

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 2 January 1973

relating to proceedings under Articles 85 and 86 of the EEC Treaty  
(IV/26 918 — European sugar industry)

(73/109/EEC)

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 85 and 86 thereof;

Having regard to Council Regulation No 17 of 6 February 1962 <sup>(1)</sup> and in particular Articles 3 and 15 thereof;

Having regard to Council Regulation No 26 of 4 April 1962 <sup>(2)</sup> and in particular Articles 1 and 2 thereof;

Having regard to Council Regulation No 1009/67/EEC <sup>(3)</sup> of 18 December 1967 as well as its implementing regulations;

Having regard to the Decision taken by the Commission on 31 May 1972 to introduce official procedure to implement Article 3 of Regulation No 17;

After hearing the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and the provisions of Regulation No 99/63/EEC <sup>(4)</sup>;

Having regard to the Opinion of the Consultative Committee on agreements and dominant positions in accordance with Article 10 of Regulation No 17, obtained on 5 December 1972;

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(2)</sup> OJ No 30, 20. 4. 1962, p. 993/62.

<sup>(3)</sup> OJ No 308, 18. 12. 1967, p. 1/67.

<sup>(4)</sup> OJ No 127, 20. 8. 1963, p. 2286/63.

I

A

## WHEREAS:

1. This Decision concerns the following undertakings, which are the principal producers and sellers of sugar in the Community:

- Raffinerie Tirlemontoise SA, Brussels,
- Centrale Suiker Maatschappij NV, Amsterdam,
- Coöperatieve Vereniging Suiker UA, Rotterdam,
- Westdeutsche Zuckervertriebsgesellschaft mbH & Co KG, Cologne, and its member undertaking Pfeifer & Langen, Cologne,
- Südzucker Verkaufs-GmbH, Oberursel, and its member undertakings Süddeutsche Zucker AG, Mannheim, and Zuckerfabrik Franken, Ochsenfurt,
- Sucre-Union SA, Paris,
- Société des Raffineries and Sucrieries Say, Paris,
- Société F. Béghin SA, Thumeries,
- Générale Sucrière SA, Paris,
- Société Nouvelle de Raffinerie Lebaudy-Sommier SA, Neuilly s/Seine, and the Groupement d'Interêt Economique Lebaudy-SUC, Paris,
- Sucres & Denrées SA, Paris,
- Eridania Zuccherifici Nazionali SpA, Genoa,

- Società Generale di Zuccherifici (Société Générale de Sucreries), Brussels,
- Cavarzere-Produzioni Industriali, Padua,
- Società Italiana per l'Industria degli Zuccheri SpA, Rome,
- Romana Zucchero SpA, Genoa,
- Zuccherificio del Volano SpA, Genoa,
- Agricola Industriale Emiliana (AIE) SpA, Bologna,
- Zuccherificio di Sermide SpA, Genoa,
- SADAM SpA, Bologna.

2. The sugars to which this Decision relates are raw sugar and white sugar falling within heading No 17.01 of the Customs Nomenclature of the EEC; raw sugar is produced at an intermediate stage of production and cannot be used as such for human consumption, whilst white sugar, on the other hand, is a finished product; the latter is subdivided into four grades (numbered from I to IV) according to the degree to which it has been refined; in fact Grade IV has never been produced in the EEC, Grade III has only been produced in France, and at the present time production in the countries of the EEC is almost exclusively of Grades I and II with an increasingly noticeable tendency to produce mainly Grade I sugar.

3. Total production of white sugar in the Community rose from 6.8 million metric tons in the 1968/69 marketing year to approximately 8.1 million metric tons in 1971/72, whilst consumption, during the same period, increased from 5.9 to 6.5 million metric tons<sup>(1)</sup>; during these four marketing years, therefore, there has consistently been a surplus of production over consumption and this surplus has varied between 11 and 24 % of Community sugar consumption.

4. France is the main sugar-producing Member State of the Community; French sugar production (including that of the Overseas Departments) rose from 2 620 000 metric tons in 1968/69 to 3 230 000 metric tons in 1971/72; approximately 75 % of this sugar is produced by the following undertakings: Sucre-Union (26 %), Béghin (14 %), Say (14 %), Générale Sucrière (10 %), Lebaudy-Sommier and Lebaudy-SUC (9 %); whilst the rest is produced by some ten or so small undertakings; the surplus of production over French consumption reached 885 000 metric tons in 1968/69 and 1 440 000 metric tons in 1971/72.

<sup>(1)</sup> Sugar marketing years commence on 1 July in the first year quoted and end on 30 June in the next.

The Société Anonyme Sucre-Union (hereinafter called 'Sucre-Union') was founded in 1966 by 23 French sugar refineries which entrusted it with the distribution of their production; amongst these 23 undertakings, nine are cooperatives which hold 50 % of the capital of Sucre-Union.

The Société des Raffineries et Sucreries Say (hereinafter called 'Say') is a member of an industrial combine, GISEC, which, although it still exists, apparently no longer operates as a single entity.

The Société F. Béghin SA (hereinafter called 'Béghin') is the largest producer in terms of turnover, but sugar production accounts only for about 46 % of it (its main activity being the manufacture of paper); one of the members of GISEC, la Sucrerie Centrale de Cambrai, was taken over by Béghin; Say and Béghin decided to merge as from 1 January 1973.

The Société Nouvelle de Raffinerie Lebaudy-Sommier SA is controlled by the holding company Lebaudy-Frères in which the majority shareholder has, since January 1972, been the Générale Sucrière; since 1 January 1969 Lebaudy-Sommier has distributed its production through the industrial combine Lebaudy SUC (hereinafter called 'Lebaudy SUC': this combine also distributes for other producers, among them the Union Sucrière de l'Aisne which holds 11 % of the capital of Lebaudy-Sommier.

Among a number of undertakings engaged in the wholesale sugar trade in France, two have a predominant position: Bauche and Sucres & Denrées; Sucres & Denrées operates for the most part as an independent dealer.

5. In Belgium also there is a large surplus of production over consumption; in fact, whilst average consumption in Belgium, from 1968/69 to 1971/72 was approximately 350 000 metric tons, production rose from 530 000 metric tons in 1968/69 to 770 000 metric tons in 1971/72; therefore the surplus of Belgian production, which was approximately 200 000 metric tons in 1968/69, reached 400 000 metric tons during the 1971/72 marketing year.

The largest sugar undertaking in Belgium is the Raffinerie Tirlemontoise (hereinafter called 'RT') which alone accounts for more than 50 % of Belgian sugar production, using its own factories and also renting plant from other sugar refineries (Grand-Pont, Quévy and Péronnes); by means of majority holdings (Warneton, Oreye and Moerbeke-Waas) and distributor agreements (Liers, Embresin, Naveau) this company controls or is in a

position to control the production of several other Belgian sugar refineries; by these various means RT exercises, or is in a position to exercise, a decisive influence over approximately 85 % of Belgian sugar production; since white sugar is only imported into Belgium in minimal quantities it can be said that RT's share of the Belgian market thus amounts to some 85 %.

Two Belgian undertakings, the Société pour l'Exportation de Sucre SA, in Antwerp (hereinafter called 'Export'), and SA Hottlet & Cie, in Edegem (hereinafter called 'Hottlet'), market abroad sugar produced in Belgium; RT sometimes exports its sugar directly on foreign markets, mostly when deliveries from producer to producer are involved.

6. There is no sugar producer in Luxembourg, where requirements are met by Belgian producers, particularly RT.

7. The Member State with the biggest sugar shortage is Italy; Italian production of sugar has varied, from year to year, from 1.1 to 1.3 million metric tons whilst consumption has varied from 1.4 million metric tons in 1968/69 to 1.55 million metric tons in 1971/72; the Italian sugar deficit is therefore between 12 % and 25 % of consumption.

The structure of the Italian sugar industry, which over the years has undergone numerous changes with a growing tendency towards concentration, can at present be described as follows:

the largest sugar group, which controls more than a third of the Italian market, is that which has grown up around the Eridania company, which also has important commercial and financial activities; this group after taking over the 'Saccarifera sarda' and the 'Saccarifera lombarda', recently also took over the 'Società Fondiaria Agricola Industriale' (SFAI) and acquired a majority shareholding in 'SPICA-Lauis'; in addition it has a 15 % holding in 'Zuccherificio d'Avezzano';

the second largest sugar group is at present the 'Gruppo Padano', of which the activities are coordinated by the 'Société Générale de Sucreries' in Brussels, and which recently took over the 'Zuccherificio e Raffineria di Pontelongo'. Having

recently gained control of 'Società Italiana per l'Industria degli Zuccheri' (the second largest Italian producer after Eridania), this group controls approximately one third of the Italian market and is practically of the same size as Eridania. The other company in the group is 'Cavarzere-Produzioni Industriali' which in 1967 took over 'Società Veneta per l'Industria degli Zuccheri';

the latest case of companies combining centred round the AIE (Agricola Industriale Emiliana). This company, which already controlled SFIR (Società Fondiaria Industriale Romagnola) and 'Zuccherificio e Raffineria di Mizzana', acquired a holding in 'Romana Zuccheri' which in turn is associated with 'Zuccherificio del Volano'. One may therefore consider that a fairly powerful new group has now been added to the two existing groups;

the rest of Italian production is divided between a dozen small undertakings which more often than not market their sugar through companies in the three large groups mentioned above.

There was no independent distribution network for sugar in Italy, as the product was distributed by the large manufacturers themselves. Only recently have a few undertakings for the first time concerned themselves with the distribution of sugar in Italy.

8. In the Netherlands there is a certain shortage of sugar in relation to consumption. During the last few marketing years this shortage has amounted to between 50 000 and 100 000 metric tons approximately.

The largest Dutch sugar producer is the 'Coöperatieve Vereniging Suiker Unie UA', Rotterdam, (hereinafter called 'SU') which came into existence in 1966 following a merger of four cooperatives.

The second largest sugar producer in the Netherlands is the 'Centrale Suiker Maatschappij NV', Amsterdam (hereinafter called 'CSM').

In 1953 the Dutch producers concluded a quota agreement for the supply of beet, under which the CSM and the cooperatives now combined in the SU were allocated 37.48 and 62.52 % of the Dutch output respectively. Moreover the two Dutch producers cooperate closely in many of their activities (common purchasing of beet, collaboration in the use of by-products, joint technical research, cooperation in

market research, advertising and sales, harmonization of ex factory prices and conditions of sale) <sup>(1)</sup>.

Taking into account imports of sugar into the Netherlands, the share of the Dutch market held by SU and CSM amounts to at least 85 %.

Three importers, NV Internatio Produkten, Leonard Jacobson en Zonen and Handelsmaatschappij Dudok de Wit en Co (hereinafter respectively called 'Internatio', 'Jacobson' and 'Dudok de Wit') import sugar on to the Netherlands market, mostly for the sugar processing industry.

9. In Germany, supply and demand for sugar are, on the whole, in balance, although there are some local exceptions. Since 1 July 1968 the sugar manufacturers have been grouped together in sales organizations <sup>(2)</sup>, each with a clearly defined territory.

The sugar manufacturers of Schleswig-Holstein and a part of Lower Saxony are grouped together in the Norddeutschen Zucker GmbH & Co KG, Uelzen ('NZV'). Their production amounts to approximately 600 000 metric tons (about 27 % of German production) and exceeds the needs of their sales territory; the surplus white sugar is for the most part exported to third countries.

The sugar manufacturers of North Rhine-Westphalia and a few producers from Lower Saxony (11 undertakings) are grouped together in the Westdeutschen Zuckervertriebsgesellschaft GmbH & Co KG, Cologne ('WZV'). Their production amounts to approximately 750 000 metric tons (about 35 % of German production). This is insufficient for the needs of the sales territory of WZV, which includes North-Rhine Westphalia, Rhineland-Palatinate and parts of Lower Saxony and Hesse (the latter is described in the agreements with wholesalers—local commission agents — as a 'special sphere of interest' for WZV). The shortage in this territory is met mainly by deliveries from the north, particularly of raw sugar to be refined by producers in the western part of Germany, and partly by imports from the areas with large surpluses in Belgium and France.

