3. A prohibition of sales between authorized dealers provided for in a standard agreement used by an undertaking which applies a selective distribution system constitutes a restriction of the economic freedom of such dealers and, consequently, a restriction of competition within the meaning of Article 85 (1) of the EEC Treaty. The fact that the undertaking concerned never impeded exports by its dealers is not sufficient to preclude the existence of a clear prohibition of exports.

4. A clause inserted in a standard agreement used by an undertaking which applies a selective distribution system constitutes an infringement of Article 85 (1) of the Treaty if it permits that undertaking to scrutinize the wording of dealers' advertisements as regards selling prices and to prohibit such advertisements.

5. A selective distribution system falls within the prohibition laid down by Article 85 (1) of the Treaty if it provides for the selection of dealers on the basis not only of qualitative but also of quantitative criteria. That is the case where an undertaking which applies a system of that kind reserves the right not to appoint a new qualified dealer if, in a small area, there is already a large number of dealers and where it restricts the freedom of dealers, even authorized dealers, to establish their business in a location in which it considers their presence capable of influencing competition between dealers.

In Case 86/82

HASSELBLAD (GB) LIMITED, London, represented by the firm of Deringer, Tessin, Herrmann & Sedemund, Rechtsanwälte, Cologne, and by William T. Stockler, Solicitor, London, with an address for service in Luxembourg at the offices of the Vereins- und Westbank Internationale SA, 25 Boulevard Royal,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, John Temple Lang, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

supported by

CAMERA CARE LTD, represented by Mark Barnes, Barrister, of Lincoln's Inn, instructed by Pollard & Co., Solicitors, with an address for service in Luxembourg at 50 Route d'Esch,

intervener,

APPLICATION for a declaration that the Commission's decision of 2 December 1981 (No IV/25.757) is void to the extent set out in the conclusions of the applicant,

THE COURT

composed of: J. Mertens de Wilmars, President, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

Victor Hasselblad AB ("Victor Hasselblad") whose registered office is in Gothenburg, Sweden, manufactures photographic equipment of a high quality.

Victor Hasselblad has exclusive distribution arrangements with dealers in many countries. On 28 June 1985 it notified its standard distribution agreement to the Commission. The Commission, in a letter of 23 December 1976, objected to two provisions of the agreement: an export prohibition contained in clause 1 (2), and clause 8 which stipulated that the sole distributor had to take account of the manufacturer's recommendations regarding sales policy, prices and discounts. Clause 1 (2), according to the Commission, offended against the rules on the free movement of goods whilst clause 8 constituted an infringement of the competition provisions laid down by the Treaty of Rome. Victor Hasselblad agreed to comply with the Commission's recommendations. Accordingly, a new version of the distributorship agreement was sent to the Commission on 6 March 1978. This met with the Commission's approval and Victor Hasselblad was informed by letter of 20 February 1979 that the agreement fell within the scope of Regulation No 67/67/EEC (Official Journal, English Special Edition 1967, p. 10).

Hasselblad (GB) Limited ("HGB") is a company incorporated in the United Kingdom. HGB signed a sole distributorship agreement with Victor Hasselblad on 1 January 1958. On 2 December 1975 a new agreement was signed between the same parties. That agreement was amended on 20 November 1977. Neither agreement provides for any form of export prohibition but both were notified to the Commission on 25 January 1980.

HGB made its own distribution arrangements in the United Kingdom for Hasselblad cameras and equipment. In 1975 it had approximately 20 dealers in the United Kingdom and the number has now risen to approximately 110. The original dealer agreement used by HGB since 1 January 1976 was amended on 1 January 1979 and was notified to the Commission in December 1979.

Camera Care

Camera Care Ltd is a company registered in Northern Ireland. Its business premises are in London. Camera Care signed a dealer agreement with HGB on 7 January 1976. That agreement was terminated in May 1978.

The contested decision

Camera Care complained to the Commission about the practices of Victor Hasselblad and its sole distributors, alleging violations by them of Article 85 (1) of the Treaty of Rome. The Commission investigated the complaint and initiated proceedings under Regulation No 17 (Official Journal, English Special Edition 1959-1962, p. 87).

On 2 December 1981 the Commission addressed a decision to Victor Hasselblad and six of its sole distributors, namely Hasselblad (GB) Ltd, Ilford (Ireland) Ltd, James Polack Aps, Têlos SA, Prolux Sprl, and Nordic Im- und Export Handelsgesellschaft mbH.

For the purpose of these proceedings the relevant provisions of the decision are:

"Article 1

The concerted practice engaged in between Victor Hasselblad, Hasselblad (GB), Têlos, Ilford, Prolux, Polack and Nordic to prevent, limit or discourage exports of Hasselblad equipment between the Member States of the European Community constitutes an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

(a) The sole distributorship agreements covering Hasselblad equipment between Victor Hasselblad and Hasselblad (GB), Têlos, Ilford, Prolux, Polack and Nordic constitute, in so far as they grant exclusivity of distribution of Hasselblad equipment, infringements of Article 85 (1).

(b) An exemption pursuant to Article 85 (3) for the concerted practices and sole distributorship agreements referred to in Article 1 and in (a) above is refused.

Article 3

(a) The selective distribution system applied since 1974 by Hasselblad (GB) infringes Article 85 (1) by clauses 6, 23 and 28 of the dealer

agreement, the quantitative selection of dealers and the influence on resale prices.

(b) The application for exemption pursuant to Article 85 (3) for the selective distribution system is refused.

. . .

Article 8

The following fines are hereby imposed:

. . .

upon Hasselblad (GB) a fine of 165 000 (one hundred and sixty five thousand) ECU, that is UK 93 642.12 (ninety-three thousand six hundred and forty-two pounds sterling and twelve pence). . ."

The Commission based its decision with respect to HGB upon the following facts:

1. The Victor Hasselblad distribution system

Victor Hasselblad is the world's leading manufacturer of single lens 6 × 6 format roll-film reflex cameras. Its product range includes four different models of camera and nearly three hundred camera accessories. Victor Hasselblad exports 40% of its production to the European Economic Community. Victor Hasselblad has independent sole distributors in every Member State except Luxembourg.

Victor Hasselblad affixes a serial number to every major item of equipment, including all cameras, lenses and magazines and keeps a register of all sales to sole distributors. Victor Hasselblad is thus able to determine exactly to whom and on what date it supplied Hasselblad goods. Although Victor Hasselblad's annual production of cameras and equipment is small in terms of annual world-wide production of reflex cameras, it represents a significant share of the market segment in which Victor Hasselblad is active, that is to say, reflex cameras taking medium format roll film.

2. The application of the sole distributorship agreement

(a) Prices and competition

Victor Hasselblad invoices its sole distributors within the Community on the basis of a single international price list. Prices are always expressed in German marks.

