

## THE COUNCIL,

Having regard to Article 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Resolution of the Council of 5th December 1961, concerning Action in the Field of Restrictive Business Practices and the Establishment of a Committee of Experts [Doc. No. OECD/C(61)47(Final)];

Having regard to the Recommendation of the Council of 5th October 1967, concerning Co-operation between Member Countries on Restrictive Business Practices Affecting International Trade [Doc. No. C(67)53(Final)];

Having regard to the Recommendation of the Council of 14th and 15th December 1971, concerning Action against Inflation in the Field of Competition Policy and, in particular, Section I, paragraph 1, subparagraph (i) (c) thereof [Doc. No. C(71)205(Final)];

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\* This Recommendation does not apply to Switzerland.

Having regard to the Recommendation of the Council of 3rd July 1973, concerning a Consultation and Conciliation Procedure on Restrictive Business Practices Affecting International Trade [Doc. No. C(73)99(Final)];

Having regard to the Report by the Committee of Experts on Restrictive Business Practices of 11th September 1972, on Restrictive Business Practices relating to Patents and Licences and, in particular, paragraph 49 thereof [Doc. No. RBP(71)3(2nd Revision)];

Recognising that it is desirable to scrutinize and remedy the harmful effects of abusive restrictive business practices relating to the use of patents and licences since economic development is dependent on the dissemination of scientific and technological innovation through patents and that by granting licences subject to unjustifiable restrictions firms can use the rights attaching to the patents to exercise excessive economic power;

I. RECOMMENDS to the Governments of Member countries:

1. That they should be particularly alert to harmful effects on national and international trade which may result from abusive practices in which patentees and their licensees may engage and, in particular, from the following:

- (a) when negotiating or operating patent pools or cross-licensing agreements, unjustifiably imposing territorial, quantity or price restrictions or attempting to dominate an industry, market or new industrial process;
- (b) by means of territorial restrictions in patent licences affecting international trade, unjustifiably prohibiting exports of patented products or unjustifiably restricting trade in or exports of the patented products to specified areas;
- (c) by means of clauses concerning tied sales, obliging the licensee to obtain goods from the licensor or his designated sources, when the tied sales are not justified, for instance, by technical reasons concerning the quality of the goods manufactured under the licence;
- (d) by means of grant-back clauses, unjustifiably requiring the licensee to assign or grant back to the licensor exclusively all improvements discovered in working the patents when the effect of this practice is to reinforce the dominant position of the licensor or to stifle the licensee's incentive to invent;
- (e) by means of clauses unjustifiably limiting competition, preventing one or more parties to the patent licensing contract from competing with other parties to the contract, or with

third persons, in other industrial fields not covered by the licensed patent;

- (f) arbitrarily grouping and licensing all patents in a particular field and refusing to grant licences for only some of the patents or using other forms of package licensing when these practices are coercive in character and when the selection of the patents is not negotiated for the convenience of the parties;
- (g) contrary to national law, fixing the prices of patented products by means of patent licences.

2. That they should give consideration to the desirability and feasibility of compulsory licensing of patents and, where possible, related know-how as a remedy to restore competition where such patents have been misused contrary to their restrictive business practices laws, when such a remedy is not already provided for in their legislation.

3. That they should give consideration to the desirability and feasibility of making available to the competent authorities procedures for the registration of international licensing agreements, when such procedures are not already provided for in their legislation.

II. INSTRUCTS the Committee of Experts on Restrictive Business Practices to keep under review the application of the present Recommendation and to report to the Council when appropriate.

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In adopting this Recommendation, the Council :

1. NOTED the Report by the Committee of Experts on Restrictive Business Practices of 27th December 1973 concerning Action Against Restrictive Business Practices relating to the Use of Patents and Licences [Doc. No. C(73)238];

2. AGREED to derestrict the Recommendation;

3. NOTED that the Swiss Government was not in a position for the moment to apply the Recommendation.