The largest member of WZV is Pfeifer & Langen which produces about half the output in this

territory. Pfeifer & Langen has a 21 % holding in WZV.

The distribution of branded sugar in household packaging is carried out through the Nord-westdeutsche Markenzuckertriebs-GmbH & Co KG, Bielefeld/Cologne ('NWZV') in which members of both WZV and NZV have holdings. The major part of the production is marketed through WZV and NWZV. In addition, members sell their products individually partly through the same wholesalers as the sales organization and partly direct to the sugar processing industry. Exports take place only on a small scale.

In the southern part of Germany, the producers are grouped together in the Südzucker Verkaufsgesellschaft mbH & Co KG, Oberursel (hereinafter called 'SZV'). Their production amounts to approximately 800 000 metric tons (approximately 38 % of German production). By far the largest undertaking among the five members of SZV is Süddeutsche Zucker AG, Mannheim (hereinafter called 'SZ AG') which, even by comparison with the producers in the other Member States, is one of the main producers in the Community. It accounts for 70 % of the production of all the members of SZV which represents 29 % of German production and 8 % of Community production. It has a 25 % holding in Zuckerfabrik Franken, the second largest sugar producer in southern Germany, the remaining 75 % holding being that of Süddeutschen Zuckerrüben-Verwertungsgesellschaft. SZ AG has a 51.5 % holding in SZV; the latter's articles require not less than 80 % of the votes for decisions.

The production of SZV members is for the most part marketed through SZV which enjoys complete autonomy as to its sales policy. However, SZV members do also sell individually the sugar produced by them, whether for denaturing, for export or for human consumption in Germany; in the latter case they use the same middlemen as SZV.

In its sales territory, which borders to the south those of NZV and WZV, SZV maintains a network of regional representatives who sell the sugar on behalf of SZV and for its account. SZV does not itself import or export.

Accurate figures cannot be given for sugar consumption in this territory because the statistics are compiled for the various Länder, and the sales territory of SZV — like those of WZV and NZV — does not coincide with the boundaries of the Länder.

<sup>(1)</sup> The assessment of these cooperation agreements in relation to Article 85 will be the subject of separate proceedings.

<sup>(2)</sup> The assessment of these agreements setting up sales organizations in relation to Article 85 will be the subject of separate proceedings.

It can however be estimated at approximately 800 000 metric tons. One part of the production (varying between 10 000 and 20 000 metric tons) is exported by SZ AG to other Member States of the EEC, particularly to Italy, and another part to third countries.

Exceptional situations exist in Berlin and in the Saarland. The sugar supplies for Berlin are imported from the DDR. The Saarland, which is excluded from the sales territory of both the WZV and SZV, is for the most part supplied with sugar from French sources.

10. Financial ties exist between quite a number of European sugar producers. RT is connected through two holding companies, European Sugar and European Sugar France, with Tate and Lyle, London, which has a substantial share of the British market. European Sugar France, in which RT has a 56.7 % holding, controls as to 50.9 % another holding company, the Compagnie Européenne de l'Industrie Sucrière, in which Béghin (33.4 %), Eridania (15.1 %) and SZ AG (0.5 %), are also represented. The Compagnie Européenne de l'Industrie Sucrière was formed with the object of acquiring control of the French undertaking Say in which it at present holds 50.13 % of the shares. After the merger of Say and Béghin, which is planned to take place in January 1973, this situation may possibly change and RT, Eridania, SZ AG and Tate & Lyle then together hold only 10 % of the shares in Say. RT, for its part, has a holding in Raffinerie d'Erstein which is a large sugar refiner in the east of France.

## B

11. Until 30 June 1968 the production and distribution of sugar were governed in the various Member States of the EEC by national market organizations. Since 1 July 1968 the production and distribution of sugar in the Community have been governed by Council Regulation No 1009/67/EEC and its implementing Regulations.

The purpose of this Regulation is to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet and sugar cane and to avoid both overproduction of sugar and shortages thereof. The basic machinery set up to achieve these objectives consists essentially of the fixing of intervention prices and production quotas. For each

sugar marketing year an intervention price is fixed for white sugar produced in the Community, and the Community intervention agencies are obliged to buy in at this price all quantities of sugar offered to them. However, to avoid the danger of overproduction, this obligation to purchase is only to apply within the limits of certain quotas. For this purpose a basic quota and a maximum quota have been fixed for each sugar undertaking.

The maximum quota is 135 % of the basic quota in Germany, France and Italy, and 116 % of the basic quota in Belgium and the Netherlands, in view of the special system which obtains in those two countries. The producers are therefore assured of being able to dispose of their sugar at the intervention price, up to the amount of their maximum quotas. Where their production lies between the basic quota and the maximum quota, producers must pay a production levy on production in excess of their basic quota. If, on the other hand, their production exceeds the maximum quota, they have no guarantee of being able to dispose of the excess and this must therefore be exported on the world market without the benefit of export refunds.

The Community market is protected against the world market, where the usual price of sugar is lower than the EEC price, by the fixing of a threshold price which is approximately 16 % higher than the intervention price.

Community regulations have made various arrangements to assist sugar producers in disposing of their excess production, the main measure being the payment of refunds for exports on the world market and deliveries to the chemical industry. Premiums may also be paid for the denaturing of sugar for animal feedingsuffs.

With regard to storage, producers must pay a levy for each quantity produced within their maximum quota; storage costs are then reimbursed at a flat rate in proportion to the duration of the storage.

There is a special situation on the Italian market which is the result not only of the Community regulations but also of special measures taken by the national authorities. In Italy a regional intervention price is fixed, which is approximately 5 % higher than the intervention price ruling in the other Member States of the Community. Since the

Community regulations came into force a levy of lire 23 per kilogramme, known as the 'sovrapprezzo', has been applied to the price of sugar sold in Italy. This levy applies to Italian-produced sugar as well as to imported sugar. If this 'sovrapprezzo' were applied in its entirety to sugar imported into Italy, the price of such sugar would be higher than the maximum selling price fixed by the Italian authorities. The latter have therefore, through the 'Cassa Conguaglio Zuccheri', organized a system of tendering for import quotas on which only part of the levy is payable. Tenders may be submitted by any undertaking, whether Italian or not, which produces, sells or processes sugar. The tenders must be in respect of a minimum amount of 1 000 metric tons. In the latest invitations to tender, provision was made for a quantity equal to up to 25 % of the total quantities awarded to be imported by undertakings which submitted tenders but to which no award was made. In such cases the undertakings concerned benefit from a reduction of the 'sovrapprezzo' to the average of the reductions granted in the case of the tenders which were successful. The tendering system applies only to imports of white sugar; for imports of raw sugar there is a fixed reduction of approximately one half of the 'sovrapprezzo', without recourse being had to the tendering system.

A maximum consumer price has been fixed by the national authorities in Italy, based on the regional intervention price for Italy and the other price elements to be taken into account, such as profit margins.

The Community regulations do not determine the actual manner of price formation on the markets of the various Member States. The possibility of selling to the intervention agencies, at the intervention price, quantities of sugar within the maximum quotas merely prevents selling prices within the Community falling during a considerable period and to an appreciable extent below the intervention price. In fact the unexpected increases in production and surpluses have led to selling prices in general being below the target price. For the majority of countries and marketing years this price was close to the intervention price. In Germany and the Netherlands, however, prices were higher and occasionally came close to the target price.

No comparison of prices in the various Member States can be more than approximate, since it is difficult to determine how different undertakings calculate costs for transport (either as actual cost or

on a lump-sum basis), packaging and marketing, or what periods they agree to for payment and delivery, or whether any differences in quality are reflected in prices.

The Community rules impose no restrictions on trade between Member States. However, soon after their entry into force, dealers and the processing industry began to make complaints about the situation in intra-Community trade. Several cases were notified to the Commission in which Belgian and French suppliers, despite large surpluses in their territories, had informed buyers in other Member States that they were unable to make deliveries, as the available supplies were reserved for the national market.

This apparently artificial limiting of supply, together with certain restrictive measures which had been observed on various national markets, led the Commission to make investigations on the markets of the Member States and to collect information. As a result of those enquiries these proceedings were initiated. In the course of these proceedings certain facts have come to the Commission's attention which are set out below.

## C

12. Since the Community rules came into force, the sugar producers in the Community have attempted to conclude a general agreement relating to the sale of sugar for human consumption on the various national markets, and the disposal of large surpluses, particularly on the markets of third countries.

It was with this aim in view that a meeting of the CEFS (Comité Européen des Fabricants de Sucre) took place in Munich on 30 May 1968, in which representatives of the main sugar producers and sales organizations in the common market took part, the purpose of which was the apportionment of the available quantities both on the market for surpluses and on the market for human consumption.

Following this meeting the French producers, who were faced with the problem of disposing of surpluses, attempted in July 1968 to solve their problem through the 'Association syndicale de Défense des Intérêts Economiques, Agricoles et Sucriers'. This association was given the task of ensuring uniform apportionment of production on

both markets and the pooling of the profits therefrom. This agreement which had been notified to the Commission pursuant to the provision of Regulation No 17 only came into operation during the 1968/1969 marketing year<sup>(1)</sup>. During this marketing year, all sales by French producers of sugar for export to third countries, for denaturing or for the chemical industry were made on condition that the sugar delivered was in fact to be used for the purpose envisaged. In some cases the sales contracts provided that sugar delivered for one of the purposes referred to would also be sold on other markets, on condition however that a specified price supplement was paid.

During the 1969/1970 marketing year, the sales policies of the sugar producers in the Community were formulated on more general lines. They were no longer concerned only with relations between certain Member States, but generally with cooperation between sugar producers, in particular as regards deliveries from producer to producer. According to notes of conversations about the trade policy followed by RT, the latter's representative summed up its sales policy as follows: 'pas de mouvements de marchandises de pays à pays, si ce n'est en concertation de producteur à producteur'<sup>(2)</sup>. RT itself insisted on several occasions on the necessity for a rationalization involving progressively closer cooperation with the large groups of sugar producers and agreements with certain other producers.

Moreover, in a telex sent to RT, Export characterized this sales policy with the words 'Chacun chez soi'<sup>(3)</sup> and declared in another telex, to Sucre-Union '... respecter ainsi la même règle du "chacun chez soi" que celle que les fabricants de sucre européens ont adoptée dans leur ensemble, du moins les plus grands groupes de fabricants raffineurs ...'<sup>(4)</sup>.

The principle of 'chacun chez soi' was applied differently according to the particular characteristics of each market concerned (structure of the market, location of factories, part played by dealers) and

according to the circumstances of each marketing year (supply position, size of harvest).

The sugar manufacturers all use identical means to apply the said principle. They consist of:

- selling sugar directly or indirectly to competitors established in another sales zone;
- selling sugar with the consent of competitors established in such other zones;
- selling in another zone at an increased price, based on competitors' prices;
- compelling dealers to follow this policy.

These means have been used separately or concurrently according to the economic situation in the various markets.

It is therefore necessary to examine in detail the conduct of the undertakings concerned, on the various markets and during the different marketing years.

13. As regards Italy, that country has always depended on imports from other countries to meet its sugar requirements. However, during the 1968/69 marketing year, Italian imports were relatively low, owing to the fact that, during the preceding year, national production had been exceptionally good, and large stocks were available, reducing the need for imports. Certain Italian sugar processing industries nevertheless considered that their supply situation was not wholly adequate and complained of the lack of attractive offers from suppliers in other Member States. The latter, and particularly the French and Belgian producers had large amounts of sugar available which they were disposing of partly for denaturing and partly for export to third countries.

It is already clear from certain documents relating to the 1968/69 marketing year the French and Belgian producers had shared out among themselves their sales in Italy, harmonizing their conditions of sale and assuring their Italian purchasers that any other sales on the Italian market would be at a higher price.

