

# Recent Changes in EC Law

*Insight into the new law of licensing and R&D cooperation in European Community*

BY GEORG ALBRECHTSKIRCHINGER\*

This paper deals with two major steps in European Community Law.

In January the block exemption on patent licensing and in March the block exemption on joint research and development have come into force.<sup>1</sup> They are of considerable interest for the business community.

With the enactment of the block exemption on patent licensing a long period of controversial debate as to its structure, contents and feasibility has come to an end. It differs considerably from the early drafts which had first been published in 1979.<sup>2</sup> The block exemption on joint research and development took a much shorter time of preparation, as a matter of fact little more than one and a half years from the first draft to enactment, and this time period was also characterized by significant changes.

The way and the circumstances under which these block exemptions have come into force, indicate quite clearly that the Commission responds to a general concern to provide an environment conducive to innovation and industrial cooperation. Guided by the conviction that the Europeans must render their innovative resources and capacities more viable, antitrust policy in the EC is under cautious and partial review. There will certainly be no relaxation in applying EC antitrust law as far as grave misconduct is concerned, such as price fixing, quota allocations of production, market sharing and abusive monopolistic behavior. But the Commission wishes to facilitate through a series of measures industrial cooperation, in particular in view of the competitiveness of European industry in the world markets. For example, the Commission has announced that it will review its policy of applying the rules of competition to joint ventures in general and summarize the new policy guidelines in a notice to be published later this year. As of March 1, 1985, there is an updated version of the block exemption on specialization agreements.<sup>3</sup>

Block exemptions are of practical significance for mainly two reasons:

1. Agreements covered by a block exemption are valid and enforceable; they cannot be attacked for alleged antitrust violations.

\*Member of the bar at Frankfurt am Main, Frankfurt, Germany; paper presented at LES International Conference, Tokyo, Japan, May 1985.

2. Agreements covered by a block exemption need not be notified to the Commission.

This means that the parties to such an agreement will have legal security as to the validity under civil law aspects and of course also immunity from antitrust fines. The practitioner will use the guidelines as a tool in drafting contracts. He will try to comply with the block exemption whenever possible in order to avoid the cumbersome and lengthy procedure of notification and individual clearance.

## GROUP EXEMPTION PATENT LICENSING

The importance of the block exemption is in good part due to the fact that case law in the field of antitrust and licensing is not developed enough to provide a safe guideline.

First, there was a period of about 10 years from 1962 to 1972, governed by the so-called Christmas message of December 24, 1962, that allowed in broad language restrictions imposed on licensees as long as these were covered by the scope of the patent. The Commission notice of December 24, 1962<sup>4</sup> provided a fairly wide interpretation of the scope of the patent, in particular restrictions imposed on the licensee as to territory, quantity, field of use, and also the exclusivity rule binding the licensor, were considered to be fully compatible with the rules of competition of the Rome treaty.

Then, for a long period, there was no evolution and in particular no Commission decision in the field, although in the meantime a sizable number of licensing agreements had been notified to the Commission for clearance under Art. 85, III.

From 1972 on we have had a number of Commission decisions that indicated a change in policy moving away from the broad language of the Christmas message and spelling out antitrust concern on clauses dealing with obligations imposed on the licensee.<sup>5</sup> The main emphasis in these decisions of 1972 was on the issue of exclusivity. Although the Commission made a difference

1. Regulation No 2349/84, OJ L 219 August 16, 1984; Regulation 418/85, OJ L 53 February 22, 1985.

2. OJ C 5811 March 3, 1979.

3. Regulation 417/85 OJ L 53 February 22, 1985.

4. OJ L 39, December 24, 1962, p. 2922, 62.

5. Cases:

- *Burroughs-Delplanque*, OJ L 13/50, January 17, 1972.

- *Burroughs-Geha*, OJ L 13/53, January 17, 1972.

- *Davidson Rubber Company* OJ L 43/31, June 23, 1972.

- *Raymond Nagoya*, OJ L 143/39, June 23, 1972.

- *Kabelmetal I*.

*Luchaire*, OJ L 222/34, August 22, 1975

- *Bronbemaling v Heidemaatschappij*, OJ L 249/27, September 25, 1975.