Price competition and currency fluctuations within the EEC for photographic equipment are such that it is in the interests of wholesalers and retailers to purchase Hasselblad equipment at the best possible price even in other Member States and to pass on the price difference to their customers. The fact that Hasselblad sole distributors grant their major customers quantity discounts and bonuses is an incentive to Hasselblad dealers to increase their sales figures by exporting.

In an effort to stem the tide of parellel imports a sales strategy paper entitled "A Policy for Europe", drawn up at the beginning of 1980 by HGB, condemns the practice as being disruptive of retail price levels and, consequently, Hasselblad's entire distribution system. In a memorandum to the HGB management dated 23 May 1979 a sales representative complained of the detrimental effect of parallel imports, mentioning Camera Care as one of the main culprits.

(b) Prevention of trade between Member States.

The Commission alleges in its decision that HGB tried to prevent sole distributors in Ireland, France and Belgium from exporting Hasselblad equipment and cameras to the United Kingdom, thereby hindering trade between Member States.

3. Measures to preserve market compartmentalization

The decision points to three types of measures used by Victor Hasselblad and HGB to ensure compartmentalization of the market:

(a) Serial number checks

The Victor Hasselblad distributorship agreement requires distributors to keep a register of the serial numbers of equipment it sells together with the name and address of the buyer and to allow Victor Hasselblad to inspect its register whenever it so wishes. Victor Hasselblad, acting in conjunction with the United Kingdom, French, Belgian and Danish sole distributors, used the serial number checks and its right of access to each sole distributor's register to identify the distribution channels and to trace the exporting dealer in order to discourage exports.

(b) Exchange of price lists and terms of business

Victor Hasselblad and its sole distributors have for many years provided one another with price lists and terms of business applicable in each Member State.

(c) Discrimination against parallel imports as regards after-sales service

Victor Hasselblad provides a twelve-month guarantee for its cameras and equipment. The sole distributors undertake to discharge the terms of the guarantee for the cameras covered. With effect from 1 January 1979 HGB introduced a new guarantee, the "Silver Service Card Guarantee", which extended to 24 months the manufacturer's guarantee for cameras imported by HGB and sold through the official HGB distributors' network. In this way HGB sought to combat parallel imports. HGB's advertisements promoting the Silver Service Card state "Advantages of the Silver Service Card: priority warranty repair service with rapid turn-round and Silver Service Card holders will always have our first priority".

By an application registered at the Court on 10 March 1982, Hasselblad (GB) appealed against the decision in so far as it was concerned. By an application of 14 June 1982, Camera Care requested permission to intervene in the proceedings. By an order of 29 June 1982 Camera Care's application to intervene was allowed. The proceedings followed the normal course.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiries. The parties were, however, asked to answer certain questions.

II — Conclusions of the parties

The *applicant* claims that the Court should declare void Articles 1, 2, 3 and 8 of the Commission's decision with respect to HGB and order the Commission to pay the costs.

The *defendant* contends that the Court should dismiss the application and order HGB to pay the costs.

III — Submissions and arguments of the parties

HGB advances eight main arguments in support of its application. It queries the Commission's assessment of the market and rejects the Commission's allegation that Camera Care's distributorship agreement was terminated because of its pricing policy. HGB denies partitioning the market for Hasselblad products or that it was a party to a conspiracy to partition the market. Furthermore, it rejects the Commission's assertion that the sole distributorship agreement signed between it and Victor Hasselblad and the selective distribution system operating within the United Kingdom infringe Article 85 (1) of the Treaty.

HGB raises several objections with respect to the Commission's procedure during its investigations and its treatment of evidence furnished by HGB both in reply to the statement of objections and at the subsequent hearing.

Finally, HGB complains that the amount of the fine imposed by the Commission is excessive and it pleads inability to pay it.

(a) Market share

HGB argues that even if restrictions on trade existed, they would not fall within the scope of Article 85 (1) because they would not have had an appreciable effect on competition or trade between Member States in view of the low market share of Hasselblad cameras.

In its decision the Commission defined the relevant market as the market of "6 × 6 format roll-film reflex cameras". This definition, according to HGB, would include only cameras such as Bronica, Mamiya, Rollei and one Pentax model but would exclude all 35 mm cameras. HGB does not agree with the Commission's assessment of the relevant market. It argues that Hasselblad cameras compete not only with other cameras of the same kind, of which there are very few, but with 35 mm cameras. HGB points out that 35 mm cameras are at least as complex as Hasselblad cameras; they have the same or indeed sometimes a better standard of technology; their range of accessories is comparable to that of the Hasselblad camera and high quality enlargements can be obtained from 35 mm cameras. In support of its arguments it refers to advertising material and to other evidence which it claims clearly show that the Hasselblad camera and the 35 mm camera compete seriously and indeed form a single market.

The *Commission* maintains in its defence that medium format cameras form a separate market which consists of high quality cameras bought only by a few professional photographers and a few wealthy skilled amateurs. These cameras take medium format film, that is to say film which is 6 cm wide, so that the negatives are larger and therefore need less enlargement than those taken with 35 mm film. Even though some 35 mm cameras may be as good as medium format cameras, the Commission argues that this does not affect its finding that medium format cameras form a market

separate from 35 mm cameras. In support of its contention the Commission points to the Economist Intelligence Unit Report N 70 entitled "The UK Market for Amateur Photography" (1979) and to statistics compiled by the British Photographic Importers' Association for the period between 1 July 1978 and 30 June 1979 which show that the volume of Hasseblad's share of the market in reflex cameras, that is to say 35 mm and medium format roll-film cameras, was 0.597% but that its share of the market in medium format cameras was 26.05%.

HGB states in its reply that ultimately it is the consumer who decides what the market share is. The statistical evidence produced by HGB and the letters and statements of some of the United Kingdom's major retailers show that the market for 35 mm cameras and Hasselblad cameras is essentially the same.

Camera Care disputes the quality of the evidence introduced by HGB in support of its assessment of the relevant market.

(b) Camera Care

HGB claims that it terminated its dealer agreement with Camera Care for three reasons:

(i) Camera Care made unreasonable demands of HGB with respect to delivery of supplies. Camera Care telephoned HGB frequently, criticizing HGB's management and deliveries. It tried to obtain details of enquiries for Hasselblad cameras so that it could approach the enquirers directly, thereby excluding other dealers. Camera Care wrote directly to Victor Hasselblad complaining about HGB's poor deliveries. This embarrassed HGB.

(ii) Camera Care tried to service Hasselblad equipment without the necessary spare parts. This, HGB claimed, damaged its reputation.