At the beginning of the 1969/70 marketing year, at a meeting held in Paris on 29 July 1969 on the occasion of the conclusion of new sales agreements, involving

<sup>(1)</sup> The assessment of this agreement in relation to Article 85 will be the subject of separate proceedings.

<sup>(2)</sup> Translation: 'No movement of goods from country to country, save by agreement between producer and producer.'

<sup>(3)</sup> Translation: 'each in his own home'.

<sup>(4)</sup> Translation: '... thus respect the same rule of "each in his own home" as that adopted by the European sugar producers as a whole, or at any rate the biggest groups of producer-refiners ...'.

large amounts of sugar, between the French and Belgian producers, on the one hand, and Eridania, acting on behalf of the Italian purchasers, on the other, a discussion took place as to what measures should be taken to prevent 'outsiders' offering sugar for sale on the Italian market at lower prices. The undertakings concerned met again in Genoa on 11 September 1969 for a general settlement of the problems arising in connection with exports of sugar to Italy. The basic principles governing deliveries of sugar to Italy were laid down at this meeting, as is apparent from business letters exchanged since then by undertakings exporting or importing sugar on the Italian market.

One particular fact to emerge from these letters is the existence of two groups with the task of centralizing deliveries of sugar to Italy: the group of French and Belgian producers with, for the 1969/70 marketing year, the German producers also (hereinafter called 'the suppliers' group'), and the group of Italian purchasers (hereinafter called 'the importers' group'). The suppliers' group consisted essentially of the French undertakings Béghin, Say, Générale Sucrière, Lebaudy-SUC, and sometimes Sucre-Union as well, the Belgian undertaking RT, the German undertaking SZ AG (for the 1969/70 marketing year only) and the French company Sucres & Denrées, which is mainly engaged in the wholesale trade in sugar and was given the task of centralizing the offers and organizing the deliveries of the whole group, except those of SZ AG. The importers' group consisted initially of the Italian sugar producers which had taken part in the meeting in Genoa on 11 September 1969, that is to say Eridania, which was the coordinator of the group, Società Italiana per l'Industria degli Zuccheri, Romana Zuccheri e Zuccherificio del Volano, Zuccherificio e Raffineria di Pontelongo e Cavarzere-Produzioni Industriali, Agricola Industriale Emiliana (AIE), Zuccherificio di Sermide, SADAM, Società Fondiaria Agricola Industriale (SFAI) and SPICA-Lauis. Eridania has since taken over SFAI and SPICA-Lauis. Zuccherificio e Raffineria di Pontelongo has become the Société Générale de Sucreries and, in conjunction with Cavarzere-Produzioni Industriali, has acquired control of Società Italiana per l'Industria degli Zuccheri. AIE, for its part, has acquired control of Romana Zuccheri and Zuccherificio del Volano.

The sugar imported by the importers' group was then sold for human consumption and to the Italian sugar processing industries at the same price and on the same conditions of sale as nationally produced sugar, as appears from the confirmations of sales given to their customers by the Italian producers. According to the statistics available, the importers' group took approximately 75 % of the total amount of imported

sugar put up for tender. All the sugar taken by Eridania or any other member of the group was supplied by the suppliers' group. In the 1969/70 marketing year 15 % of the sugar to be supplied by the suppliers' group was reserved for SZ AG which did in fact deliver the sugar (not, however, through Sucres & Denrées). Apart from this collaboration with the French and Belgian producers, SZ AG continued to act in concert with the Italian producers, so that the major part of its exports to Italy was delivered directly to the Italian producers, to enable them to resell the imported sugar at the same price and on the same terms as sugar produced by them.

Moreover, the foreign sugar producers mentioned above undertook not to sell to any other Italian purchasers, in particular the sugar processing industry, except at increased prices (increase of FF 1.25 per 100 kilogrammes for the 1968/69 marketing year, FF 1.65 for 1969/70 and FF 1.75 for 1970/71). As a result deliveries in Italy from outside the suppliers' group remain limited to small amounts offered by 'outsiders'. At a meeting in Genoa on 22 September 1970 between the members of the two groups, the respective obligations that they already had assumed and were respecting were reaffirmed, in order to overcome certain difficulties which had arisen between suppliers and importers from time to time.

14. As regards the Netherlands, since the 1968/69 marketing year, Dutch producers have been purchasing increasing amounts of white sugar from their competitors, particularly those in Belgium and Germany. For the first three marketing years, the amounts purchased were as follows:

|         | SU                 | CSM                |
|---------|--------------------|--------------------|
| 1968/69 | 251 metric tons    | 5 150 metric tons  |
| 1969/70 | 72 metric tons     | 5 660 metric tons  |
| 1970/71 | 24 600 metric tons | 10 353 metric tons |

The competitors who delivered this sugar to them were RT and (from 1970/71) Pfeifer & Langen. During the 1971/72 marketing year these purchases increased, and SU, for example, purchased 10 400 metric tons of white sugar from Pfeifer & Langen alone. None of these purchases related to raw sugar.



Apart from deliveries to SU, during the 1968/69 marketing year, of sugar intended for denaturing, this white sugar was marketed in the Netherlands through the Dutch producers' distribution network at the same price and on the same terms as domestic sugar. Further, a large part of it was sold in the packaging, and under the trade marks, of the Dutch producers. RT and Pfeifer & Langen did not as a rule make deliveries to other purchasers on the Dutch market.

When the Community regulations came into force, RT and the Dutch producers SU and CSM refused to deliver sugar to customers established in the countries of their competitors. These producers put forward the same reason to justify their refusal, namely that the amounts of sugar available were reserved for the national market and no exports could take place, and this in spite of the existence of large surpluses, especially in Belgium.

During the marketing years 1968/69 and 1969/70 RT only exported a few hundred metric tons of sugar to the Netherlands, and only on condition that it was to be used for denaturing. During these years RT reminded other Belgian exporters several times that it did not want sugar to be exported freely to the Netherlands. Such exports should only take place through the Dutch producers CSM and SU, and at their request, so as to enable them to retain control over the Dutch market.

After fairly keen competition was felt on the Dutch market, during those two marketing years, from sugars imported mainly from France but partly also from Belgium, coming either from small independent sugar refineries or through independent German dealers, RT and the Dutch producers decided to incorporate the Belgian and Dutch dealers in their distribution network. Therefore, from the end of the 1970/71 marketing year, and with the exception of its own deliveries direct to the Dutch producers RT gave the exclusive handling of its sales in the Netherlands to Export and Hottlet, on condition that these undertakings should only deliver to buyers or final users approved by the Dutch sugar producers CSM and SU. The producers' reason for this was to avoid upsetting the Dutch market structure. Another condition attached to such exclusivity for the Belgian

dealers was that they should no longer export to the Netherlands sugar produced by Belgian producers independent of the RT group.

In fact the Dutch producers only agreed to deliveries of Belgian sugar being made to the Netherlands on condition that it went to the milk products industry. To this end, the Dutch dealers who normally supply the milk products industry indicated in their offers to buy Belgian sugar, that it was being purchased for clients approved by the Dutch producers and that the sale contracts contained clauses stipulating that the sugar was for the milk products industry.

The Dutch milk products industry uses quite large amounts of sugar, representing approximately 50 000 to 70 000 metric tons each marketing year. This sugar is used for the manufacture of tinned milk which is mainly exported from the Netherlands.

Belgian sugar was also delivered in very small quantities to the Dutch chemical industry during the marketing year 1970/71. The sales arrangements used for the milk products industry were also used for the chemical industry.

These procedures were followed also during the 1971/72 marketing year. Sales to the milk products industry even increased considerably. RT stated that the major part of the 70 000 metric tons of sugar sold by it in the Netherlands during that marketing year had been delivered to the milk products industry.

The two Dutch sugar producers SU and CSM manufacture the entire production of sugar in the Netherlands. Imports of sugar into the Netherlands amount to about 10 to 15 % of national production. These producers, furthermore, controlled nearly the whole of the imports of sugar, except a part of the principally French deliveries during the 1968/69 marketing year.

During the 1968/69 marketing year, Dutch dealers bought large amounts of sugar in France, approximately 90 000 metric tons, to be delivered by instalments over several marketing years. This amount was supplied mainly by Sucre-Union (some 70 000 metric tons) and to a lesser extent by Lafosse-Baudesson, which was selling sugar on behalf of Lebaudy-SUC.

Following these imports, the Dutch producers and dealers agreed that the latter should market the imported sugar at a price which would be not too competitive in relation to the price of Dutch-produced sugar. Furthermore, the last consignments of sugar imported were to be delivered in 50 kilogramme bags and in 1 kilogramme packets bearing the trade mark of SU. The sugar thus packed was then to be resold to the producers for them to market it themselves. During the marketing years 1969/70 and 1970/71 more than 14 000 metric tons of sugar of French origin were purchased in this way by the Dutch producers. The price at which the Dutch producers bought the sugar was slightly lower than the price at which they then sold it, which was the same as the selling price for Dutch-produced sugar.

The Dutch dealers had to accept the provisions of this agreement because the Dutch producers — in particular the SU — threatened to make the dealers' customary imports of sugar under temporary import arrangements for the milk processing industry impossible by supplying that industry themselves on world market terms.

From the next marketing year onwards (1970/71) the Dutch producers made the Dutch dealers parties to their agreement with RT. Since then deliveries of Belgian sugar have been made through Belgian and Dutch dealers in agreement with the Dutch producers CSM and SU. This procedure was followed also during the 1971/72 marketing year.

15. As regards exports of sugar to the western part of the *Federal Republic of Germany* and the marketing of sugar imported into that territory, the following facts can be established: since 1968/69, Pfeifer & Langen has purchased sugar in increasing amounts from Belgian and French competitors:

|         | White sugar        | Raw sugar          |
|---------|--------------------|--------------------|
| 1968/69 | 1 000 metric tons  | —                  |
| 1969/70 | 881 metric tons    | 8 361 metric tons  |
| 1970/71 | 22 900 metric tons | 24 853 metric tons |

The contracts for the delivery of the raw sugar were made with RT.

During the marketing year 1971/72, this tendency towards the purchasing of sugar from competitors continued, whilst German production was larger, and

additional needs therefore smaller than in the preceding year. Pfeifer & Langen imported less white sugar (3 574 metric tons), but continued to purchase considerable amounts of raw sugar (23 419 metric tons) from RT. Pfeifer & Langen purchased even larger amounts of raw sugar from sugar refineries in the north of Germany which were not members of WZV (approximately 125 000 metric tons per marketing year). On the other hand, during the 1971/72 marketing year, Pfeifer & Langen sold a not inconsiderable amount to competitors in other Member States, in particular 10 400 metric tons to SU (during the preceding marketing year 1970/71: 4 600 metric tons).

The sugar purchased from foreign competitors was sold, in some cases after processing, by Pfeifer & Langen and WZV at the same prices, on the same conditions of sale and under the same trade marks as national products. Where sugar was sold by Pfeifer & Langen to competitors on the Dutch market, it was distributed by the latter on the same terms as Dutch sugar.

As well as these deliveries from producer to producer, the statistics available reveal other imports into the western part of Federal Germany. These imports were small during the marketing years 1968/69 and 1969/70. During the marketing years 1970/71 and 1971/72 they were slightly larger, but still fall far short of the volume imported by Pfeifer & Langen. Such imports represent less than 3 % of the total sales of sugar for human consumption in this territory. (Raw sugar is included together with white sugar in these imports since, after processing by the national industry, it is sold on the same market.) Deliveries from the north which are included in these statistics relate mainly to sales of sugar produced by WZV members in Lower Saxony, sales of sugar effected through the joint sales organization NWZV and sales of raw sugar to Pfeifer & Langen.

With regard to other deliveries by foreign suppliers to the sales territory of WZV, it has been found that, where sugar was delivered for denaturing or for export to third countries, the dealers involved were usually obliged to undertake not to sell such sugar for human consumption in the Community. There are numerous examples of this among the deliveries from French and Belgian producers during the marketing year 1968/69 and also, as regards Belgian producers, during the years 1970/71 and 1971/72. The main explanation for this is the fact that sugar for denaturing or export to third countries would in principle be sold at the intervention price and

therefore more cheaply than sugar for human consumption in the Community. The fulfilment of the obligation was therefore supervised strictly.