- *AOIP Beyrard*, OJ L 6/8, January 13, 1976.

between the exclusivity of manufacture and use on the one hand and the exclusivity of sales on the other, its basic opinion was that exclusivity in a licensing agreement as such was a violation of Art. 85, 1 because of the binding effect on the licensor, not to grant further licensees.

The maize-seed case and the issue of exclusivity, under appeal before the European Court of Justice, brought a certain clarification of this difficult issue.<sup>6</sup> The clarification, however, is limited due to the complexity of the facts of the case. The language of the Court is cautious and not free of contradictions and the decision does not lend itself to generalization. It is clear, however, that the Court refuted the Commission doctrine that exclusivity in licensing agreement was a *per se* violation of Article 85, 1. The Court said that territorial exclusivity within the Common Market was lawful in the situation described as "an open exclusive license" but that the territorial exclusivity should not be allowed when it provided for absolute territorial protection within the Common Market.<sup>7</sup>

A yardstick for the existence of "open exclusivity" will be the possibility of having parallel imports by dealers or consumers from one part of the Common Market to another part of the Common Market. But the Court avoids a clear definition of this new terminology.

The maize-seed case has, however, facilitated a consensus on the block exemption for agreements on patent licensing and this in particular as far as the question of exclusivity is concerned.

The draft exemption, of 1979, provided exemption for territorial exclusive sales in licensing contracts only under the condition that certain criteria were fulfilled; in particular the draft would exempt the territorial exclusivity on sales only in favor of smaller units and only if the patented products were available in the Common Market in commerce.<sup>8</sup> Regulation 2349/84 no longer contains such restrictions for the exemption of territorial clauses.

In short, the classical restriction between licensor and licensee in an exclusive agreement, not to compete with each other in their respective territories in any way, and in particular as far as sales are concerned, is lawful and therefore exempted throughout the duration of the agreement.

### Binding

As far as the relationship between two or more licensees is concerned, these can be bound by agreement to refrain from manufacturing or use in other territories; as to sales they can be bound not to engage in active sales or sales promotion in territories other than their own; this means for example to refrain from advertising specifically aimed at those areas or establishing any branch or a distribution depot.<sup>9</sup> This is enforceable for the entire life of the agreement always under the condition that at least one of the patents is still in force.

Also the licensees may be bound by agreement to refrain from what is called "passive sales activity." This

means for example that a license in France can be obligated by contract not to respond to unsolicited demand from a customer or dealer domiciled in Germany. This rule of abstaining from unsolicited orders emanating from other territories may be enforced only for a period of five years.<sup>10</sup> The five-year period starts with the first marketing of the product by the licensor or one of the licensees in the Community. After that period the licensee can no longer be bound not to respond to such orders.

Even during this five-year period a system of binding your licensee to abstain from passive marketing does not amount to an absolute territorial protection. All patented goods marketed by the patent owner himself or with his consent by someone else anywhere in the Community are freely marketable and cannot be kept out of member countries by invoking patent rights. This follows clearly from the jurisprudence of the European Court of Justice.<sup>11</sup>

Therefore, in discussing territorial restrictions in licensing agreements within the Common Market we deal only with the limited problem of whether we can, by contract, inhibit first marketing in other areas than the ones assigned to an exclusive licensee. The block exemption allows this for a limited period of time, a compromise based on economic thinking rather than on legal philosophy: for the beginning period of market introduction of a new technology, the licensee is given a stronger degree of market exclusivity. The legal issue whether direct exporting from one exclusive territory to another is to be considered a patent infringement which could be stopped by court order—as spelled out in Article 43 of the Luxembourg Convention on the Community patent—is in suspense. One day it is likely to come before the courts and the European Court of Justice will have the last word. The solution found in the block exemption is not prejudicial for the legal question since the block exemption is a purely regulatory measure.

### SOME CHARACTERISTICS OF THE BLOCK EXEMPTION

1. The block exemption—while maintaining the basic structure of having a list of exempted clauses in Article 1; a list of clauses that may be part of agreements without hindering the application of the block exemption, Article 2; and a blacklist of clauses, Article 3, which make the regulation inapplicable whenever one or several of these clauses are part of the agreement—*avoids carefully to be of prejudice* to the solution of unresolved questions that will have to be decided by jurisprudence. For example, recital 19 of the regulation says that restrictions listed in the blacklist of Article 3 may fall under the prohibition of Article 85, 1, and that in these cases there can be no general presumption that they will lead to the positive effects required by Article 85, 3, as would be necessary for the granting of a block exemption.

