

ANNEX 7

TETRA PAK
The Tetra Pak Group Management
Christer Hedelin
Company Secretary

EEC Commission
Directorate General for
Competition IV/B
150, Avenue de Cortenbergh
B-1040 Brussels

1 February 1991

Case No IV 31.043 — Tetra Pak II

Letter of Undertaking

With reference to previous correspondence and meetings, Tetra Pak wishes to summarize hereunder its final and substantial commitments related to its future commercial practices. We also enclose herewith copies of the machine rental and machine sales agreements, as well as the packaging material order form, which Tetra Pak will implement in the Community.

Tetra Pak has agreed to drop any element of exclusivity in its contractual relations with its customers, except as provided below.

Any Tetra Pak customer will be offered the choice between renting or buying a filling machine using any of the enclosed agreements and will then be free to buy his requirements of packaging material from whatever supplier he may choose. Should he wish to buy such packaging material from Tetra Pak the enclosed order form will be used.

Any exclusive purchase obligation of Tetra Pak packaging material for users of Tetra Pak filling machines remains only in the following limited cases which the Commission has accepted to be necessary for the protection of public health and the preservation of workers' safety:

- (a) for customers having no previous experience of any Tetra Pak aseptic packaging system, who choose to start using such a system, the initial exclusive purchasing obligation of Tetra Pak packaging material will be for a period of two years and until 20 000 000 packages have been produced.
- (b) for customers having no previous experience of any Tetra Pak packaging system, who choose to start using a Tetra Pak non-aseptic packaging system, the initial exclusive purchasing obligation of Tetra Pak packaging material will be for a period of six months and until 5 000 000 packages have been produced;

In all other cases (including customers switching from aseptic to non-aseptic or between aseptic systems), there will be no exclusive obligations.

Tetra Pak reserves the right to modify the above obligations, in consultation with the Commission, in case Tetra Pak would introduce on the market a wholly new packaging concept or a new family of machines.

Tetra Pak wishes to make it clear that it continues to believe that the exclusive purchase obligation previously contained in its agreements was justified for the reasons given in its Answer to the Statement of Objections and during the hearing and that its suppression, even subject to the exceptions described above, could have very severe potential adverse consequences for public health and workers' safety. Tetra Pak therefore reserves the right to point out that the exclusive purchase obligation was dropped as a result of the Commission's insistence.

Furthermore, Tetra Pak would like to state the following:

- (a) the duration of the contractual relations between the lessee and the lessor will be left open for the Contracting Parties to negotiate at the signing of the contract. It is however not Tetra Pak's intention to have the initial term of the agreement to exceed three years, unless the customer requests a longer duration.

Any subsequent renewal of the agreement would normally be on a yearly basis, with the possibility for either Party to terminate the rental agreement by giving six months notice before the end of each yearly period.

Tetra Pak is willing to communicate *a posteriori* to the Commission on a yearly basis the identity of all customers with whom a lease is made for an initial period of more than three years;

- (b) Tetra Pak will provide all users of a Tetra Pak packaging machine at the time of delivery with the minimum physical specifications required of the packaging material used in that type of packaging machine for the products such user intends to pack and with a list of the packaging machine spare parts, related to the package integrity and the workers' safety, which have to be approved by Tetra Pak;
- (c) Tetra Pak will open its service and maintenance training courses to any qualified person, whether employed or independent, as long as this person bears all the costs related to his/her participation to such courses;
- (d) in case a customer wishes to opt for a rental agreement, Tetra Pak will set the amount of the 'initial payment' at a level which, together with the first 12 monthly rentals, will give Tetra Pak an amount equivalent to, at most, one third of the sales price for the same packaging machine;
- (e) Tetra Pak is willing to supply its packaging systems to any interested customer, whether end-user or not, as long as such customer is creditworthy, reputable, has the required technical and scientific knowledge and qualifications to deal with such sensitive items as Tetra Pak packaging systems and is fully aware of the risk involved if such packaging systems are not correctly handled.

Tetra Pak is willing to communicate *a posteriori* to the Commission on a yearly basis the identity of all interested customers with whom Tetra Pak has refused to contract for one of the reasons mentioned hereabove;

- (f) Tetra Pak will not use its position in the aseptic sector to gain an unfair advantage in the non-aseptic sector.

In proposing the above, we believe that we have now complied with the Commission's objections and we trust that the Commission will endeavour to establish similar ground rules with respect to the practices of Tetra Pak's competitors, in so far as these are contrary to the Community's competition rules.

We respectfully request that the fact that Tetra Pak has willingly agreed to put an end to the infringements alleged by the Commission will be given due consideration by the Commission and will be recorded, together with the substance of this letter, in any possible decision that might be taken against Tetra Pak.

Yours sincerely,

Christer Hedelin

Annexes