(iii) Camera Care's advertisements of Hasselblad products were in poor taste and unsuited to the nature of those products.

An advertisement in a professional newspaper in autumn 1977 was entitled "Swedish massage by Victor Hasselblad tones up your pictures". HGB was shocked when it appeared. Mr Barnard of HGB contacted the owner of Camera Care, a Mr Hodes, and explained to him that HGB considered the advertisement to be in bad taste and a personal affront to Dr Victor Hasselblad who was still alive at the time. Mr Hodes promised that the advertisement would not reappear. However, the same advertisement subsequently appeared in the "Industrial and Commercial Photographers 'Directory and Buyers' Guide" for 1978. When Mr Barnard telephoned to demand an explanation for the appearance of the offending advertisement Mr Hodes said that when Mr Barnard had made his objections known it had been too late to withdraw the advertisement. HGB does not accept this explanation. However, the Com-

mission accepts Mr Hodes' explanation for the appearance of the advertisement without question.

HGB denies that it terminated the dealer agreement because of Camera Care's price-cutting policy. HGB says that it supplied the Commission with evidence that other Hasselblad dealers were actively price-cutting. None of these dealers had their agreements terminated by HGB. This, according to HGB, demonstrates that the termination of Camera Care's contract was not part of a general policy to partition the market for Hasselblad products.

Contrary to what might appear from the Commission's version of events, HGB claims that it treated Camera Care well. It gave Camera Care the period of notice provided for in the dealer agreement. After the termination of that agreement it discussed the possibility of resupplying Camera Care if Camera Care undertook not to repeat distasteful advertising or demand special treatment or service cameras in a manner detrimental to HGB.

The *Commission* argues that Camera Care's dealer agreement was terminated because of its pricing policy. In support of its arguments it refers *inter alia* to correspondence between HGB's lawyers and the United Kingdom Department of Trade and between HGB and Ilford (Ireland) Ltd from whom Camera Care had obtained supplies of Hasselblad products. In these letters HGB expressly mentioned Camera Care's price-cutting. The Commission supports its contention further by drawing attention to discussions between HGB and Camera Care in which HGB asked Camera Care to delete references to other dealers' prices from its advertisements.

The Commission relies on HGB's unwillingness to accept Camera Care's offer to submit future advertisements to HGB for its approval before printing as proof that HGB was not concerned about Camera Care's advertisements solely because they were in poor taste but rather on the grounds of price. HGB contests this. It says, in its reply, that there is no evidence to substantiate the Commission's suppositions. Contrary to any impressions the Commission might have, HGB maintains that it was ready as early as the summer of 1979 to reinstate Camera Care as a Hasselblad dealer and therefore it cannot have had strong objections to Camera Care's pricing policy.

The Commission admits that HGB did not terminate its agreements with other dealers even though they were also cutting prices. HGB claims in its reply that this proves that Camera Care's agreement was not terminated for price-cutting reasons.

Camera Care says that the dealer agreement was terminated because of prices. The advertisements to which HGB objected were merely an excuse to terminate the agreement. HGB's arguments as to Camera Care's bad servicing are not supported by evidence.

(c) Partitioning of the market

HGB claims that it did not attempt to partition the market for Hasselblad

goods by preventing parallel imports. It admits that it did prevent Camera Care from gaining access to supplies of Hasselblad equipment from September 1978 to October 1979. In October 1979, following legal advice, HGB ceased that practice.

HGB states that the Commission has not produced any example other than that of Camera Care of a case in which HGB tried to prevent parallel imports; in fact HGB says it tried to do the opposite in so far as it actually encouraged exports and that it has furnished evidence to that effect to the Commission.

HGB says that the "Silver Service Guarantee Card" was a legitimate means of competing with parallel imports. There was no discrimination against customers who did not have such a card. HGB's fulfilment of the Victor Hasselblad International Service Guarantee was at least as good as fulfilment thereof by any other European distributor. HGB did not discriminate against parallel imports of cameras with respect to repairs. It says that is has produced evidence to the Commission to prove its fairness of treatment.

The *Commission* argues in its defence that HGB obstructed Camera Care's access to Hasselblad goods for more than a year. Moreover, correspondence between HGB and Ilford (Ireland) Ltd shows that HGB objected to sales by Ilford to United Kingdom residents even if they personally visited Ilford's premises. This policy was designed to protect Hasselblad distributors in the United Kingdom.

With respect to the Silver Service Guarantee Card, the Commission maintains that HGB's advertisements of the service indicate that holders of the card will be given preference in the servicing of cameras and photographic equipment.

HGB says in its reply that the Commission has not produced any evidence to show that HGB discriminated against customers not holding the Silver Service Card either with respect to the one-year Victor Hasselblad International Guarantee or to after-sales services for payment.

Camera Care argues that HGB discriminated against parallel imports. It points to the wording of certain advertisements which might indicate that HGB favoured Silver Service Card holders over other Hasselblad owners.

(d) Conspiracy to partition the market

In its decision the Commission accuses Victor Hasselblad, HGB, Ilford, Têlos, Prolux, Polack and Nordic of conspiring to partition the market for Hasselblad products. HGB denies that it was a party to the conspiracy. The Commission alleges that this was done by preventing parallel imports. HGB denies the allegation.

(i) Prevention of parallel imports

The Commission concludes in its decision that HGB attempted to prevent the import, other than through official channels, of Hasselblad products. The main evidence upon which the Commission relies consists of a document entitled "A Policy for Europe" drawn up by HGB in 1980 and the minutes of a management meeting held on 18 August 1978.

HGB alleges that the Commission by quoting in its decision only part of the document "A Policy for Europe" misrepresents the contents of that document which, it says, were intended to encourage the advertising and promotion of Hasselblad products. The document acknowledges that "an absolute territorial protection" in the EEC is prohibited and HGB alleges that the document stated that HGB intended to work within the perimeters of EEC law.

With respect to the minutes of the management committee meeting of 18 August 1978, HGB says that the paper discussed "combating grey imports" by fierce competition but within the terms of Article 85. The Commission says in its defence that the minutes confirm that HGB arranged to buy Hasselblad equipment from Camera Care clearly in order to trace where it had come from. Furthermore, the minutes indicated that the Silver Service Card was being used to combat grey imports.

In its decision the Commission points to correspondence and other communications between HGB and sole distributors in other Member States from which, it says, it may be concluded that HGB was trying to prevent exports to the United Kingdom. HGB states that all the evidence in question concerns supplies of Hasselblad cameras and equipment to Camera Care at a time when Camera Care was no longer an authorized dealer and when HGB believed that authorized distributors and dealers were not allowed to supply unauthorized dealers.

HGB reproaches the Commission for trying "... to over-emphasize this individual dispute between HGB and Camera Care and to turn it into a general policy ...".