10. Article 1, nr 6 of Regulation 2349/84.

11. 119/75 Terrapin/Terranova, June 22, 1976.

187/80 Merck/Stephar, July 14, 1981.

12. Recitals are not of mere explanatory character as to the structure and legislative background and history. They are in the community legal system part of the regulation, inseparable from the articles and they must be taken into account in working with the text.

6. OJ 258/78, June 8, 1982.

7. Recital 53.

8. Article 1 paragraph 2, a-d of the 1979 draft.

9. Article 1 nr 5 of Regulation 2349/84.

Recital 18 says that the obligations listed in Article 2 are normally not restrictive of competition but that these also should benefit from the exemption in the case that, because of particular economic and legal circumstances, they should exceptionally fall within the scope of the prohibition of Article 85, 1.<sup>12</sup>

2. As far as the scope of application of the block exemption is concerned, it is fundamental that the regulation *applies to patent licenses and to mixed licenses*, combining the licensing of patents and the communication of know-how.

Such agreements are lawful, where the communicated technical knowledge is secret and permits a better exploitation of the licensed patent. A further requirement is that the licensed patents are necessary for achieving the objects of the licensed technology. Also the exemption lasts only as long as at least one of the licensed patents is still in force (recital 9).

It seems that this covers adequately the mixed contracts. The regulation does not limit the scope of application to agreements where the patent is dominant and the know-how is of mere ancillary nature. It does not indicate an approach of measuring the size and quality of each of the parts. It excludes, however, agreements where the patent is of no relevance for the licensed technology or the know-how does not fulfill its normal function of a better exploitation of the licensed patent.

The regulation does not exempt pure know-how agreements. Case law on the application of antitrust to know-how hardly exists in Community law. The Commission intends to provide guidelines for the appraisal of pure know-how agreements under the antitrust rules. The issue is a delicate one: there are conflicting schools of thoughts as to the extent that know-how agreements imposing restraints on the parties to the agreement may be exempted in analogy to patent licensing agreements. A more restrictive approach would be a poor service to industry and to the transfer of technology.

For the moment our immediate concern, however, is that the exemption for mixed contracts ends with the life of the patent. There may be situations where the ensuing legal uncertainty about the know-how part can be counterproductive to technology transfer: Procedures of market screening of products are so lengthy that the greater part of the patent life may be spent by the time the product will be marketable.

Also, the life of a patent may come to an end for a number of reasons whose existence will in no way diminish the value of the technology transferred between the parties to the agreement. In all these situations, Community law at the moment offers little guidance and each case will have to be carefully analyzed by legal counsel.

3. The block exemption also covers agreements that contain ancillary provisions on trademarks, more specifically the obligation of the licensee to use only the licensors trademark or get-up.

### Patents Pools

4. The block exemption covers only agreements to which *not more than two entities are party*. This means that it does not exempt patents pools. But if we have a licensing pattern including several partners, where obligations imposed on the licensees refer only to the

relationship licensor-licensee, you may very well conclude separate agreements with your licensees of virtually identical nature, and still enjoy the benefit of the block exemption.

If, however, we have a patent pool relationship in the sense that there are obligations binding the partners to a common purpose we will have to stand the test of a normal exemption procedure under Article 85, 3.

Also *reciprocal agreements* are not covered by the regulation—with one important exception. This is regulated in Article 5, § 2, of the regulation, which says that the exemption does apply to reciprocal licenses if the parties are not subject to any territorial restriction within the Common Market on the manufacture, use or putting on the market of the products.

It seems that the emphasis in this wording is on the absence of territorial restrictions within the Common Market. Based on this it will be necessary to distinguish between two cases. If the parties to a cross licensing agreement operate in the Common Market, the text clearly specifies they would have to abstain from agreeing or practicing any territorial restrictions in the manufacture, use or marketing. If, however, one of the parties operates in Japan and the other one in the Common Market it can very well be held, that the parties to the agreement stay in their respective territories of which one would be attributed to one of the partners only.