Free resale was only allowed upon request and on condition that prices were increased. When, following the abolition of the denaturing premium in 1969, sugar which had originally been intended for denaturing was sold in Germany at prices below the usual internal prices, the supplier RT, after protests from the German sugar producers, gave instructions on 24 July 1969 to its exporter Export to cease such operations and to conclude no further contracts of this kind in relation to Germany or the Netherlands. Damages were claimed against certain dealers who had without authorization sold at the lower prices sugar which had been intended for denaturing. Since then no further instances have been recorded of sugar intended for denaturing being sold for human consumption in the Community.

During the 1968/69 marketing year, some cases were recorded of refusal to deliver, when sugar was to be delivered to Germany for human consumption. A dealer in the Saarland who had ordered a quantity of French sugar, gave as the reason for non-delivery to his German purchaser the fact that the German sugar industry had instructed his French supplier not to make any sales on the German market.

During the 1969/70 marketing year, sales of Belgian sugar were made by dealers of whom it had been required that in the case of resales for human consumption, the consent of Pfeifer & Langen was to be obtained, or the price increased by Bfrs 10.

At the beginning of the 1970/71 marketing year, demands for imports increased owing to a shortage of sugar in Germany, whilst in Belgium there was still a surplus, and following the abolition of the fixed premiums for denaturing, and the reduction in export refunds, sales within the Community appeared more remunerative. In fact, by comparison with the preceding marketing year, much larger amounts were imported, but of these three-quarters were in the form of deliveries from producer to producer. Enquiries from German importers to the Belgian export dealer, Export, in a certain number of cases, after being referred to RT, received a negative reply. As appears from correspondence between the suppliers and the customers in question, either they would be told that RT was not for the time being interested in exporting to that destination, or, after close consultation between RT and Pfeifer & Langen, an insufficiently attractive price would be required.

That price would have been calculated in relation to the internal price communicated by Pfeifer & Langen. The German ex-works price for purchasers in Aachen was taken as a basis (this price is from 1 to 2 % higher than the price in the other parts of WZV's sales territory). From this price would be deducted the transport and customs costs for Belgian sugar, profit margins and an amount allowed to German purchasers by way of a 'small price advantage' (0.5 %) over purchasers on the home market. The purpose of this was to leave the German home market undisturbed for Pfeifer & Langen's clientèle. RT required Export to apply this price for any exports of sugar from other Belgian sources.

In October 1970 WZV and Pfeifer & Langen succeeded in increasing their home market prices by DM 1.50 per 100 kilogrammes (nearly 2 %) to which was added a further increase of DM 2 in December 1970. In November 1970, German dealers who had at first been interested informed Export that in the meantime they had concluded annual agreements with the German industry for all their requirements.

German dealers buying sugar from WZV or Pfeifer & Langen are forbidden to sell sugar from any other source without their consent.

WZV's sales territory is subdivided into various areas. In certain areas, WZV only sells through its four area commission agents. Under the contracts concluded with these commission agents, they are to sell in their sales areas in their own names on behalf of WZV, and on terms as to delivery and payment laid down by the latter, only to wholesalers, to the sugar processing industry and to similar undertakings.

The commission agent receives a basic commission, a *del credere* commission and an area commission. The latter is a special commission 'on all deliveries which — by agreement — are made directly and not through the commission agent' on his area. If the ex-factory price exceeds, by a specified amount, the intervention price for Grade II sugar, the commission agent receives an additional commission based on this amount. It is forbidden for the commission agent to pass on his commission to his customers in any form whatsoever.

In the territory bordering on NZV's sales area, WZV has reserved a priority ('first hand') right to sell. The commission agent must inform WZV of all

negotiations in progress and wait to see whether WZV claims its priority right. The Commission agent undertakes, for himself and for all firms depending on him, not to make any sales in the area of special interest, either for or through other manufacturers or dealers, national or foreign, or even in his own name and on his own account, without the express authorization of WZV. Where sugar from another source is sold without authorization, or through an unauthorized distribution network, the contract provides for penalties to be imposed.

Pfeifer & Langen concluded agency agreements with WZV's middlemen which contain, amongst other items, a prohibition against selling sugar from other sources, either as agents or on their own account, without the consent of Pfeifer & Langen.

Other dealers are only supplied directly by WZV and Pfeifer & Langen on condition that they sign one of the contracts described above or declare themselves to be in agreement with the principles of such a contract. This was the case with certain dealers who before the 1968/69 marketing year already supplied important customers in North Rhineland-Westphalia. If they did not declare themselves in agreement with the principles of the WZV contract, they were sent back to their respective local commission agents.

According to information gathered by the Commission WZV made sure that the prohibition of competition was observed, by getting the dealers supplied by it to report any sale of sugar from another source. However dealers who sell on behalf of WZV and Pfeifer & Langen are able to market sugar intended for denaturing and for export to third countries. These activities account for an important part of their turnover.

16. As regards exports of sugar to the southern German sales territory (SZV, SZ AG and Franken) and the marketing of imported sugar in that area the following facts can be established: SZ AG and Franken have, since the marketing year 1970/71, bought sugar from their competitors in France in increasing quantities:

#### SZ AG

|         | <i>White sugar</i> | <i>Raw sugar</i>   |
|---------|--------------------|--------------------|
| 1970/71 | 286 metric tons    | 11 200 metric tons |
| 1971/72 | 4 500 metric tons  | 13 900 metric tons |

#### Franken

|         | <i>White sugar</i> | <i>Raw sugar</i>  |
|---------|--------------------|-------------------|
| 1970/71 | —                  | —                 |
| 1971/72 | 4 000 metric tons  | 9 200 metric tons |

The raw sugar was bought from Béghin, and the white sugar from Béghin and Sucre Union. The sugar bought in this way was marketed—in some cases after processing—at the same prices, on the same conditions of sale and under the same trade marks as German sugar.

SZ AG delivered the greater part of its EEC exports (on an average 75 %) directly to its competitors, namely to Italian producers (1 500, 17 100, 8 400 and 17 000 metric tons in the last four marketing years).

As well as these deliveries from producer to producer the statistics available show further deliveries principally from France to SZV sales territory. During marketing years 1968/69 and 1969/70 these imports were very small and represented about 1 % of total sales in that territory (the deliveries from French producers for the Saarland are not included in this). In marketing years 1970/71 and 1971/72 the proportion was not much greater; quantitatively these imports were decreasing in relation to imports effected by the southern German producers themselves.

The statistics also show deliveries from other parts of the German Federal Republic into SZV's sales territory. One should bear in mind that the statistics, compiled according to Länder, do not give an entirely accurate picture. But what is certain is that a large part of the deliveries from North Rhineland-Westphalia to the Rhineland-Palatinate took place in those areas which belong to the WZV sales territory, and on the other hand a considerable part of the deliveries to Hesse are due to sales of sugar by Friedberg, a member of SZV, in the part of Hesse belonging to SZV sales territory. In these circumstances the share of sales by SZV and its members in the southern German sales territory clearly separated from WZV amounts to at least 90 to 95 %. The sale of the sugar produced by SZV members takes place, with the exception of the amounts intended for denaturing and exports, predominantly through SZV, which fixes its prices and sales policy independently.

As regards the opportunities for marketing sugar from producers who do not belong to SZV in the sales territory of SZV and its members, investigations have produced the following facts:

For its domestic sales SZV makes use of 17 local representatives. Agreements called 'trade representa-

tives' contracts' require the representatives only to do business in the name of, and on behalf of SZV, to follow instructions from SZV, to visit clients regularly (with the support of SZV), to see that sales are properly carried out, to keep a careful check on the solvency of clients, to look after, without additional remuneration, the stores set up and maintained in their territory, and in particular only to take over further representation of a producer of, or dealer in, sugar or competitive products with the prior authorization of SZV (otherwise the contract can be terminated immediately).

SZV members can sell the sugar they produce through the same local representative, as authorization by SZV is taken in such cases to have been granted.

Producers who are not members of SZV, can only sell their sugar through these local representatives if they have received express prior authorization from SZV.

These undertakings are representatives for a variety of goods and sell other products than sugar on their own behalf. In the sugar sector, since the sugar of SZV members is not marketed exclusively by SZV, they also to some extent work directly for one or more members of SZV.

When they have wanted to sell sugar from other sources for refining, or special sorts of sugar for other undertakings, they have been authorized to do so where they were working for several SZV members, after prior agreement between the various principals. This applies to sugar of foreign origin as well as to sugar produced in other parts of the German Federal Republic.

SZV also sells occasionally through dealers trading on their own account. In other parts of Germany it is not represented. Imports and exports as well as deliveries for denaturing are undertaken directly by SZV members themselves.

As a rule SZV members, in particular Franken, use the same middlemen as SZV for sales of sugar for human consumption within the Community. The contracts concluded with them are substantially the same as SZV trade representatives' contracts described above.

Since SZV has been in existence, SZV members and SZV itself in particular have used a system of annual quantity and fidelity discounts. A series of SZV bills of sale and sales contracts bear the words: 'Bei ausschließlicher Deckung Ihres Jahresbedarfs bei unseren Gesellschafterfabriken vergüten wir auf den Kontraktpreis am Ende des Zuckerwirtschaftsjahres (30. Juni einen Jahresmengenrabatt in Höhe von DM 0,30 je 100 kg' <sup>(1)</sup>). With some clients, particularly in the west of the SZV sales territory, this annual quantity discount of DM 0.30 per 100 kg is immediately deducted from the bill.

According to the parties concerned the discount is also granted if buyers buy sugar elsewhere up to a certain amount. According to the Commission's information, however, the fidelity discount has been cancelled at least in some cases or the buyer has been told that it will be cancelled if he continues to import sugar. This has led to the buyer discontinuing the imports.

17. As regards the behaviour of RT towards the Belgian dealers Export and Hottlet, who traditionally export Belgian sugar, RT has insisted on including in the sales contracts with those dealers clauses which limit the destination of the sugar, thereby obliging them

- only to resell RT sugar to competitors and to impose the same obligation on other possible middlemen in those sales;
- only to resell RT sugar in the countries of competitors with their agreement and to impose the same obligation on other possible middlemen in those sales;
- only to resell RT sugar on the surplus market, that is to say for denaturing, the chemical industry or exports on the world market, on the condition that the sugar is in actual fact intended for one of those purposes, and to impose the same obligation on other possible middlemen.

Such clauses are systematically inserted in all sales contracts concluded by RT with those two Belgian

<sup>(1)</sup> Translation: 'If you cover your annual requirements exclusively from the factories of our members, you will be granted at the end of the marketing year (30 June) an annual quantity discount on the contract price of DM 0.30 per 100 kg.'

dealers. RT refuses to supply sugar to them without contracts containing such clauses. The implementation of those clauses by the two dealers was obtained by means of pressure by RT, which informed them that it would not supply them with any more sugar, in particular sugar for export to third countries, which makes up an important part of their turnover. For lack of any other major sources of supply the two dealers had to give in to that pressure from RT.

On the Belgian market these two dealers, and other wholesalers, are only allowed to act as brokers, and it is therefore impossible for them to export the sugar which RT intends should go to the Belgian market.

## D

18. As regards the *invitations to tender for export refunds* the Community rules stipulated the payment of compensation from time to time for exports to third countries of sugars produced within the maximum quota so as to allow sugar producers in the Community to sell part of their production on the world market where the price of sugar is generally much lower than that fixed within the EEC. Since the marketing year 1969/70 a system of invitations to tender has been introduced for obtaining other export refunds of which the amounts vary according to the tenders submitted by the tenderers.