The Commission points in its defence to correspondence between Victor Hasselblad and HGB and between Victor Hasselblad and Ilford (Ireland) Ltd which, it says, shows that Victor Hasselblad was anxious to stop all export sales by Ilford and not only sales to Camera Care.

(ii) Influencing of prices

HGB states that if Victor Hasselblad and its distributors provided one another with price lists, this was perfectly within the limits of the distribution agreement of 1965.

HGB obtained price lists from Têlos and Polack in order to "combat" Camera Care, namely by attacking its prices. There was no conspiracy to partition the market by exchanging price lists.

(e) The sole distributorship agreement between Victor Hasselblad and HGB

HGB argues that Article 2 (a) of the decision is not justified with respect to the agreement between Victor Hasselblad and HGB. The Commission itself admitted in its statement of objections that the agreement did not contain any provisions which might violate the competition rules of the Community. Moreover, HGB says that the agreement is covered by Regulation No 67/67 as the Commission has not proved that HGB engaged in discriminatory practices with respect to parallel imports.

The Commission states that the distributorship agreement is unlawful because the parties took steps to protect the allotted territory, and to prevent parallel imports. HGB's interference with parallel imports into the United Kingdom automatically deprives HGB's distributorship agreement of the benefit of Regulation No 67/67 and Article 85 (3).

In its reply HGB reiterates that it did not apply export bans but only tried to stop supplies to an unauthorized dealer, Camera Care. Even if HGB's actions *vis-à-vis* Camera Care were interpreted as enforcing export bans or hindering imports, this would not invalidate block exemption under Regulation No 67/67.

The Commission says in its rejoinder that there is no basis for the proposition that a "single case" of export bans cannot render Regulation No 67/67 inapplicable. Moreover, Regulation No 67/67 does not allow interference with supplies to unauthorized dealers.

(f) The dealer agreement

Article 3 of the decision objects to clauses 6, 23 and 28 of the dealer agreement, the quantitative selection of dealers and the influence of resale prices by HGB.

Clause 6 reads:

"All Hasselblad products supplied to the dealer pursuant to that agreement shall be utilized by the dealer at the franchised premises for retail resale (or sale for professional use) and shall not (save as aforesaid) under any circumstances be:

(a) supplied by or with the approval of the dealer to any other person, firm or corporation dealing in or specializing in the sale of cameras and photographic equipment in the United Kingdom or elsewhere, or

(b) sold from any other address than the franchised premises

without the prior consent in writing of the Company."

HGB says that clause 6 was inserted into the dealer agreement on 1 January 1979 to prevent sales of Hasselblad products by unauthorized dealers. An increase in such sales led HGB to fear that they might harm the reputation and goodwill of Hasselblad products. It was not intended to impose import bans.

The Commission states in its defence that clause 6 prohibits re-selling altogether, except to consumers within the dealer's allotted territory. It is therefore in restraint of trade.

Clause 23 of the dealer agreement obliges a dealer to withdraw any advertisement or announcement to which HGB has objected in writing. Paragraph 60 of the decision states that "post-publication censorship" prevents dealers from advertising their prices. HGB states that this provision is designed to ensure a "common advertising programme of a high standard".

The Commission in its defence does not accept HGB's interpretation of clause 23. It maintains that the two advertisements of Camera Care to which HGB objected both offered low retail prices and that was the primary reason for HGB's objection to them.

HGB admits that it did try to prevent Ilford, Têlos and Prolux from supplying Camera Care with Hasselblad products but only because Camera Care was no longer an authorized dealer.

HGB reproaches the Commission for portraying the dispute between it and Camera Care as a general policy designed to prevent parallel imports. This, HGB says, is not true. The Commission has not produced any other evidence that HGB prohibited imports to, or exports from, the United Kingdom.

HGB states that it did not oblige dealers to sell Hasselblad equipment at any particular price. The Commission has not produced any evidence to show that it did so.

The Commission points in its defence to correspondence between Victor Hasselblad and Ilford (Ireland) Ltd and between HGB and Ilford which discusses pricing policy and it deduces from this that HGB tried to maintain certain price levels.

As to the quantitative selection of distributors, HGB maintains that the number of Hasselblad distributors will always of necessity be limited because of the high cost of carrying adequate stock. HGB estimates that an effective dealer would have to sell at least UKL 6 000 worth of goods annually in order to finance the minimum amount of stock which he would have to carry. HGB says that it does not limit quantitatively the number of its dealers. Any quantitative limitation is a consequence of the cost of maintaining stocks of Hasselblad products.

The Commission does not accept that argument and argues that HGB restricted trade by means of its quantitative selection criteria.

HGB has approximately 110 dealers in the United Kingdom. But for the quantitative selection criteria, 2 000 dealers would be qualified to be Hasselblad dealers. Since, according to the Commission, Hasselblad distributors have enforced export bans and have tried to keep national price levels similar, it is impossible to say what the volume of imports or exports would be if competition was unrestricted.

Camera Care points out that even if quantitative selection is inevitable this does not explain why HGB felt it necessary to prohibit cross-supplies. Such a prohibition in itself constitutes a quantitative selection. Moreover, the refusal to supply or to allow cross-supplies to "grey" importers is a substantial deterrent to any dealer who was considering importing Hasselblad products.

Camera Care argues that HGB used its distribution system to influence prices. Advertisements of retailers show a uniformity of prices where prices are

quoted and a reticence about prices in other cases.

Procedure

HGB makes several objections to the Commission's method of investigation.

It alleges that the statement of objections sent to Victor Hasselblad and HGB contained an excerpt from correspondence between HGB and its solicitor which was privileged and which HGB's solicitor had refused to hand over during investigations by the Commission. Worse still, the Commission, in breach of its obligations under Article 20 (2) of Regulation No 17/62, supplied highly confidential business information relating to HGB, including market strategy and details of its turnover, loss and profits, to Camera Care. This caused HGB substantial loss and damage.

HGB maintains that the facts relied on by the Commission in its decision are identical to those found in the statement of objections. No cognizance has been taken of evidence supplied by HGB, either before or after the hearing. Therefore, the Commission has violated the principle of a balanced *ex officio* investigation.

HGB argues that the Commission's decision is contrary to Article 190 of the EEC Treaty because it is insufficiently reasoned.

Even if the Court were to hold that the requirements of Article 190 of the Treaty have been met, HGB denies that the Commission has proved an infringement of Article 85.

The *Commission* says that it is not obliged to discuss or refute all the arguments raised by parties. Its only obligation is to give the evidence on which it bases its decision. It is satisfied that the obligation has been discharged in this case.