5. Article 2, 3, of the regulation says that an obligation on the licensee is lawful, which restricts the exploitation of the licensed invention to one or more *technical fields of application* covered by the licensed patent.

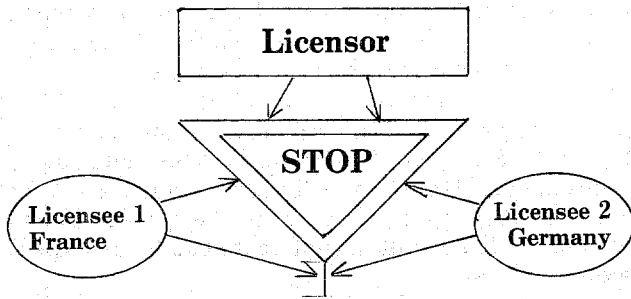
In the 1979 draft technical fields were defined in a narrow manner. It was said that in order to qualify for this exemption the product in the respective technical fields would have to be substantially different from each other. This narrow interpretation of the term "technical fields" no longer exists. Therefore Article 2, 3, should cover the distinct and separate use of a therapeutic substance for on the one hand human medical use and on the other hand veterinary use. Also it should cover motors for use in land vehicles and for use in boats.

But does it also cover two different sizes of motors or of television screens? In this respect the issue is certainly difficult to decide and attention has to be paid to the fact that in Article 3—the blacklist—number 7 says that the exemption does not apply if one of the parties is restricted as to the customers it may serve, in particular by being prohibited from supplying certain classes of users, employing certain forms of distribution, etc. Therefore, attention must be paid that field-of-use clauses are sufficiently justified reasons other than customer discrimination.

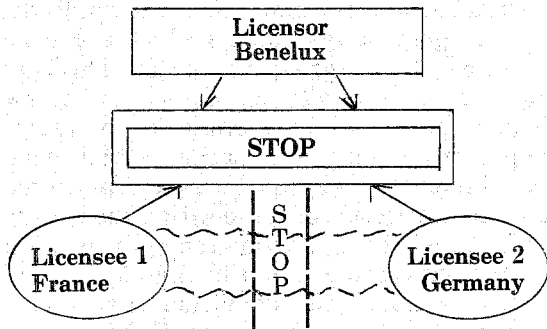
6. A delicate example of one of the prohibited clauses in Article 3 is the one on *quantity restrictions*—number 5. The text uses very broad language and eliminates any kind of quantity restriction imposed on the licensee. Recital 23 of the regulation makes a reference that such quantity restrictions are not exempted, especially since restrictions of this type may have the same effect as export bans. What is meant by this is of course export bans within the European Economic Community. It seems to me that a careful borderline can be drawn between such cases which by imposing a quantity restriction amount to an export ban or not.

**TERRITORIAL EXCLUSIVITY**

**1a. Territorial Limitation of Production or Use**



**1b. Territorial Limitation of Sales**



**Licensor/Licensee relationship**

*Absolute contractual barrier as to sales between territories allowed for the entire term of the agreement.*

**Licensee/Licensee relationship**

*Interdiction of active sales and sales promotion in the other territory for the entire term of the agreement allowed.*

*Interdiction of passive sales (unsolicited orders from the other territory) possible for a period of five years after first marketing.*

**Figure 1**

Figure 1 deals with the central issue of the block exemption, i.e. with territorial exclusivity in the Common Market. It describes a situation where the Japanese patent owner and licensor has patent protection in all of the Common Market countries. In our example we assume that he wishes to keep Belgium, the Netherlands, and Luxemborg-Benelux—for himself and that he will license other, nonrelated companies in France and in Germany, giving the exclusive rights of use and sales in these territories to a licensee 1 in France and licensee 2 in Germany.

Let us further assume that the last of the underlying patents will end in 1995 and that the product manufactured under license has been first marketed in the Common Market in 1985 either by the licensor or one of the licensees.

The Japanese company has its center of operation in Brussels. The patents may be the property of the Japanese parent company or of its Brussels subsidiary. The subsidiary company can be authorized by the patentee to become the licensor and to grant a license or a sublicense. This follows from Article 11, Number 1 of the regulation.