At the beginning of 1970 the principal French and Belgian producers, namely the undertakings Say, Béghin, Lebaudy-SUC, Générale Sucrière, Sucre-Union and RT, together with Sucres & Denrées, came to an agreement among themselves on the subject of such tenders, as the following telex from RT to Export shows: '... suppression de la concurrence aux restitutions, de manière à ce que tout producteur soit assuré au minimum du prix d'intervention. En conséquence, suppression de la lutte pour placer des quantités sur le marché intérieur où l'on est sûr du prix plutôt que de devoir exporter (ceci s'applique essentiellement à la France)...' <sup>(1)</sup>

Those undertakings include all the large sugar producers of the two surplus countries of the

Community, together with the principal French dealer, Sucres & Denrées. Several of those producers have admitted that they had agreed on the tenders to be made. This agreement covered both the quantities to be offered for export and the amount of the refunds.

The licences to export on the world market granted to the undertakings which were declared the successful tenderers allow the latter a certain period of time to carry out the deliveries. Since the marketing year 1970/71 these licences have become transferable and German dealers have obtained a very large share of the quantities awarded. There is no proof that this agreement continued during the marketing year 1971/72.

## II

The principal producers and sellers of sugar in the Community have, since the marketing year 1968/69, engaged in concerted practices to control the trade in sugar between the Member States with the aim of ensuring the protection of their respective markets and thus considerably restricting competition between certain groups of sugar producers and sellers. These concerted practices were carried out mainly by means of the following measures:

- deliveries from one competitor producer to another;
- measures relating to intra-community deliveries made to buyers other than competitor producers (agreement by the producers in the market to which the sugar is to be sent, increase of prices, or alignment of prices with those of the country of destination);
- measures taken regarding distributors aimed at restricting or preventing free importing and exporting within the Common Market and thus obliging them to respect the producers' agreement;
- agreement on the tenders put forward for export refunds in respect of exports to third countries;

## A

1. The following undertakings have engaged in concerted practices as regards deliveries of sugar to Italy:

- Eridania, Società Generale di Zuccherifici, Cavarzere-Produzioni Industriali, Società Italiana

<sup>(1)</sup> Translation: '... suppression of the competition for refunds, so that each producer will be guaranteed at least the intervention price. Consequently, suppression of the struggle to sell quantities on the domestic market, where the price is more certain, rather than having to export (this applies particularly to France)...'

per l'Industria degli Zuccheri, Romana Zuccherio, Zuccherificio del Volano, Agricola Industriale Emiliana (AIE), SADAM, Zuccherificio di Sermide, on the one hand, and

— Sucres & Denrées, Béghin, Sucre-Union, Say, Générale Sucrière, Lebaudy-SUC, RT and SZ AG, on the other.

This concerted practice consisted of the abovementioned Italian producers agreeing together to buy sugar directly from the French, Belgian and German producers and then re-selling it at the same prices and on the same conditions of sale as sugar produced by domestic producers. These deliveries were allotted to the various suppliers on a quota basis and, except for SZ AG, were all carried out through Sucres et Denrées. Individual deliveries from these suppliers to other purchasers in Italy were only made at a higher price. The adoption of this concerted practice was decided on in the course of meetings attended by all concerned, as emerges from their commercial correspondence regarding the deliveries. According to the Commission's information, SZ AG only participated in this suppliers' group during the marketing year 1969/70; but during the following marketing years it continued to deliver directly to its competitors among Italian producers the larger part of the sugar it exported to Italy.

This concerted practice had as its object and effect the prevention, restriction and distortion of competition within the Common Market.

2. On the Italian market all competition between the abovementioned French, Belgian and German suppliers and the group of Italian importers has been excluded. These restrictions are especially obvious because, on the one hand, the suppliers divided up the quantities to be delivered among themselves on a quota basis (though in the case of SZ AG for the marketing year 1969/70 only, according to the information received by the Commission), and because, on the other hand, the French and Belgian suppliers grouped their tenders through Sucres et Denrées and the Italian producers were represented by the Endiana company.

Without these sales between producers, which involved considerable quantities, the sugar producers of the surplus countries, in particular France and Belgium, would sell their sugar individually on the

Italian market, deciding on the quantities, prices and marketing organization themselves. In respect of the quantities sold to their competitors, the producers have thus renounced an independent commercial activity on the Italian market.

Furthermore, these sales between producers allow the producer-buyers to have at their disposal much larger quantities of sugar and to re-sell it later, since sugar is a mainly homogeneous product, at the same prices and on the same conditions as the sugar they produce themselves. This is a result of the formation of the importers' group.

Those concerned have repeatedly asserted that the grouping of demand (importers) and supply (suppliers) was made necessary by the tendering system introduced by the Italian authorities, particularly in view of the very large quantities for which invitations to tender were issued at one time, and that, faced with large demand, foreign suppliers had to divide up among themselves, according to their ability to deliver, the quantities of sugar for which contracts were awarded. It has been pointed out that only the large Italian sugar undertakings have a distribution network capable of handling and channeling the sale of large quantities of imported sugar, and that furthermore the grouping of sugar deliveries to Italy led to considerable rationalization of transport costs (extremely advantageous rates were obtained from the SNCF). Finally deliveries of sugar to Italy were not always made exclusively through these two groups, the importers and the suppliers, but that there had also been some direct deliveries, in particular from Sucre-Union and Générale Sucrière, to Italian clients.

However these statements are not such as to put in question the existence of restrictions on competition. The tendering system in Italy does not make such grouping of supply and demand necessary. Although the majority of the deliveries of sugar imported onto the Italian market were the subject of import-tendering procedures, these deliveries nevertheless took place within the marketing system set up by mutual agreement by the producers concerned from the various countries. As regards these large amounts of sugar all competition on the Italian market has been wholly excluded.

Normally it is not to a producer's advantage to sell large quantities of his products to one or more competitors. He can obtain higher profits by



supplying dealers and consumers direct. Deliveries from one producer to another are thus to be explained by the fact that they were an effective means of restricting competition between the parties concerned and preventing the Italian consumers from obtaining the sugar they need freely from foreign suppliers. The restrictions on competition resulting from the deliveries between producers are particularly serious since they affect a very large part of the quantities of sugar traded between the countries concerned.

3. Furthermore the suppliers' group has agreed with the importers group not to make deliveries to other Italian buyers except at a higher price. As the commercial correspondence between the participants shows this price increase, decided upon by mutual agreement between the two groups, includes both a distribution margin and a safety margin in favour of the Italian producers which has been increased several times.

In view of the fact that the members of the suppliers' group have bound themselves to charge a higher price to any buyer who is not a member of the importers' group, in addition to the other difficulties in having orders carried out (in particular, risks in the tendering procedures, the need for large quantities, and higher transport costs) it is very difficult if not impossible to sell sugar freely in Italy. After a series of often fruitless attempts during the first few marketing years to obtain sugar of Community origin on better terms, independent Italian buyers have resigned themselves to giving their orders to their usual suppliers, the Italian producers.

The deliveries made to Italy apart from those made by the suppliers' group and the importers group have been very limited, primarily as a result of the restrictions imposed by the marketing system.

The largest Italian buyers, in particular industrial consumers, have been obliged to conclude one year contracts with the Italian sugar producers who are members of the importers group because they have not been able to obtain firm and advantageous offers from foreign sellers.

The application of the price increase has led other Italian sugar buyers to conclude purchasing agreements applying dissimilar conditions to equivalent transactions. The increase in price cannot

be justified by the margin for distribution costs, and certainly not by the safety margin.

4. This concerted practice, aimed at preventing French, Belgian and South German sugar being delivered freely on the Italian market in competition with Italian producers, constitutes a restriction of competition likely to affect trade between Member States in a way which could be detrimental to the realization of the objectives of a single market among the States. It consequently comes under the prohibition in Article 85 (1) of the Treaty. This concerted practice cannot be the subject of a declaration of exemption under Article 85 (3), from the very fact that it has not been notified to the Commission in accordance with Article 4 (1) of Regulation No 17.

## B

1. As regards sugar deliveries to the Dutch market, the undertakings SU and CSM on the one hand, and RT as well as Pfeifer and Langen on the other, have engaged in a concerted practice.

This concerted practice consists in the fact that Dutch producers have bought sugar directly from Belgian and German producers, and have re-sold it at the same prices and under the same conditions of sale as sugar produced domestically. This concerted practice by those concerned is revealed, as regards deliveries of Belgian sugar, in the business correspondence, which clearly shows that RT cannot make any deliveries to the Netherlands without the consent of the Dutch industry, and also in the way in which RT has obliged its exporters not to deliver to the Netherlands except with the consent of the Dutch producers or for certain specified purposes not only the sugar it produces itself but also that of other Belgian producers.

All the deliveries of Belgian sugar to the Netherlands have, by agreement between the producers, only been made to specified purchasers (Dutch milk products industry). As regards deliveries of German sugar, the concerted practice consists in the fact that Pfeifer and Langen have carried out deliveries to Dutch producers systematically and in increasing quantities, without there having been any other deliveries of appreciable amounts.

The basic principle of the concerted practice of RT and the two Dutch producers SU and CSM, whereby RT wished to avoid making sugar



available for export to the Netherlands during the marketing years 1968/69 and 1969/70 except for deliveries to its competitors, was reaffirmed several times, and is stated thus in a letter from RT to Export: 'As regards Holland, the basic principle is that we do not want to do anything that would upset Suiker Unie or CSM, just as they do not want to do anything which would disturb us.'

This concerted practice has as its **object and effect** the prevention, restriction and distortion of competition within the Common Market.

2. All competition on the Dutch market between the abovementioned Belgian and German suppliers and Dutch producers has been eliminated. Without these sales among producers, the Belgian and German undertakings in question, which are geographically the best placed, would sell their sugar individually on the Dutch market, fixing the prices and conditions themselves and using their own trade marks. In respect of the quantities sold to their competitors the producers have thus given up independent commercial activity on the Dutch market.

These sales among producers allow the Dutch producers to have at their disposal much larger quantities of sugar and to re-sell them later, as it is a matter of a largely homogeneous product, at the same prices and on the same terms as the sugar they produce themselves.

Moreover, as regards in particular deliveries of Belgian sugar, those concerned have pointed out that part of the deliveries by RT to CSM are made in fulfilment of an agreement whereby RT manufactures quick melting lumps of sugar for CSM, which does not have the necessary equipment for their production.

Other sales by RT help to complete the range of qualities of sugar sold by CSM. However RT has given up selling these qualities of sugar in the Netherlands. Consequently Dutch consumers have no chance to choose such sugars since they are deprived of direct supply from RT. Apart from deliveries of special qualities of sugar, RT also delivers considerable quantities of white sugar to CSM which resells it on the same terms as the sugar it produces itself.

As regards deliveries of sugar from RT to SU, those concerned have pointed out that part of these deliveries is of sugar for denaturing. However, even if the use of sugar sold in this way is limited to part of the animal feedingstuffs market, the number of offers made to the sugar users on this market is restricted, and therefore their choice is limited, if not non-existent. Only a very small part of RT's sales to SU is of sugar for denaturing. However, most of the sugar sold by RT to SU is white sugar delivered in bags which are provided by SU.

Normally it is not to a producer's advantage to sell large quantities of his products to one or more competitors. He can obtain higher profits by supplying dealers and consumers direct. Deliveries from one producer to another are thus to be explained by the fact that they were an effective means of restricting competition between the parties concerned and preventing the Dutch consumers from obtaining the sugar they need freely from foreign suppliers. The restrictions on competition resulting from the deliveries between producers are particularly serious since they affect a substantial part of the quantities of sugar traded between the countries concerned.

3. Furthermore, competition on the Dutch market is restricted because RT makes no deliveries of sugar without the consent of its competitors SU and CSM. The Dutch producers have in the main only given their consent to deliveries to the milk products industry, since most of the sugars supplied to this industry are used for inclusion in products derived from milk and therefore have no competitive effect on the sale of sugar from Dutch producers.

The concerted practice was continued during marketing years 1970/71 and 1971/72 by including Belgian and Dutch dealers in these concerted deliveries. This is evident from the agreements concluded with the dealers and the way in which they were implemented. From the marketing year 1970/71 onwards the sources of supply for these Dutch dealers and reconsumers was still more restricted by the fact that RT prevented the Belgian dealers from delivering to the Netherlands sugar produced by other Belgian producers.