The Commission says that HGB has never claimed damages for the loss it claims to have sustained as a result of disclosure by the Commission of privileged information and business secrets. Moreover, HGB has never specified exactly what loss it suffered.

Camera Care argues that the requirements of Article 190 have been met in this case. The Commission is only obliged to state the reasons for its decision, not the reasons for rejecting the applicant's arguments as to law or fact.

The Fine

HGB submits that according to Article 15 (5) of Regulation No 17 fines may not be imposed in respect of acts which fall within the limits of the activity described in the notification if they occur "before the decision (of the Commission) in application of Article 85 (3) of the Treaty". Thus if HGB requested in the summer of 1978 that sales by Ilford to Camera Care should be stopped, that request may not be the subject of a fine because the agreement between Victor Hasselblad and the other distributors which was notified in 1965 contained an export prohibition.

The Commission contends that HGB is wrong in saying that notification afforded the companies protection against fines for restricting exports even

after Victor Hasselblad had been informed that the export ban must be removed and had agreed to do so. HGB's argument implies that an undertaking could mislead the Commission into believing that the export ban had been lifted by the undertaking and yet remain protected from fines.

HGB says that the fine imposed by the Commission is not justified. Even if a violation of Article 85 (1) is established the fine is disproportionate. If HGB is obliged to pay the fine, especially if it is required to do so in one lump sum, it might have to cease trading.

The *Commission* states that HGB has given no reasons for its inability to pay the fine. The Commission says that it has asked HGB for information about its financial situation with a view to giving it enough time in which to pay the fine but it has not received any information.

Camera Care feels that the fine is modest given HGB's annual turnover.

Questions put to the Commission

1. The Commission was requested to provide the Court with a detailed list enumerating every instance — known to the Commission when it adopted its decision — in which the applicant refused to repair, or delayed the repair of, Hasselblad cameras.

   In reply the Commission stated that the only case of refusal of which it was aware was that involving Mr Orbison and that it had not considered it necessary to investigate specific cases of delay in as detailed a manner as that which the answer to the Court's question would require.

2. The Commission was requested to specify how long it took, on average, at the material time to carry out the repairs in question in the other Member States?

   The Commission replied that it had no information at its disposal concerning the average time needed to repair Hasselblad cameras in other Member States.

IV — Oral procedure

The parties presented oral argument at the sitting on 2 June 1983.

The Advocate General delivered his opinion at the sitting on 13 July 1983.

Decision

1 By application lodged at the Court Registry on 10 March 1982 Hasselblad (GB) Ltd brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that part of the Commission's decision of 2 December 1981 (No IV/25.757) relating to a proceeding under Article 85 of the EEC Treaty which was notified to the applicant on 4 January 1982 is void.

2 Victor Hasselblad AB (hereinafter referred to as "Victor Hasselblad"), whose registered office is in Gothenburg, Sweden, manufactures high-quality photographic equipment. It has concluded exclusive distributorship agreements with dealers in many countries. On 28 June 1965 it notified its standard sole distributorship agreement to the Commission. By letter of 23 December 1976 the Commission objected to two clauses of the agreement which, in its view, were incompatible with the principle of the free movement of goods and with the competition rules contained in the EEC Treaty. By letter of 10 February 1977 Victor Hasselblad agreed to comply with the Commission's recommendations. Accordingly, on 6 March 1978 a new version of the distributorship agreement was sent to the Commission, which informed Victor Hasselblad by letter of 20 February 1979 that the agreement came within the scope of Commission Regulation No 67/67/EEC of 22 March 1967 (Official Journal, English Special Edition 1967, p. 10).

3 Hasselblad (GB) Ltd is a company incorporated in the United Kingdom. It signed a sole distributorship agreement with Victor Hasselblad on 1 January 1958. On 2 December 1975 a new agreement differing from the standard agreement notified to the Commission was concluded between the same parties. That agreement was amended on 20 November 1977. The agreement, as amended, was notified to the Commission on 25 January 1980.

4 The applicant made its own distribution arrangements in the United Kingdom for Hasselblad cameras and equipment. In 1975 there were approximately 26 Hasselblad dealers in the United Kingdom, but in 1982 the number had risen to over 100. The dealer agreement used by the applicant since 1 January 1976 was amended on 1 January 1979 and notified to the Commission in December 1979.

5 Camera Care Ltd is a company whose registered office is in Northern Ireland. Its business premises are in London. Camera Care signed a dealer agreement with the applicant on 7 January 1976. That agreement was terminated by the applicant in May 1978.

6 Camera Care submitted a complaint to the Commission concerning the practices of Victor Hasselblad and its sole distributors in which it claimed that the latter had infringed Article 85 (1) of the EEC Treaty. The

Commission investigated the complaint and initiated a proceeding under Regulation No 17 of the Council of 6 February 1962 (Official Journal, English Special Edition 1959-1962, p. 87).

7 On 2 December 1981 the Commission addressed a decision to Victor Hasselblad and six of its sole distributors, namely the applicant, Ilford (Ireland) Ltd, James Polack Aps, Têlos SA, Prolux Sprl and Nordic Im- und Export Handelsgesellschaft mbH, in which it stated that the concerted practice engaged in between those parties to prevent, limit or discourage exports of Hasselblad equipment between the Member States of the European Community constituted an infringement of Article 85 (1) of the EEC Treaty.

8 According to Article 2 of the decision, the sole distributorship agreements between Victor Hasselblad and the above-mentioned distributors constitute, in so far as they grant exclusive distribution rights for Hasselblad equipment, infringements of Article 85 (1). Exemption under Article 85 (3) was refused.

9 According to Article 3 of the decision, the selective distribution system applied by the applicant since 1974 infringes Article 85 (1) of the Treaty by clauses 6, 23 and 28 of the dealer agreement, the quantitative selection of dealers and the influence of that system on resale prices. The application for exemption of the selective distribution system under Article 85 (3) of the Treaty was refused.

10 Article 4 of the decision provides that the undertakings to which the decision is addressed are to bring to an end forthwith the infringements referred to in Articles 1, 2 and 3 and are to refrain in future from taking any measures having the same object or effect.

11 Article 6 of the decision requires the applicant to inform within three months of the date of notification of the decision and in a form previously approved by the Commission,

(a) its dealers, that cross-supplies to other dealers and exports to other Member States are not forbidden and must not be prevented or discouraged, whether by price maintenance or otherwise, and

(b) the public, that it will grant after-sales service under the manufacturer's guarantee to all Hasselblad products without discrimination.

12 Article 7 of the decision requires Victor Hasselblad and the applicant not to prevent or hinder access by Camera Care to Hasselblad products.