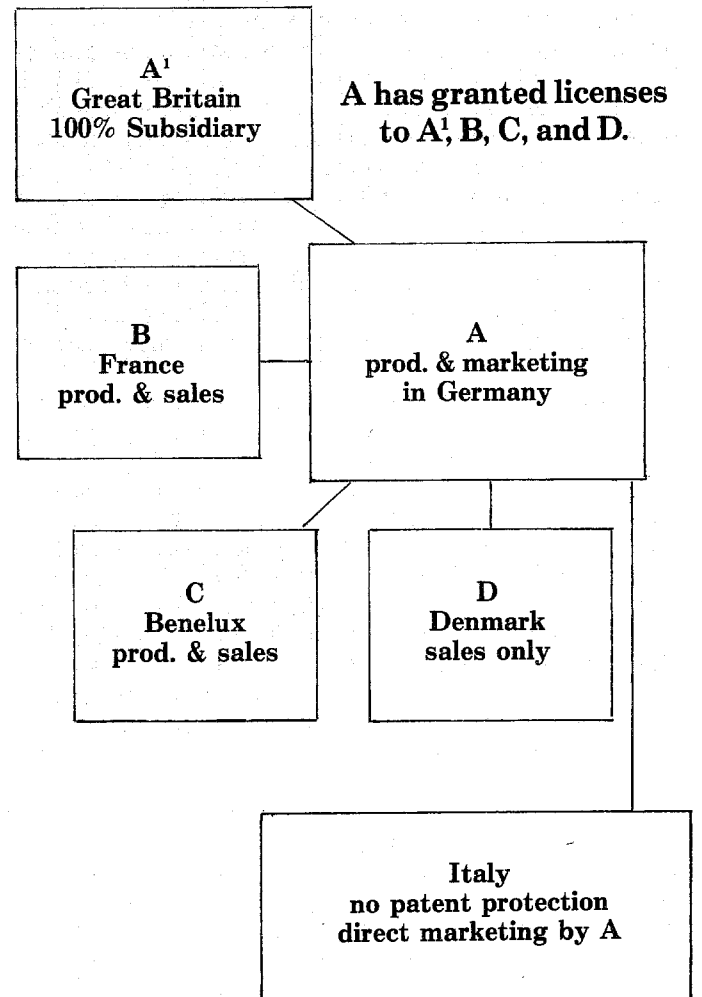
If the territorial restrictions concern only manufac-

ture and use, they may be imposed between licensor and his licensees and also between licensees for the entire term of the agreement.

If the territorial restrictions concern sales we have to differentiate:

As far as the relationship between the licensor and his licensees is concerned, the licensor can establish vis-à-vis each of his licensees a barrier of imports and exports for the entire period of the agreement, i.e. up to 1995. But this is not the case in the relationship between the two licensees where the stop barrier is not a total one: Licensee 1 and licensee 2 may be bound to abstain from active selling and sales promotion in the other territory (advertising, soliciting orders and having depots) until 1995, that is for the entire life of the agreement.

Also licensee 1 and licensee 2 may be bound not to respond to unsolicited orders from the other territory for a period of five years after the first marketing, i.e. until 1990. But this cannot be contracted or enforced thereafter. Dealers and customers in their respective territories may order from the licensee in the other territory and the licensees cannot refuse to fill these orders after 1990. If they refuse, they risk that the Commission withdraws the benefit of the exemption for the entire agreement. This is regulated in Article 9 of the regulation which says that the Commission may withdraw the benefit of the exemption if, for example the licensee refuses, without objectively valid reasons, to meet un-



**Figure 2**

solicited demand from users or resalers in the territory of other licensees.

### Case Study

Let us now take to a more complex case study.

Figure 2 shows you that A is a company established in Germany having its business place in Dusseldorf and a production site nearby. The company is owner of patents and licensor. It is 100% owned by a Japanese parent company.

A has patents in all the Common Market countries, except Italy. A has licensing partners in France, Benelux and Denmark (in France and Benelux for production and marketing, in Denmark for distribution only). All of his partners are independent. A has no corporate control over them. A has decided to service the patent free area Italy by himself. In Great Britain, however, A has a subsidiary of its own under 100% share control. The Great Britain company produces and markets in Great Britain.

Now what can be said on the basis of this scenario from the viewpoint of Community law?