4. This concerted practice, aimed at preventing Belgian and German sugar being delivered freely on

the Dutch market in competition with Dutch producers constitutes a restriction to competition likely to affect trade between Member States. It consequently comes under the prohibition in Article 85 (1) of the Treaty. This concerted practice cannot be the subject of a declaration of exemption under Article 85 (3), from the very fact that it has not been notified to the Commission in accordance with Article 4 (1) of Regulation No 17.

### C

1. As regards deliveries into the West German sales territory, since the marketing year 1968/69 there has been a concerted practice between Pfeifer and Langen and RT, on the basis of which Belgian sugar, especially sugar produced by RT, has been delivered into the Pfeifer and Langen sales territory or that of its sales organization WZV in such a way that the pressure of competition which would have resulted from the free marketing of this sugar has been considerably reduced and protection of this market made possible.

After RT—in the marketing year 1968/69—had kept almost completely away from the German market, apart from 2 800 metric tons, in the following marketing year and in particular in 1970/71 the quantities of deliveries increased, although these were mainly made up of deliveries of white sugar and raw sugar to Pfeifer and Langen, (with in addition smaller amounts direct to WZV). In addition it has been established that deliveries of Belgian sugar to customers in the West German sales territory were made dependent on the consent of Pfeifer and Langen or on the application of prices adjusted to Pfeifer and Langen's prices.

Those concerned declared that this was a matter of independent action by RT and a sales policy towards its competitors on which it had itself decided. In the telexes and other business correspondence with Export, RT tried to make this policy clear to its customers and to obtain their compliance: RT did not exercise any pressure. The statements made by Export that RT had concerted its sales policy with its competitors were based on a series of misunderstandings, which were a result of differences of opinion and personal tensions.

Pfeifer and Langen further maintain that this was a matter of third hand evidence which could not be used against them; that they themselves had never tried to restrict the exports to Germany or to align prices; and that, moreover, considerable imports took place quite apart from deliveries from producer to producer.

The Commission is of the opinion that the enquiries show clearly that concerted practices were engaged in by RT and Pfeifer and Langen. The statements by Export cannot be explained by misunderstandings and personal dissension. For one thing, these statements agree with those made by RT itself; for another, the need to obtain Pfeifer and Langen's consent is expressly laid down in writing in a sales contract of Moerbeke-Waas, an undertaking belonging to the RT group, and cannot be construed as a unilateral declaration of intent. The same is true of the application of a price aligned with the German domestic price in the case of exports to Germany. The calculation of this price shows that the selling price for Aachen reported to RT by Pfeifer and Langen was chosen as a starting point. It was in the marketing year 1970/71, from which most of the documents date, that advantageous exports to Germany would in fact have been possible. The selling price applied there was increased twice, in October and December 1970, making a total increase of 4 %, and the intervention price remained the same. Because of a bad harvest there was a greater demand for imports. The Commission considers that the fact that in this situation deliveries from RT to other German customers remained insignificant, but direct deliveries from RT to Pfeifer and Langen increased suddenly, is to be attributed to these concerted practices.

The express reference to Pfeifer and Langen's consent, taken together with the other facts and indications concerning cooperation between the Belgian and West German sugar industries, can only be taken to imply mutual agreement about deliveries from RT to Pfeifer and Langen's sales area. The Commission also considers as further indications of such a concerted practice the continual references to the principle of 'chacun chez soi', the way in which the main supplier, RT, required its exporters to export not merely sugar produced by RT itself, but also sugar from other Belgian producers, only at prices aligned with those in the country for which the sugar was destined, as well as the fact that the sugar industry in the country of destination tied the most important dealers in its own land to itself by forbidding them to market foreign sugar without its consent, so that it was made difficult for foreign outsiders to sell in the WZV sales territory and in any case impossible for them to sell through the dealers connected with WZV and Pfeifer and Langen.

These measures would be incomprehensible if they were not based on an agreement between the most important sugar producers of the countries concerned. It would undoubtedly have been possible for Pfeifer and Langen to compete effectively with

RT in its own territory, particularly in those parts of Belgium close to the frontier, which would have brought in higher profits than exports to non-member states. On the other hand it would have been normal for RT to endeavour to sell its surplus in the neighbouring deficiency area of the WZV, where RT, above all during the marketing year 1970/71 after several price increases by WZV and Pfeifer and Langen would have been able to make sales, since transport costs are not a decisive factor, as is shown by the deliveries from producers to producer. In fact RT only made very limited deliveries, to specific customers, in the WZV sales territory. The other imports shown in the statistics were made by smaller producers to final buyers and to an even smaller extent — to independent dealers.

As revealed in the statements by those concerned Pfeifer and Langen tried 'resolutely to oppose attempts to penetrate into its clientele' by obliging dealers in the WZV sales territory to buy only from WZV and its members, as well as by offering especially favourable prices in areas close to the frontier.

The concerted practices described above had as their **object and effect** the prevention, restriction and distortion of competition within the Common Market.

2. The deliveries made between producers allow the purchasing producer to have at its disposal large quantities of sugar. Since this is a mainly homogeneous product the sugar is resold by the buyer — ie, by the producer or its sales organization — at the same prices, on the same conditions of sale and under the same trade mark as the sugar which it produces or markets itself.

Without these sales between producers RT would market its products independently on neighbouring markets. It would decide on the amounts, prices, sales outlets and packaging of the sugar itself. In respect of the quantities sold to their competitors in the other Member States, the producers are renouncing any sales policy of their own. It is not normally in the interest of a producer to sell its products to a competitor, instead of marketing them itself, which RT would be perfectly able to do given its favourable geographical position and the customers interested in imports (processing undertakings and dealers). If therefore RT regularly and systematically supplies Pfeifer and Langen under conditions which are less favourable for RT than marketing through agents then this is only to be explained by the fact that there is a concerted practice of which the object and effect is the

limitation of competition between the producers concerned.

On the other hand those involved have pointed out that deliveries between producers can be justified economically both for the suppliers and the buyers. As regards deliveries of raw sugar the advantages are obvious since in this way buyers are able to exploit their extra capacity which their own production cannot meet and to buy from raw sugar factories close to the frontier. The factories are considerably closer than the nearest raw sugar factories of Northern Germany and the type of transport used for raw sugar saves expense. The suppliers do not have to build up their own sales organization in the country of destination with all the problems of storing and service. Competition is not restricted, because deliveries between producers are not exclusive and large quantities are imported in free trade.

In reply it must be pointed out that a restrictive effect on competition can only be denied in cases where a producer who does not have his own refining plant sells quantities of raw sugar to a refinery. A raw sugar producer of this kind is not in competition with a producer of refined sugar.

That, however, is not the situation in this case. RT, which itself has a large refining capacity, and in the first marketing year 1968/69 refined all the raw sugar itself, is party to a contract to supply raw sugar. This producer is to be regarded as just as much a competitor of the producer to which it cedes a portion of the raw sugar for processing (Pfeifer and Langen) in respect of the raw sugar which may be sold, as a competitor in respect of the refined sugar.

These remarks are particularly true of deliveries of sugar which had already been refined and which the sellers could market individually in the area of the competing producer. The fact that these deliveries are not exclusive is immaterial in this connection.

By and large, these deliveries from producer to producer constitute a means of depriving the buyers of possibilities of disposing of the quantities delivered in this way, and thus limiting competition between RT and Pfeifer and Langen. The restriction of competition through such deliveries is all the more severe in that in contrast to international trade in other commodities, these deliveries make up a large part of the trade in sugar. The fact that the RT regularly delivers sugar in large quantities to its

competitors in the West German sales territory, makes it impossible that RT would undertake deliveries to other buyers in this zone, which might cause competitive pressure and prejudice cooperation with Pfeifer and Langen. In fact RT has only exported small quantities into the West German sales territory in addition to the deliveries from producer to producer.

3. RT's opportunities for supplying the Pfeifer and Langen sales area apart from deliveries from producer to producer is still further restricted by the fact that such exports are expressly made dependent on Pfeifer and Langen's agreement, or are only permitted if the prices are aligned with those of Pfeifer and Langen or the WZV.

In this way any competitive effect arising from the deliveries (if any) have been prevented. The result is that these countries' dealers' and consumers' possibilities of purchasing are considerably restricted.

In this context it is also important that both producers concerned have taken measures which have either prevented dealers from importing sugar from the other Member States, or considerably restricted opportunities for free export. This subject will be dealt with in more detail under E, below.

4. This concerted practice agreed upon by Pfeifer and Langen and RT, which restricts competition within the Common Market, is aimed at the mutual protection of the Belgian Market and the Western German sales territory. It is therefore likely unfavourably to affect trade between Member States and thus comes under the prohibition in Article 85 (1). As it has not been notified to the Commission in accordance with Article 4 (1) of Regulation No 17, there can be no question of a declaration of exemption under Article 85 (3).

#### D

As regards deliveries to the South German sales territory, at least since the marketing year 1970/71 there has been a concerted practice between SZ AG and Franken on the one hand and Béghin and Sucre Union on the other, whereby the SZ AG and Franken have increasingly brought sugar directly from the French producers so as to re-sell it at the same prices and on the same terms as their own

sugar. The concerted practice is evident from the fact that deliveries from one country to another take place increasingly between producers in order to avoid losing clients and shares of the market, from the way in which SZV as well as SZ AG and Franken have tied their agents by forbidding them to sell sugar from other sources without their consent, and from the practice of giving fidelity rebates, which makes it even more difficult to sell imported sugar.

Although the French producers, after the Community Regulation on sugar came into force opening frontiers, should have been able to supply sugar to the South German area because of their large surplus and the higher price level in South Germany (which was always close to the target price and therefore definitely higher than the price prevailing in France), in the first two marketing years 1968/69 and 1969/70 there were hardly any exports from France to Germany if one does not include exports into the Saar area which both before and after the Community rules came into force was almost exclusively supplied with French sugar. The continuance of the local representative system, which divided the South German sales territory into precisely defined and controlled sales districts making it possible to control sales of foreign sugar, and the use of fidelity rebates for clients which bought sugar exclusively or almost exclusively from SZV factories, contributed to the fact that imports took place only in a few cases and to a small extent.

The quantitative increase of imports in the years 1970/71 and 1971/72 coincides with the notable increase of deliveries between producers, similar to those made by SZ AG in the case of its exports to Italy in the previous marketing years.

Those concerned have stated that these deliveries from producer to producer are economically rational and serve to balance out variations in production caused by harvests and to make full use of the capacity available. The additional purchase of raw sugar and white sugar of poorer quality for processing into liquid sugar is particularly advantageous because of lower transport costs. The suppliers do not need to build up in the buyer's country their own sales organization with its problems of storing and service. For the buyer there is the advantage that a loss of clients and share of the market is avoided. Deliveries from producer to producer do not affect the other trade in sugar between States which is increasing in the South German territory and is not hindered either by the



local representative system or the fidelity rebate system. If these imports are nevertheless relatively small, this is due to transport costs which often make sales in other countries of little interest.

In reply it must first be pointed out that the small imports cannot be attributed to transport costs. This is shown firstly, by the fact that the Saar is supplied with French sugar from a long distance away although the sugar factories of German producers are much closer. Secondly, the information provided on transport costs show that even over longer distances (delivery from a French factory to the South German sales area) these costs do not exceed the difference between the intervention price in France and the target price in South Germany. Thirdly, the numerous requests (usually in vain) from South German buyers show that there is economic interest in importing sugar from other Member States.

The French producers would have been equally capable of selling their sugar individually in the SZV sales territory because of their considerable surpluses and the good prices obtainable. If Béghin and Sucre Union have since 1970/71 regularly sold increasing quantities of sugar to their most important competitors in this area thus enabling them to re-sell this sugar as a domestic product, that is the result of a concerted practice which — as SZ AG itself put it — avoids losing clients and a share of the market, which would have had to be feared in the case of individual marketing of these amounts.