13 A fine of ECU 165 000, or UKL 93 642.12, was imposed on the applicant (Article 8 of the decision).

14 The applicant seeks a declaration that Article 1 of the decision, Article 2, in so far as it concerns the distributorship agreement between Victor Hasselblad and the applicant, Article 3 and Article 8, in so far as it concerns the applicant, are void.

15 A number of arguments are relied upon in support of the application:

(1) The Commission's decision infringes Article 190 of the Treaty. It does not contain an adequate statement of the reasons on which it is based, in so far as the various arguments and circumstances put forward by the applicant were not examined and the Commission failed to explain why it did not accept the arguments and evidence adduced by the applicant.

(2) The Commission did not properly appreciate the relevant market; had it done so, it would have been obliged to conclude that the applicant's marked share was negligible, with the result that even if the alleged conduct on the part of the applicant were established, it could not affect trade between Member States within the meaning of Article 85 of the Treaty.

(3) The applicant never engaged in a concerted practice aimed at preventing, limiting or discouraging exports of Hasselblad equipment between the Member States of the Community.

(4) The sole distributorship agreement between Victor Hasselblad and the applicant does not constitute an infringement of Article 85 (1) of the Treaty.

(5) The selective distribution system operated by the applicant does not constitute an infringement of Article 85 (1).

(6) In any event the Commission cannot impose a fine for conduct consistent with the selective distribution agreement notified to the Commission until exemption under Article 85 (3) of the Treaty has been expressly refused. Finally, the applicant claims that the amount of the fine is excessive.

1. The statement of the reasons on which the decision is based

16 The applicant considers that the decision does not contain an adequate statement of the reasons on which it is based, since the Commission did not explain on what grounds it rejected the arguments put forward by the applicant and, more particularly, since the decision makes no reference whatsoever to the abundant evidence adduced by the applicant during the administrative procedure. The decision is therefore inconsistent with Article 190 of the Treaty and should be declared void.

17 In that regard, it must be remembered that although Article 190 of the Treaty requires the Commission to mention the factual circumstances justifying the decision and the considerations which led to its adoption, it does not require the Commission to discuss all the issues of fact and law which were raised during the administrative procedure.

18 In its statement of the reasons on which the contested decision is based, the Commission set out the considerations of fact and law on which it relied. Accordingly, the submission that the statement of reasons was inadequate cannot be upheld.

2. The relevant market

19 The applicant contends that Article 85 (1) of the Treaty is inapplicable in the present case because its market share is negligible and therefore the conduct with which it is reproached by the Commission cannot appreciably affect trade between Member States. In its view, the Commission based its decision

on the finding that the market sector in which Victor Hasselblad carries on business is that of medium format reflex cameras. That definition includes only certain medium format cameras and excludes all 35 mm cameras, however complex they might be. Some 35 mm cameras compete effectively with Hasselblad cameras. If the Commission had taken account of the cameras which compete effectively with Hasselblad cameras, it would have been compelled to conclude that the applicant's market share was so negligible that it could not affect trade between Member States and that, accordingly, Article 85 (1) was inapplicable.

20 That argument cannot be accepted. It is clear from the documents before the Court that in 1978 Victor Hasselblad itself stated that it was the world leader in the sector of medium format reflex cameras. In a letter to the Commission in December 1978 it estimated its share of that sector at between 20% and 25% in the Federal Republic of Germany, 25% in the United Kingdom, 25% in Belgium, 30% in France, 50% in Italy, 50% in Denmark, 50% in the Netherlands and 50% in Ireland. It is true that it also stated that Hasselblad cameras were competing with certain 35 mm cameras which it named, but that factor is not such as to invalidate its own definition of its business sector, namely that of medium format reflex cameras.

21 It must be remembered that, as the Commission rightly pointed out, the features which characterize Hasselblad cameras are (1) their format (film and photograph dimensions), (2) the quality of reproduction, (3) handiness (in view of their dimensions, bulk and basic design, since the image is viewed from above by means of a focusing screen placed at the top of the body, a Hasselblad camera is unsuitable for taking photographs in certain conditions, for example, where the subject is moving) and (4) the range of accessories. Moreover, the high price of a Hasselblad camera restricts its potential customers to professional photographers, trade users or specialists, keen amateur photographers or prestige buyers. The view must be taken that only cameras producing photographs and displaying characteristics which are broadly similar or comparable are reasonably substitutable for, and can therefore compete effectively with, a Hasselblad camera. Hasselblad cameras are virtually indispensable for a large number of users in the various Member States of the Community.

22 Furthermore, the applicant itself considers that the reputation enjoyed by Hasselblad cameras is greater that that of any other camera available in the world and they are much sought after by professional photographers and higly qualified amateurs. Even if the number of cameras manufactured each year, approximately 20 000, is not very great, their selling price is such that Victor Hasselblad's turnover is considerable and even the applicant's turnover exceeds UKL . . . per annum. In the circumstances, it is impossible to take the view that the restriction on trade in those cameras between Member States has no appreciable effect on intra-Community trade.

23 Accordingly, the submission that the applicant's market share was so negligible that Article 85 (1) of the Treaty is inapplicable has not been established and must be rejected.

3. The concerted practice

24 In support of the finding that the applicant has engaged in a concerted practice contrary to Article 85 of the Treaty, the Commission states in its decision that between June and October 1978 an undertaking known as "The Amateur's Nook" established in Northern Ireland took delivery of a consignment of Hasselblad cameras from Ilford, the authorized distributor for Ireland. Part of that consignment was re-sold to Camera Care. The applicant established, by means of test purchases, that the goods in question had originally been supplied to Ilford. Victor Hasselblad therefore complained to Ilford. Ilford agreed by letter of 21 November 1978 to cease exports and to turn away foreign customers who visited its premises. Ilford complied with the export ban between November 1978 and August 1980. In December 1978 the applicant demanded compensation from Ilford in respect of expenses incurred by it as a result of the test purchases from Camera Care. Since Ilford assured the applicant that it would do its utmost to prevent "grey" (that is to say, parallel) exports, the applicant waived its demand for reimbursement.

25 According to the decision the proprietor of Camera Care ordered a large consignment of Hasselblad cameras from Têlos, the authorized distributor for France, in May 1978. The applicant established by means of test

purchases that the goods had originally been supplied to Têlos. Following a complaint from the applicant, Têlos refused to provide Camera Care with further supplies.

26 Similarly, the applicant contacted Prolux, the authorized distributor for Belgium, with a view to preventing exports of Hasselblad cameras from Belgium to the United Kingdom which were intended for Camera Care.

27 The applicant does not dispute that after the termination of the dealer agreement with Camera Care in 1978 it sought to stop supplies of Hasselblad cameras to Camera Care and with that end in view approached Victor Hasselblad, Ilford, Têlos and Prolux. However, it maintains that once Camera Care ceased to be an authorized distributor, it was justified in considering that authorized distributors and dealers could no longer supply Camera Care. In September 1979, however, following consultations with its lawyer, the applicant ceased its efforts to block supplies of equipment to Camera Care.