1. Company A and A', the Great Britain company, are members of one corporate family. The antitrust rules of the EC do not apply to intercorporate situation if the parent company exercises effective business control over the subsidiary. If the two companies enter into contractual relations and agreements which are restrictive of competition it is of no relevance as long as these agreements are limited to the companies themselves. This means that A and the company in Great Britain can convene that manufacture, use and sale take place only in their respective territories. They can certainly maintain this limitation throughout the life of the agreement but even beyond 1995 since this covenant is independent of the patent situation. Of course all of these applies only to first sales in the respective territories. Once the products are marketed in these territories either by the patentee himself or with his consent they must travel anywhere in the Community without restriction.

2. The relationship between A and the licensees B and C were explored earlier in our example on exclusivity and territorial limitations.

3. An interesting question is whether the licensee in France can be held not to export into Great Britain. According to the letter, both the French licensee and the licensee in Great Britain are licensees of A in different territories. Therefore, one might assume that the situation can be no different from the one just explained. But the licensee in Great Britain is under complete corporate control of A, and for this reason it seems that the absolute barrier of import and export as it exists between A and A' must also be lawful between B and the British company.

4. The relationship between A and his licensee in Denmark D is characterized by the fact that D is only distributor. Article 1, paragraph 2, says that the exemption of restrictions shall apply only if the licensee manufactures the licensed products himself or has it manufactured by a connected undertaking order by a subcontractor. Since this is not the case the regulation on patent licensing is not applicable. The relationship is governed by the block exemption on exclusive distri-

butorship (regulation 1983/83). This means that D can be held by contract not to engage in active selling and sales promotion outside of Denmark but that he cannot refuse unsolicited orders from other Common Market countries even if they come from Germany, the territory reserved to A himself. This is the legal situation from the first day on. There is no possibility to exclude the passive marketing for the first five years.

5. This situation is characterized by the fact that there is no patent in Italy and that A has decided to do the marketing himself. For this reason, although one could consider Italy to be a "licensor's territory," there is no possibility to benefit from the patent licensing regulation. The result is that there can be no export interdiction at all.

I should like to refer only to two more points:

1. The first one is a procedural point. Article 4 of the regulation introduces a new, accelerated procedure for a certain category of agreements which are not covered automatically by the group exemption. This is a new instrument in Community cartel law and it has been duplicated in the group exemption on research and development and on specialization. Article 4 says that exemption can also be applied to agreements containing obligations restrictive of competition that are not mentioned in Article 1 or 2, provided they do not contain any one of the restrictions listed in Article 3. This means that, always under the condition that none of the clauses listed in Article 3 are part of the agreement, we have an accelerated procedure of screening for agreements which seem to be in a "gray area," having no major antitrust relevance. To make use of this procedure such agreements must be notified.

If the Commission does not oppose within a period of six months after the notification, the agreement has the full benefit of exemption. If the Commission opposes, the normal procedure of individual screening of Article 85, 3, will apply. But in all cases where the Commission after first scrutiny decides not to oppose, exemption will take place without the necessity of any further administrative steps.

2. The second remark is that: the regulation will certainly be the guideline for the drafting of new contracts. But with the regulation in force and the Christmas notice no longer in existence<sup>19</sup> care must also be given to the situation of old contracts. If they are not in conformity with the new law the partners to the contract are exposed to the danger of fines and even more important they have the risk of invalid and not enforceable agreements if these are contested by one of the partners. Legal security as to the civil validity can be obtained by amending the agreement. In such cases validity will prevail from the date the change has been made.

### THE BLOCK EXEMPTION ON R&D COOPERATION

The block exemption on R&D agreements, in force since March 1, 1985, offers a new perspective by clarifying certain issues of antitrust relevance in joint R&D agreements as such, and by exempting for most agreements automatically the ensuing phase of joint industrial exploitation by manufacture or use for a time period of at least five years. In particular, this inclusion of the exploitation phase is of interest. It is likely to

become an impetus for R&D projects that might not be started at all unless there was legal security for joint exploitation as well.

The background of Commission antitrust in this area prior to the enactment of the regulation is this:

The Commission notice of 1968 concerning agreements, decisions or concerted practices in the field of cooperation between enterprises<sup>14</sup> deals inter alia with agreements on joint R&D up to but not including the stage of industrial application. The notice says that such agreements will generally not fall under the interdiction of Article 85, 1, i.e. that they can normally be considered as lawful. The notice also indicates the limits of the antitrust free area: in particular the parties must not undergo more far reaching restrictions in their research as necessary for the joint activity and there must be appropriate access to the results of research for each participant.

