreement
dated 10 December 1979,

Having regard to the notification pursuant to Article 4
(1) of Regulation No 17 made to the Commission on
20 May 1980 by Schlegel and CPIO of an agreement
dated 10 December 1979 concerning the purchase and
use of an upstream product supplied by Schlegel for
the manufacture of weatherseals for motor vehicles,

Having regard to the Commission decision of 28 July
1983 to open the proceeding,

Having regard to the publication ⁽²⁾ of the summary of
the application and notification pursuant to Article 19
(3) of Regulation No 17,

After consultation with the Advisory Committee on
Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

- (1) Schlegel is a manufacturer of rubber and plastic products, which produces weatherseals for motor vehicles, which are used around door openings, windows or other openings. Schlegel has developed a new product, the wire carrier product, which is a metallic and textile element designed to strengthen weatherseals for motor vehicles. The weatherseals containing wire carrier permit car manufacturers to use the flange-mounted attaching method and allow a more automated production process.
- (2) CPIO, which is a wholly-owned subsidiary of Régie Renault, is mainly a manufacturer of moulded part products in rubber and plastic. CPIO first started buying completed standard weatherseals from Schlegel with wire carrier already inserted. CPIO has since started itself to manufacture weatherseals, using wire carrier and

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 208, 4. 8. 1983, p. 7.

know-how from Schlegel for the production of automotive weatherseals, the wire carrier being produced to its own specifications. The Schlegel know-how for the production of weatherseals was a new technology for CPIO, to which it could not have had access without Schlegel's cooperation.

A. The Know-How Communication Agreement

- (3) The Know-How Communication Agreement was concluded on 10 December 1979 for a period of seven years. By that agreement, Schlegel grants CPIO a non-exclusive right to use its methods and industrial processes for the manufacture of automotive weatherseals (Schlegel know-how) in consideration of payment of periodic royalties. On the basis of this Agreement and an amendment thereto dated 5 April 1983, CPIO has the right to manufacture in all EEC countries and sell worldwide weatherseals incorporating Schlegel know-how.

B. The Agreement concerning the purchase and use of Schlegel wire carrier

- (4) Schlegel and CPIO further agreed on 10 December 1979 that for a period of five years commencing 1 April 1980, CPIO is required to use and purchase exclusively Schlegel wire carrier for the production of its weatherseals for motor vehicles. This obligation, however, lapses if and to the extent that solely for technical reasons approved by Schlegel, wire carrier is not a feasible weatherseal strengthening element or CPIO's customers do not use the flange-mounted attaching method for weatherseals in their motor vehicles.

If Schlegel fails to deliver the wire carrier, CPIO becomes immediately free to purchase from other sources and if such failure continues, CPIO has the right to terminate the agreement. Schlegel is free to sell wire carrier to any other customers in France or elsewhere. CPIO is free to resell the wire carrier to third parties within the EEC. The wire carrier purchased by CPIO is, however, primarily designed to be inserted by CPIO in automotive weatherseals. CPIO has no obligation to promote the sale of wire carrier as a separate commodity.

- (5) The parties have agreed that the Know-How Communication Agreement does not depend on the legal validity of the purchase and use agreement for wire carrier.

C. The market

- (6) Schlegel, whose total turnover in the year 1982 amounted to US\$...⁽¹⁾, has several European branches and owns manufacturing plants in England, Germany, Spain and Ireland. Its Irish plant is a new plant for the production of wire carrier, the capacity of which amounts to ... metres per year. Like most other weatherseal manufacturers, Schlegel developed wire carrier initially for use in its own production of weatherseals. The sale of wire carrier as a separate commodity is a relatively new business in the EEC.
- (7) CPIO's total turnover in the year 1982 amounted to FF ... One of its major customers is Renault. So far, CPIO has sold its weatherseals manufactured with Schlegel wire carrier mainly to Renault France and Renault Industrie Belgique.
- (8) The demand for wire carrier or substitute products depends directly on the demand for weatherseals, which in turn depends on the planned production of vehicles. Given the size of the European vehicle market, the demand for wire carrier and other weatherseal strengthening elements is substantial (the total European market for completed weatherseals as estimated by Schlegel for the year 1980 amounted to US\$ 215 million). In the EEC, there are a great number of producers of weatherseals which supply or could supply the car manufacturers. The whole rubber industry, numbering many manufacturers, must be considered as potential suppliers in this market. To the extent that they are not manufactured by the producers of weatherseals themselves, the weatherseal strengthening elements can also be supplied by a great number of manufacturers.
- (9) As regards France, Schlegel estimated the total French demand for weatherseal strengthening elements in 1982 at 46 million metres per year (on the basis of 15,5 metres per passenger car and nine metres per commercial vehicle). Of this total demand, Renault accounted in 1982 for about ... metres per year. In the same year CPIO supplied about ... metres to the French automobile industry which represents about 12 % of the total French demand and ... % of Renault's demand.

⁽¹⁾ In the published version of this Decision, some data have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

- (10) Following the publication of the summary of the above two agreements in the *Official Journal of the European Communities*, the Commission received no observations from third parties.

II. LEGAL ASSESSMENT

A. The Know-How Communication Agreement

- (11) The conditions for the grant of negative clearance pursuant to Article 2 of Regulation No 17 are fulfilled. On the basis of the facts in the Commission's possession, there are no grounds under Articles 85 (1) or 86 of the Treaty for action on its part in respect of the Know-How Communication Agreement.
- (12) The Know-How Communication Agreement contains no provisions which have as their object or effect the prevention, restriction or distortion of competition within the common market. The agreement on the use of Schlegel's methods and industrial processes for the manufacture of automotive weatherseals is non-exclusive and leaves CPIO free to manufacture the weatherseals in any country of the EEC and sell them worldwide. The prohibition on manufacture of weatherseals outside the common market — if it is a restriction at all — would not restrict competition inside the common market appreciably.
- (13) There are no grounds in the present case to believe that Schlegel or CPIO might abuse by virtue of this agreement an existing dominant position within the common market or in a substantial part of it.