28 The Commission rightly states, without being seriously challenged, that in December 1979 the applicant purchased cameras from Camera Care through one of its employees in order to determine their origin; therefore the Commission may legitimately take the view that the applicant's participation in the concerted practice lasted until the end of 1979.

29 The applicant's participation in a concerted practice aimed at restricting parallel imports into the United Kingdom between May 1978 and December 1979 has therefore been established.

4. The sole distributorship agreement between Victor Hasselblad and the applicant

30 The first distributorship agreement between Victor Hasselblad and the applicant was concluded in 1958. That agreement contained a clause prohibiting sales by the applicant outside the United Kingdom. In 1975 that agreement was replaced by a new sole distributorship agreement not containing any prohibition on exports. The terms of the agreement were thus

such that it could qualify for block exemption under Regulation No 67/67/EEC of the Commission. The Commission maintains in its decision, however, that the agreement does not qualify for such exemption on the ground that the contracting parties took steps to obstruct the provision of supplies of products referred to in the agreement to dealers elsewhere in the common market, which renders the exemption contained in Article 1 inapplicable by virtue of Article 3 of the same regulation.

31 In that connection the Commission relies, in particular, on the conduct of Victor Hasselblad and of the applicant, considered above, as regards furnishing Camera Care with supplies.

32 The Commission also contends that the applicant introduced a guarantee, known as the "Silver Service Guarantee", covering only Hasselblad cameras imported into the United Kingdom through the applicant. Every Hasselblad camera is guaranteed by the manufacturer for a period of one year. The sole distributor is under an obligation to carry out the necessary repairs. The Silver Service Guarantee extends the one-year period to 24 months for cameras imported through the applicant. The Commission claims that in its advertisements the applicant offered users covered by the Silver Service Guarantee a 24 hour repair service and that it accords priority to such repairs.

33 According to the Commission's decision (paragraph 57), the fact that the applicant advertises or practices a more rapid repair service for "properly" imported cameras and thus places parallel imports of Hasselblad products at a disadvantage constitutes a measure in restraint of competition.

34 In that regard it must be remembered that in reply to a question put to it by the Court, the Commission was unable to show that cameras which were the subject of parallel imports had to wait longer for repairs with the applicant than did the same cameras in other Member States; it was only able to show that the applicant reserved special advantages for its own customers (a 24 hour repair service and a two-year guarantee). In the circumstances, such conduct cannot be regarded as restricting the supply of parallel imports of cameras where such cameras are fully covered by the manufacturer's normal guarantee which the distributor is under an obligation to provide.

35 The view must therefore be taken that although the Commission's objection to the Silver Service Guarantee is unfounded, the existence of a concerted practice aimed at restricting parallel imports intended for Camera Care has been established and is sufficient to exclude block exemption under Regulation No 67/67/EEC.

36 The applicant also submits that the Commission did not provide it with an opportunity to express its views concerning the sole distributorship agreement concluded with Victor Hasselblad and that Article 2 of the decision should therefore be declared void. That argument cannot be accepted. It is clear from the statement of objections that the Commission informed the applicant that the alleged conduct had the effect of excluding the agreement from the exemption provided for by Regulation No 67/67/EEC.

37 Accordingly, the application for a declaration that Article 2 of the decision is void in relation to the applicant must be rejected.

5. The distribution system applied in the United Kingdom

38 The Commission states in Article 3 of its decision that the selective distribution system applied by the applicant since 1974 infringes Article 85 (1) of the Treaty by clauses 6, 23 and 28 of the dealer agreement, the quantitative selection of dealers and the influence of that system on resale prices.

39 According to the decision, the applicant decided in 1974 to introduce a distribution system for Hasselblad products. Only retailers who signed the standard dealer agreement were recognized as authorized Hasselblad dealers and supplied by the sole distributor. With effect from 1 January 1979 the applicant amended the existing dealer agreement in certain respects. The amended dealer agreement was notified to the Commission on 25 January 1980.

40 It must be pointed out in that regard that clause 6, to which the Commission refers, was not included in the agreements concluded before 1 January 1979.

Accordingly, the objection concerning that clause cannot be upheld as regards the period between 1974 and 1 January 1979. Clauses 23 and 28, mentioned in the decision, correspond to clauses 22 and 27 in the agreements concluded before 1 January 1979. If in that respect a clerical error was made in the decision, that error cannot have had any material effect on the applicant's understanding of the Commission's objections. As regards the period between 1974 and 1 January 1979, the Commission's decision must be understood as referring to clauses 22 and 27 of the previous agreements. The distribution system must therefore be considered in the light of those observations.

41 The Commission objects in particular to the following clauses of the dealer agreement, as amended in 1979, on the ground that they infringe Article 85 (1) of the Treaty:

(a) Clause 6 (a), which prohibits under any circumstances a dealer from supplying Hasselblad products to any other dealer in cameras, in the United Kingdom or elsewhere, without the applicant's prior consent;

(b) Clause 23 (c), which requires, in particular, the dealer to withdraw and not to repeat any advertisements or announcements to which the applicant has notified its objections in writing to the dealer; and

(c) Clause 28, which enables the applicant to terminate the agreement without prior notification if the dealer fails to observe any of the terms or conditions of the agreement or if the dealer changes the geographical location of his premises without the applicant's prior approval in writing, the dealer being required to notify the applicant immediately if he transfers his business premises to another location.

42 In support of its objection the Commission contends that the restrictive effect on competition of provisions such as clause 6 of the agreement has been recognized in its own decisions and in the case-law of the Court. The prohibition on cross-supplies restricts competition because it seriously impedes the economic freedom of authorized dealers and makes them wholly dependent.

43 The power conferred on the applicant by clause 23 of the dealer agreement to require a dealer to stop publishing announcements in the press, to cease other advertising activities and to refrain from repeating them is tantamount to a right of retroactive censorshop which enables the applicant to prohibit dealers who are particularly active in the field of competition and prices, and more particularly those who import otherwise than through Victor Hasselblad's sole distributors, from advertising their activities.

44 As regards the admission of dealers to the distribution network, the Commission states in its decision that one of the characteristics of the applicant's marketing policy is not to give all qualified dealers access to Hasselblad products. The Commission considers that the purpose of clause 28 of the agreement is to permit the applicant to close its distribution network to some dealers who satisfy all the terms and conditions laid down in connection with the distribution system, thereby preventing potential competition within the area allotted to authorized dealers. Accordingly, dealers are selected not, or not only, by reference to objective criteria of a qualitative nature but on the basis of the applicant's quantitative assessment. In that regard, it is said in the decision (paragraph 35) that the applicant stated to the Commission in February 1980 that it could not appoint a dealer who effected parallel imports of Hasselblad goods because in such a case it would have no control at all over the products ordered.