The agreement between the German and French producers is underlined by the fact that the French producers concerned have not undertaken in addition to the deliveries from producer to producer any appreciable deliveries of sugar into the South German area with the exception of the Saar area. It is further emphasized by the measures which the SZV, as the sales organization responsible for domestic marketing, took as regards its clients. The obligation on dealers not to market any sugar from competitors and the use of the fidelity rebate system show clearly that the intention was to restrict or make more difficult the free purchase of imported goods in the South German sales area. This is also the object of the purchases made by the most important SZV members, SZ AG and Franken, from their French competitors, because they prevent the direct appearance of French producers on the South German market as far as the purchased quantities are concerned. The reason for the SZV Members and not the SZV itself appearing as buyers of French sugar is the fact that the members, as laid down in the SZV statutes, have reserved importing and exporting for

themselves, and have available such processing plant as may be necessary.

2. The concerted practice described above limits competition in the Common Market. It makes it possible for SZ AG and Franken to re-sell the amounts bought from competitors at the prices and on the terms they or their sales organization lay down, and therefore in the same way as domestic products. Because of the concerted practice the largest part of the amounts produced by the two French producers which is to go to the South German territory is absorbed and directed in to the usual sales outlets on the domestic market. Thus no competitive pressure is exerted by these amounts and the position of the domestic producers on their market is strengthened.

The fact that the larger part of the amounts supplied by French producers consists of raw sugar and sugar of inferior quality for processing does not mean there was no restriction. The suppliers would be quite capable of refining the amounts of raw sugar and processing inferior quality sugar into liquid sugar themselves, and indeed they were in the first two marketing years. In this connection it is significant that the South German dealers are not allowed to import sugar from other Member States. The consumers located in South Germany are bound to SZV by a fidelity rebate system. In this way the South German market has become almost completely protected. This subject is dealt with in more detail in E.

3. The practice concerted between SZ AG and Franken on the one hand and Béghin and Sucre Union on the other, which limited competition in the Common Market, is aimed at keeping the South German market free from competition from other supplies. It may therefore affect trade between Member States and thus comes under the prohibition in Article 85 (1). Since it has not been notified to the Commission in accordance with Article 4 (1) of Regulation No 17, it can for that very reason not be the subject of a declaration of exemption under Article 85 (3).

E

Some of the measures taken by the parties concerned towards their clients and dealers, and which have already been mentioned in connection with the

concerted practices described above under A-D, constitute in themselves infringements of the rules on competition in the Treaty.

1. The behaviour of the RT towards the two Belgian dealers, Export and Hottlet, who traditionally and because of their size and knowledge of the market deal with the export of Belgian sugar must be judged in the light of Article 86 of the Treaty.

The RT has a dominant position on the Belgian and Luxembourg sugar markets which make up an important part of the Common Market. It controls the greater part of sugar production in Belgium and Luxembourg and has a large amount of surplus sugar at its disposal there. It holds at least 50 % of the capital of the NV Suikerfabrieken van Vlaanderen at Moerbeke-Waes and of the SA Raffinerie Notre-Dame at Oreye, which gives it the opportunity to control those undertakings. Although these undertakings are not directly integrated in the marketing organization of the RT they only seldom diverge from the price policy fixed by it. They have always applied the same conditions, in their offers or sales contracts, to Belgian dealers.

This dominating position is a result of the size of the share of the market held by the RT on the Belgian and Luxembourg sugar markets (85 %), as well as of the scope which it enjoys for independent action which allows it to act without taking much account of the activities of its competitors. Thanks to its strong position on the Belgian and Luxembourg markets the RT also exerts influence over certain other Belgian producers (Naveau, Couplet, Donstiennes) so that they also follow on principle the sales policy of the RT towards the Belgian dealers. Furthermore this dominant position is increased still further by the fact that the RT also exerts some influence on the sugar markets of other Member States, in particular France, because, of its financial participation in the undertakings Say and Raffinerie d'Erstein and its financial links with certain large European sugar producers, and because of its advanced technical knowledge and achievements.

The RT has abused this dominant position by exercising economic pressure on the undertakings Export and Hottlet so as to oblige them only to re-sell the sugar which it supplied to certain clients and for certain uses, and to impose these limitations

on their customers. This economic pressure consisted of refusing to sell sugar to the two dealers, especially for exporting to third countries, an activity which represents an important part of the turnover of these dealers, if the sugar was sold for purposes other than those permitted by RT. For lack of other large sources of supply, the two dealers had to give into these pressures from the RT.

The object of these abuses was to limit the principal sources of supply of these dealers, who might have wished to buy sugar for other uses than those fixed by the RT, as well as the sources of supply of the dealers' clients.

This abusive exploitation of the RT's dominant position on the Belgian and Luxembourg markets may affect trade between the Member States in the way that might adversely affect the achievement of a single intra-states market, by restricting and in certain cases preventing the sale of sugar in other Member States of the Community. This behaviour of RT is therefore forbidden by Article 86 of the Treaty.

The behaviour of the SU and the CSM towards the three Dutch dealers, Internatio, Jacobson and Dudok de Wit, should be judged according to the provisions of Article 86 of the Treaty.

The two Dutch sugar producers SU and CSM have a dominant position on the Dutch market which constitutes a substantial part of the Common Market. These two producers cooperate closely in almost all their activities, that is to say the joint purchase of raw materials, rationing of production, collaboration in the use of intermediate products, pooling of research, cooperation on market research, advertising and sales promotions and the harmonization of ex-factory prices and conditions of sale. Towards other undertakings and particularly towards the three dealers mentioned above, these two producers have acted in a uniform manner and always appear as a single entity.

The dominant position of these two producers is due to fact that they produced all Dutch sugar and their sales represent more than 85 per cent of the Dutch market, and that they are able to behave independently which permits them to act without

taking any particular account of their competitors. This dominant position is strengthened further by the fact that they control by various direct or indirect means almost all sugar imported into the Netherlands.

The SU and CSM have exploited this dominant position on the Dutch sugar market in an improper way by obliging the dealers mentioned above to conclude an agreement in which the dealers bound themselves:

- not to sell the large quantities of sugar imported from France in 1969 and 1970 at prices considerably lower than those of the Dutch producers,
- to re-sell to Dutch producers the last amounts to be imported in 50 kg sacks or 1 kg bags so that those producers could then sell them on the Dutch market, under their trade marks and at their prices,
- not to undertake any further such importation of sugar into the Netherlands without the consent of the Dutch producers.

This agreement was obtained by means of economic pressure exerted by the two Dutch producers which consisted of threatening the dealers referred to above with hindering their traditional importing under the temporary admission procedure for the Dutch milk products industry, an activity which represents an important part of their turnover. The Dutch dealers gave in to these threats. From the marketing year 1970/71 onwards, the two Dutch producers integrated these dealers into their import system agreed with RT.

These abuses were aimed at limiting the sources of supply of the Dutch dealers who wanted to import sugar freely into the Netherlands, and, in this way, the sources of supply of their clients.

This exploitation of the dominant position of SU and CSM on the Dutch market is likely to affect trade between Member States, because it limits and in certain cases prevents the sale in the Netherlands of sugar coming from other Member States of the Community. This behaviour of SU and CSM is therefore forbidden by Article 86 of the Treaty.

3. The behaviour of the SZV towards its buyers must be judged according to Article 86.

The SZV has a dominant position in the southern part of Germany which forms a substantial part of the Common Market. It sells by far the greatest proportion of the production of its members. It decides the prices and sales policy itself. When SZV members sell individually they use the same agents. Deliveries by 'outsiders' to dealers and processing factories established in their sales area only play a small part. This area is clearly divided from the WZV and NZV sales areas and from the adjoining French market. Deliveries from the areas of Germany coming from factories not belonging to the SZV are exceptions. Nor are deliveries from neighbouring French areas to dealers or processing plants in South Germany any more numerous or intensive. French producers do deliver in the Saar territory, but in the SZV sales area usually only to the manufacturers themselves (SZ AG and Franken). SZV's share of the market must be estimated at least at 90-95 %. This position gives it scope for independent action, which permits it to act without taking any particular account of its competitors.

The SZV has, in the first place, exploited improperly this dominant position by obliging its agents not to sell sugar from other sources without its consent. In this way it has practically excluded the possibility for foreign suppliers of selling sugar through the dealers supplied by the SZV. Consent has only been given for the importation of special kinds of sugar and sugar for processing. The parties concerned have emphasized that in the Southern German area there are other dealers who have been able to import freely, and that a series of processing plants have been supplied from abroad too. This in no way alters the fact that the opportunities for foreign suppliers to sell on the southern German market, on which the price level is quite high and close to the target price thus making exports of interest, are considerably restricted by the fact that the dealers who are supplied by SZV, and are consequently bound to it, cannot be clients. The obligation imposed on the agents not to sell foreign sugar without authorization constitutes, when imposed by an undertaking in a dominant position, an improper practice and a violation of Article 86.

The SZV has, in the second place, improperly exploited its dominant position by granting fidelity rebates.

The granting of a rebate which does not depend on the amount bought, but only on whether the annual requirements are covered exclusively by the SZV, is an unjustifiable discrimination against buyers who also

buy sugar from sources other than SZV. Since the buyers depend for at least part of their supplies on SZV as they have insufficient storage facilities and need regular supplies, the disadvantage of losing the rebate is usually greater than the advantage of buying sugar from outsiders even if they offer it at more favourable prices.

The parties concerned have stated that the fidelity rebate, which was already given before the Community sugar market rules came into force, was very small and only amounted to 0.3 % of the selling price; that the offers by French exporters were so advantageous that they would have more than compensated for the loss of the annual rebate; that, furthermore, this rebate was sometimes given in cases where purchases had been made from foreign dealers; and that very often the rebate was immediately deducted from the bill, particularly in two-thirds of the cases in the western part of the SZV sales territory.

The rebate given, although it seems very low, could in fact bring about the effects described above. The loss of this fidelity rebate is quite noticeable even for an undertaking with average annual requirements. With a yearly requirement of 30 000 metric tons, which is not rare, the rebate represents DM 90 000 and for a requirement of 50 000 metric tons, DM 150 000. If the client wishes to buy 3 000 to 5 000 metric tons abroad the foreign supplier's price must compensate for the loss of the annual rebate. Such favourable offers are, however, practically ruled out. Moreover one must consider that the fidelity rebate is also at stake for future purchases by the client from national producers. It is not possible for the client to use only foreign suppliers for he is usually obliged to buy part of his requirements from nearby national factories and therefore has to submit to the conditions of SZV as the supplier dominating the market.

The facts which have come to the knowledge of the Commission show that in some cases at least the fidelity rebate has been abolished or its continuation made dependent on cessation of imports and that in these cases this has put an end to imports, although the foreign prices quoted were DM 10 to DM 20 per metric ton lower than those of SZV. An important effect of the rebate system is the possibility of controlling the customer's purchases from foreign

producers, which can easily be done on the basis of a knowledge of the average amounts bought annually, which do not vary much.

2.

The fact that the rebate has also been granted in some cases even if purchases have been made from foreign producers and that this control has therefore not been exercised strictly does not alter the fact that the mere warning or risk of the rebate being abolished prevents clients from making further large and regular imports. The small amounts imported other than deliveries from producer to producer are to be explained by the occasional deliveries temporarily tolerated by SZV.

It does not make much difference that in certain cases the fidelity rebate was granted immediately, that is to say it was deducted directly from the amount on the bill, because the determining factor in the case of purchases from foreign producers is that clients must expect that the rebate will not be granted in future, not only in respect of the next delivery but also for later purchases, which is economically more serious than the loss of the yearly rebate already due to them.

If a fidelity rebate of this kind is granted by an undertaking which holds a dominant position in order to limit opportunities for imports still further and to strengthen that dominant position, it constitutes an abuse, which is likely to affect trade between Member States. The granting of the fidelity rebate by SZV is therefore a violation of Article 86.

