

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⁽¹⁾ 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 Dentauro 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,

I

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 member 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);

⁽¹⁾ 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 Dentals, 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 85 (1) is applicable to the UNIDI 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⁽¹⁾, has caused exhibitions of dental equipment, in particular, to become concentrated, if not at Community level⁽²⁾, 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 the 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