45 The applicant maintains that the purpose of the prohibition of sales contained in clause 6 of the agreement was not to restrict exports. The words "or elsewhere" contained in that clause were inserted by the applicant's solicitor and the applicant never interpreted them in the manner alleged by the Commission. The applicant never took steps to impede exports by its dealers.

46 It should be observed that the agreement prohibits the sale of Hasselblad cameras to other dealers, including authorized dealers in the United Kingdom or elsewhere. As the Commission rightly points out, a prohibition of sales between authorized dealers constitutes a restriction of their economic freedom and, consequently, a restriction of competition. Furthermore, the fact that the applicant never impeded exports by its dealers is not sufficient to preclude the existence of a clear prohibition of exports.

47 As regards clause 23 of the agreement, the applicant claims that the Commission ignored the evidence resulting from the dealer agreement itself and from other Hasselblad publications as to the importance which the applicant attaches to a common advertising programme of a high standard. In that connection, clause 22 (b) of the agreement provides that "the dealer shall at all times actively promote the sale of Hasselblad products ... and foster in every way the reputation and the goodwill of the manufacturer, the company and the dealer". The sole purpose of clause 23 is to ensure a high standard in advertisements of Hasselblad products.

48 In reply to that argument the Commission states that the applicant's explanation is contrary to its conduct in practice. In a letter dated 25 January 1978 addressed to its solicitor (and submitted by the applicant itself to the Commission) the applicant stated that an advertisement by Camera Care was causing problems in view of the selling prices mentioned in it ("strictly on prices"). The advertisement in question contains the phrases "We will match *any* price", "Match *any* price" and "Unbeatable prices".

49 Although in the circumstances the applicant chose to terminate the agreement concluded with Camera Care, it is clear that it scrutinized the wording of advertisements as regards selling prices and that the contested clause was drafted in such a way as to permit the applicant to prohibit such advertisements. The Commission's decision was therefore well founded as far as clause 23 is concerned.

50 Furthermore, the applicant does not dispute that the number of authorized dealers is restricted. In the letter which accompanied the notification of the dealer agreement, it was stated that the applicant was prepared to grant dealerships to any qualified dealer subject, however, to the condition that if in a small area there were already a large number of dealers, it reserved the right not to appoint a new dealer in order to avoid a situation in which standards of quality could no longer be maintained by dealers. The applicant claims that the reason for that restriction is that a dealer is required to keep a given number of cameras in stock and that if a large number of dealers were appointed as authorized dealers, the sales prospects of some would be such that their business profits would not justify the maintenance of the required stock. It does not challenge the statement in the decision to the effect that it was not prepared to appoint a dealer who effected parallel imports.

51 The Commission was justified in concluding from this that the applicant's selection of dealers was based not only on qualitative but also on quantitative criteria, the more so as it is common ground that of the 2 000 dealers in photographic equipment in the United Kingdom only approximately 100 are authorized dealers. Clause 28 of the dealer agreement allowed the applicant in fact to restrict the freedom of dealers, even authorized dealers, to establish their business in a location in which the applicant considers their presence capable of influencing competition between dealers.

52 The Commission was therefore right in finding that clauses 22 and 27 of the dealer agreement in force before 1 January 1979, clauses 6, 23 and 28 of the dealer agreement as amended on 1 January 1979 and the criteria for the selection of dealers constitute infringements of Article 85 (1) of the Treaty.

53 In so far as the decision states that clause 6 of the dealer agreement constitutes an infringement of Article 85 (1) of the Treaty in respect of the period between 1974 and 1 January 1979, it must be declared void.

The fine

54 The applicant maintains that even if it were established that it had engaged in the alleged concerted practice aimed at restricting trade between Member States, the Commission cannot impose a fine upon it on that account. The 1958 agreement between Victor Hasselblad and its other sole distributors in the other Member States was notified to the Commission in 1965 and Article 15 (5) of Regulation No 17 prevents the Commission from imposing a fine for conduct which took place after that notification and prior to a decision by the Commission granting or refusing an exemption under Article 85 (3) of the Treaty, where such conduct remains within the limits of the activity described in the notification.

55 That argument cannot be accepted. At the time of the concerted practices at issue the applicant was no longer a party to the notified agreement but was bound by an agreement dating from 1975 which did not contain a clause restricting exports or imports. The applicant cannot therefore rely on the

notification of an agreement to which it was no longer a party in order to escape the fine.

56 Finally, the applicant maintains that the amount of the fine is disproportionate to the infringements established by the Commission and, in particular, is excessive in view of the fine imposed on Victor Hasselblad having regard to their respective turnovers.

57 In that regard, it must be pointed out that the amount of the fine is determined on the basis of a number of considerations, including the gravity of the infringement and its duration. An undertaking's turnover is only one of the factors which may be taken into account. The aim of the concerted practice established by the Commission was to prevent any imports into the United Kingdom of Hasselblad cameras intended for Camera Care and as such the practice constituted a flagrant breach of the rules on competition contained in the Treaty. However, it would appear that the Commission fixed the amount of the fine on the basis of various considerations, one of which was the fact that the applicant's practice in connection with the Silver Service Guarantee was in breach of the rules on competition and the applicant had delayed repairs to cameras which were the subject of parallel imports, matters which the Commission failed to prove in the proceedings before the Court. Furthermore, Article 3 of the decision must be declared by the Court to be void in one respect, and in relation to a specific period. Accordingly, the infringements found by the Commission have been established before the Court only in part. A further consideration is that the applicant is not a large undertaking. In the circumstances, the Court has decided to reduce the fine from ECU 165 000 to ECU 80 000.

Costs

58 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. However, the first paragraph of Article 69 (3) provides that the Court may order the parties to bear their own costs in whole or in part where each party succeeds on some and fails on other heads.

59 As each party has failed on some heads, each party must be ordered to pay its own costs.

On those grounds,

THE COURT

hereby:

1. **Declares the Commission's decision void in so far as it finds that clause 6 of the dealer agreement constitutes an infringement of Article 85 (1) of the Treaty as regards the period between 1974 and 1 January 1979.**

2. **Reduces the fine imposed on the applicant to ECU 80 000, or UKL 45 218.18.**

3. **Dismisses the remainder of the application.**

4. **Orders each party, including the intervener, to pay its own costs.**

Mertens de Wilmars Bahlmann Galmot

Pescatore O'Keeffe Bosco Everling

Delivered in open court in Luxembourg on 21 February 1984.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President