It is significant that the notice — unlike the Christmas message in patent licensing — has not been repealed by the regulation. It still applies and remains an important tool of interpretation for legal counsel.

Apart from the notice we have a body of case law — almost a dozen commission decisions — but no jurisprudence of the ECJ. These cases were all based on notifications for clearance under the criteria spelled out in Article 85, III. The cases often reach into the exploitation phase including elements of specialization and distribution. The Commission has granted individual exemptions in all of these cases but in several cases only after considerable modifications of the agreements by the parties following recommendations of the Commission. Under the rule and philosophy of the new regulation it seems that at least parts of these decisions would be today superfluous because of the exempting power of the regulation.

But these decisions remain a useful guideline for appraising cases that are not exempted by the regulation and this means in particular cases where the joint exploitation is intended to include joint selling and distribution.

#### *Joint Exploitation Also Exempted*

On this background the group exemption basically facilitates joint R&D by including in the exemption joint exploitation and by specifically exempting a number of contract obligations between the R&D partners which are restrictive of competition. Joint exploitation means joint manufacture or the licensing of patents and/or know-how in order to have manufactured. It does not include joint selling and distribution. Whenever the parties to an agreement believe that their joint exploitation must include selling and distribution they can only resort to notification and application for clearance under Article 85, III.

#### *Market Share Criterion*

The group exemption applies to companies of all sizes, even to the biggest companies. In the initial draft of the regulation published last year by the commission<sup>15</sup> the exemption would apply only to smaller units, measured

by their combined turnover, and exclude companies, which were technical world leaders in the field. The only quantitative limit which remained in the regulation is a market share criterion established in Article 3, which can be summarized this way:

1. If the parties to the agreement are not competing manufacturers, i.e. not competing with each other as to the products to be replaced or improved by the R&D program, their market share of these products at the time the agreement is entered into is of no significance. The exemption will be valid for the entire R&D phase plus for five years of the exploitation phase.

2. If the parties to the agreement are competitors as to the products to be replaced or improved, the exemption of five years for the joint exploitation phase is available only in cases where the market share at the time the agreement was entered into, does not exceed 20% in the Common Market or a substantial part thereof. The higher market share, will, however, not hinder the exemption of R&D programs up to the exploitation stage.

3. No matter whether the partners are competitors or not, the exemption continues beyond the five years as long as the joint production of the contract goods, i.e. the goods which are the result of the R&D program, does not exceed a market share of 20%.

#### *Exempted Restrictive Obligations*

Article 4 specifically exempts obligations between the R&D partners which are restrictive of competition, e.g. the obligation not to engage in research independently in the field the program relates to or in closely connected fields, or to restrict manufacture of goods to reserved territories, or to certain fields of technical application, or the obligation not to pursue an active sales policy within the Common Market for territories reserved for the other party for a period of five years.

Article 6 of the regulation contains the blacklist of clauses, which must be avoided to secure the benefit of the group exemption. They resemble those relating to patent licenses, e.g. no challenge, price determination, quantity restrictions, and customer restrictions.

#### *All Forms of Joint Exploitation Allowed*

As far as the joint exploitation by manufacture and use is concerned the parties may choose any form, including the formation of a joint venture, and the allocation of specialization. They may also make use of the advantage offered by other group exemptions in as far as the group exemption on R&D does not contain specific rules.

Joint exploitation is limited to manufacture and use; joint selling and distribution is not covered by the regulation.

#### *Important Practical Impact*

I am inclined to believe that the group exemption of R&D will have an important practical impact. It respects the necessity of having different obligations imposed among research partners depending on the specific data of the case and project. It provides a long list of exemptions and it gives clearance for joint exploitation for at least five years, if not longer. Although it does not extend to joint selling and distribution it may well meet most of the concerns of the practitioner to arrive at successful and profitable forms of R&D cooperation.

13. The notice has been officially withdrawn: OJ C 220/4, August 22, 1984.

14. OJ C 75 July, 29, 68 corr. OJ C 84 August 28, 1968.

15. OJ C 16 January 21, 1984.