B. The Agreement concerning the purchase and use of Schlegel wire carrier

- (14) The exclusive purchase and use agreement has as its object and effect the prevention, restriction or distortion of competition within the common market and may affect trade between Member States. However, the prohibition contained in Article 85 (1) may be declared inapplicable in the present case in accordance with Article 85 (3).
- (15) An agreement, by which — as in the present case — production planning is secured by exclusive purchase and use obligations, so that the possibility of changing suppliers is post-

poned for a period of five years (the duration of this agreement), goes beyond normal long-term sales agreements and falls within Article 85 (1) for the following reasons.

Because CPIO has the obligation to use Schlegel wire carrier during a period of five years for the manufacture of weatherseals CPIO is limited in its freedom to use, buy, develop or manufacture an alternative product. CPIO's obligation to purchase its full requirements of wire carrier for a period of five years from Schlegel has a similar effect.

- (16) The agreement also has the effect of reserving an appreciable part of the weatherseal demand for Schlegel, because Régie Renault purchases from CPIO a substantial part of its weatherseal requirements (approximately ... %), which represents approximately 12 % of the total French market (see paragraph 9 above). This agreement closes this part of the weatherseal market to other EEC suppliers for a period of five years.
- (17) The restrictions contained in this agreement affect trade between Member States since a great number of manufacturers of weatherseals and weatherseal strengthening elements would be able to supply these products from other EEC countries.
- (18) The agreement fulfils the requirements laid down in Article 85 (3).

The agreement contributes to improving production and distribution and to promoting technical and economic progress.

In the automobile industry, where it is necessary to plan series production in advance, long-term agreements for the supply of components are indispensable and normal practice for both car manufacturers and their suppliers. Where, as in this case, production planning is secured by exclusive purchase and use obligations, such commitment rationalizes the production of the supplier and of the car manufacturer. It further rationalizes the continuing process of delivery and reception of goods. This applies also to the present case where the wire carrier, which is manufactured to CPIO's own specifications, is integrated in weatherseals by an intermediary component manufacturer, namely CPIO, so that weatherseals of consistent quality can be supplied continuously to the car manufacturers. Greater production quantities also permit continuous improvement of the product concerned

and of its manufacturing process, because a sufficient return is possible only with certain minimum quantities. The exclusive purchase and use agreement offers the further advantage that long-term planning of supplies will enable CPIO and Schlegel better to meet vehicle manufacturers' requirements for weatherseals.

- (19) The expected advantages of this agreement outweigh the anti-competitive effects of the exclusive obligations to use and purchase wire carrier from Schlegel. The restrictions on competition resulting from the agreement are also indispensable within the meaning of Article 85 (3). It cannot be supposed that the same advantage could be achieved with less restrictive obligations. The five-year exclusive purchase and use contract does not exceed what is necessary to achieve these advantages. The agreement provides also that CPIO is not obliged to use and purchase Schlegel wire carrier where for technical reasons wire carrier is not a feasible weatherseal strengthening element (see paragraph 4 above).
- (20) The agreement allows consumers a fair share of the resulting benefit within the meaning of Article 85 (3). This follows from the fact that in this market effective competition for supply exists, which is no doubt reflected in the agreed purchase price for the wire carrier. The benefits resulting from the rationalization of Schlegel's an CPIO's production (see paragraph 18 above) must also benefit the car manufacturers and final consumers, because CPIO is in a very competitive market for weatherseals. This will be reflected in CPIO's sales prices for weatherseals.
- (21) The agreement does not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. From paragraph 8 above it can be seen that there is an important demand for and supply of weatherseals and weatherseal strengthening elements in the common market. The secret technical processes of Schlegel do not constitute a barrier to the entry of competitors in this market. Given this situation, it cannot be expected that the market tied up by the Schlegel-CPIO agreement will be a significant part of the total market of the products

concerned within the EEC. In addition, where CPIO's customers, the vehicle manufacturers, do not want to use weatherseals containing Schlegel wire carrier for technical reasons, CPIO is no longer committed to purchase the wire carrier (see paragraph 4 above),

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 2 of Regulation No 17 and on the basis of the facts in its possession, the Commission hereby certifies that there are no grounds under Articles 85 (1) and 86 for action on its part in respect of the Know-How Communication Agreement dated 10 December 1979, concluded between Schlegel Corporation of New York and Compagnie des produits industriels de l'ouest SA of Nantes and amended on 5 April 1983.

Article 2

Pursuant to Article 85 (3) of the Treaty, the provisions of Article 85 (1) are hereby declared inapplicable for the period 20 May 1980 to 31 March 1985 to the Wire Carrier Purchase Agreement dated 10 December 1979 and concluded between Schlegel Corporation and Compagnie des produits industriels de l'ouest SA.

Article 3

This Decision is addressed to the following undertakings:

1. Schlegel Corporation, 400 East Avenue, PO Box 23 113, Rochester, NY 14692 — USA;
2. Compagnie des produits industriels de l'ouest SA, Nantes, Z.I. de Nantes — Carquefou, BP 1226, F-44023 Nantes Cedex.

Done at Brussels, 6 December 1983.

For the Commission

Frans ANDRIESEN

Member of the Commission