4. The measures that WZV and Pfeifer and Langen have taken in respect of their agents in order to restrict their opportunities for importing and exporting must be judged according to Article 85.

The 'commission contracts' concluded by the WZV and the 'trade representatives contracts' concluded by Pfeifer and Langen are agreements of which the purpose and effect is to restrict competition in the Common Market by obliging dealers to re-sell the sugar supplied by those producers only in certain territories and to certain clients, and not to market sugar from other sources either as trade representatives or on their own account.



In addition to the restrictions examined above the effect of these agreements is to make the sale of imported sugar considerably more difficult in the sales territory of Western Germany. They prevent the number of suppliers of sugar for human consumption on the market from increasing. Dealers are allowed to act for other suppliers on this market only if this is compatible with the joint interests of the contracting parties. Even if authorization is granted in one particular case the contracting parties are still able to control the sale and the control covers or can cover the volume, the quality, the supplier, the client and the price. According to the Commission's information these controls are in fact carried out and authorization is only granted for the sale of particular qualities of sugar and sugar for denaturing. The agents tied in this way can no longer be important clients at the marketing stage for outside suppliers, in particular for suppliers from other Member States.

A further restriction on import opportunities lies in the fact that the WZV commission on sugar sales is calculated on the basis of the amount exceeding the intervention price, so that dealers have no interest in endangering the general price level by selling imported sugar at more favourable prices.

The fixing of sales territories means that the wholesalers cannot export to other Member States the sugar produced by members of the WZV.

The parties concerned have submitted that Article 85 (1) does not apply, because commission contracts and trade representative contracts are not the subject of the prohibition concerned according to the Commission's communication of 24 December 1962 relating to exclusive representative contracts concluded with commercial agents<sup>(1)</sup>; that these are non-independent dealers who are part of the sales organization; and that competition is not only forbidden by law but by loyalty towards the principal.

In the communication mentioned above the Commission stipulated that its judgment was not related to the description but to the function of the commercial agent. It defined the role of a commercial

agent as that of a temporary employee integrated into the principal's undertaking and considered his obligation to work exclusively for a certain time for one employer as a consequence of the special obligation of mutual defence of interests as between commercial agent and principal, and thus not as a restriction on competition. The fact that some dealers were described as commercial agents or commission agents in the contracts concluded with their supplier did not relieve the Commission of the task of looking into the real economic function of these agents on the basis of the contracts concluded.

The peculiarity of this case lies in the fact that the agents described as commission or commercial representatives do not work for one principal alone. They provide clients not only for WZV but also for some of its members and for the NWZV.

In so far as the contracting party is agreeable they can also market sugar in their sales territory as agents for other producers. Their activity as dealers in sugar for denaturing and more especially in sugar intended for third countries is definitely more important.

Consequently the agents do not work exclusively for one employer, but act on their own to a considerable extent, as independent dealers, particularly as regards sales to third countries. Even on the national market they work for several undertakings at the same time with their agreement.

Under these circumstances the agents of WZV and Pfeifer and Langen are not employees. They are not integrated into the undertaking of the principal, which would have been a reason for not applying Article 85.

Since the marketing agreements of WZV and Pfeifer and Langen regulate the imports and exports of sugar between Member States, they are not exempted from notification under Article 4 (2) (1) of Regulation No 17. Since there has been no notification they are forbidden, and there can be no question of applying Article 85 (3). Even if one were to assume that the sales contracts did not have to be notified, the Commission is of the opinion that the conditions have not been fulfilled for a declaration of exemption under Article 85 (3).

It does not appear that the forbidding of importing and exporting without the consent of the domestic sugar industry would bring tangible objective

<sup>(1)</sup> OJ No 139, 24. 12. 1962, p. 2921/62.

advantages for the distribution of the products which would be such as to compensate for the disadvantages as regards competition or to give the consumers a fair share in the profit thus obtained.

## F

The behaviour of RT, Say, Béghin, Générale Sucrière, Lebaudy-SUC, Sucre-Union and Sucres & Denrées in connection with tenders for refunds for exports to non-member countries should be judged in the light of Article 85 of the Treaty.

The concertation between the aforesaid sugar producers had as its object and effect the prevention, restriction and distortion of competition within the Common Market. It affected both the amounts and the refunds which were offered in the invitations to tender for exports to third countries. In a system of tendering, competition is of the essence. If the tenders submitted by those taking part are not the result of individual economic calculation, but of knowledge of the tenders by other participants or of concertation with them, competition is prevented, or at least distorted and restricted. Although these invitations to tender relate to exports of sugar to countries outside the Community it should be borne in mind that they allow the export of sugar produced inside the Community and that competition within the Community has thus been prevented, restricted or distorted.

This concertation is likely to affect trade between Member States. Important producers from certain Member States — France and Belgium, countries which have the largest sugar surpluses in the Community — have concerted together and have thereby been able to alter the sugar tonnages which each of them, had there been no such concertation, would have sold on the markets of the Member States of the Community. Although the system of tendering provided for in the Community rules is aimed at selling a certain amount of sugar on the world market, if the refunds are granted by the effect of competition to those submitting the lowest tenders, the producers remain uncertain as to their opportunities for exporting sugar to non-member countries. According to the results of the tendering procedure, some producers rather than others would have to sell surplus quantities in other Member States of the Community. Thus the concertation was likely

to bring about a change in the quantities marketed within the Community by the principal producers in France and Belgium. Furthermore, as is evident from the business correspondence of the undertakings concerned, the existence of a certain guarantee of being able to sell large quantities at a considerable profit through this tendering procedure has certainly been one of the determining factors in the marketing of surpluses by the producers mentioned above. That concertation has likewise complemented the other measures taken by the interested parties to protect certain national markets.

The fact that the Commission can refuse to award a contract and therefore can decide the amounts which are exported on to the world market does not alter the conclusion that the concerted practices described above are likely to affect trade between Member States. The Commission cannot fix the condition for exporting sugar at its own discretion as regards either the refunds or the quantities, since its choice is limited by the tenders submitted by the producers. It can consequently only fix the conditions within the framework of those tenders. Even if during one marketing year the Commission has some overall control over Community exports, the producers by concertation can alter the results of the various tendering procedures.

This concerted practice is covered by Article 85 (1) of the Treaty.

## III

The concerted practices described above and covered by the prohibition in Article 85 (1) of the Treaty cannot benefit from the exceptions laid down in the first sentence of Article 2 (1) of Regulation No 26.

The first of these exceptions, that established in favour of 'such... agreements, decisions and practices... as form an integral part of a national market organization', cannot be invoked where a common organization of the market has not left any place for the national market organizations. It follows from the third recital in Regulation No 26 that the second of these exceptions, that made in favour of 'agreements, decisions and practices... necessary for attainment of the objectives set out in

Article 39 of the Treaty' is only intended to apply in so far as the application of Article 85 (1) of the Treaty would jeopardize attainment of the objectives of the common agricultural policy in the sugar sector. The necessary means for attaining these objectives were laid down in Regulation No 1009/67/EEC and its implementing Regulations (in particular the minimum price for sugar beet, sugar price support systems, basic and maximum production quotas for each undertaking, measures intended to facilitate the sale of surplus production). The practices in question cannot be included in this context no matter from what point of view one examines them (artificial separation of the Community market in sugar for human consumption from that of surpluses, the sharing of the national markets in sugar for human consumption, discrimination in deliveries, measures to restrict imports, concertation in respect of tendering procedures).

The means of attaining the objectives of the common agricultural policy in the sugar sector should allow the common sugar market to operate and develop as provided for in Article 38 (4) of the Treaty ie, in such a way that there is free movement of the product between the Member States. If Regulation No 1009/67/EEC provides for basic amounts per Member State these amounts are only factors in calculating the quotas to be attributed to each undertaking with the sole aim of limiting the guarantee regarding prices and sales, and they are therefore not a form of sharing out production between Member States.

Among the objectives of the common agricultural policy as defined in Article 39 of the Treaty, the recitals in Regulation No 1009/67/EEC emphasize the importance of the necessary guarantees in respect of employment and standards of living of Community growers of sugar beet and sugar cane. The practices in question are not part of the means provided to this end by Community rules and mentioned above, and were adopted for purposes totally alien to these objectives.

Concertation with regard to the Community tendering procedures determining the export refunds leads to a distortion of competition between the undertakings concerned, whereas competition is the whole point of the system of tenders provided for in Regulation No 1009/67/EEC.

The practices in question cannot be considered in any way necessary for attaining the objectives of Article 39 of the Treaty in the sugar sector. They even conflict with the measures laid down in the Community rules as necessary for attaining the said objectives in this sector.

#### IV

1. Where the Commission finds that there is infringement of Article 85 or Article 86 it may, under Article 3 (1) of Regulation No 17, by decision require the undertakings concerned to bring such infringements to an end. Taking into account the above considerations, the Commission is in this case in a position to establish (see Article 1 of this decision) infringements of Article 85 and Article 86, and in accordance with Article 3 of the abovementioned Regulation it requires the undertakings concerned to bring such infringements to an end.

2. According to Article 15 (2) (a) of Regulation No 17 the Commission may by decision impose on undertakings or associations of undertakings fines of from 1 000 to 1 000 000 units of account or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently they infringe Article 85 (1) or Article 86 of the Treaty.

The Parties concerned have, deliberately or, at least, negligently, committed infringements consisting of the concerted practices described above, because they knew, or in any case could have known, the restrictive effects of these practices on competition. The measures which the various parties concerned took as regards their agents, certain buyers, or the tenders for refunds for exports to third countries (cf. II — E + F) should be considered, in order to determine the amount of the fines, in conjunction with the concerted practices in which they engaged (cf. II — A to D).

In fixing the amount of the fines, regard is to be had, in accordance with Article 15 (2), both to the granting and to the duration of the infringements.

(a) In judging the gravity of the infringements, the following general observations should be made.

On the one hand, account should be taken of the fact that it is a matter of a product of particular

importance to the consumer and that the measures taken by those concerned are obviously contrary to the objective of integration of the markets envisaged in the Treaty. In this connection it should not be forgotten that the various practices are directed towards the same goal although the methods of implementing them vary according to the special features of the market concerned and the sugar supply situation. The effect of every such practice is to reduce to the minimum the possibilities of importing sugar freely without the control of the national producers.

On the other hand, it must be borne in mind that the production of, and trade in, sugar were regulated up to 30 June 1968 by national market organizations, which even provided for sales territories for marketing sugar. This explains a tendency for old practices to become a habit and a slowness to adapt and take advantage of the opportunities that the Community organization of the sugar market has opened up for free intra-Community trade. However, the special characteristics of the Community sugar market, the organization of which includes certain restrictions, though without thereby eliminating opportunities for competition, must be taken into consideration.

As regards the duration of the infringements, it must be stated that in general they covered a period of several years.

- (b) In assessing the amount of fines to be imposed on the various undertakings, account must be taken of the nature and duration of the infringements in which they participated, the extent of their participation, their situation on the market and this position in relation to their clients.

RT participates both in the concerted practice relating to exports to Italy and on the concertation on sales policy with regard to the SU, CSM and Pfeifer and Langen, as well as in the tendering procedure for export refunds. It was able to exert influence on the Belgian and Luxembourg market over its principal clients who were the first in line for possible exports.

*Sucre & Denrées* took part in the concertation on the tendering procedures for export refunds, as well as in the concerted practice relating to deliveries to Italy,

and played a decisive part in organizing those deliveries, because it coordinated all the supply and negotiated with Eridania the conditions on which the deliveries were made.

*Say* played an important part within the framework of the group of French and Belgian producers as regards the exports to Italy and also participated in the concertation on tendering procedures for export refunds, without however having taken part in the agreements concerning the other Community markets.

*Béghin* is not only the most important producer in the group of French and Belgian producers exporting to Italy and not only participated in the concertation on tendering procedures for export refunds, but has made large scale direct sales to its German competitors (SZ AG and Franken).

*Générale Sucrière* took part both in the concertation on deliveries to Italy and in the offers within the tendering procedure for export refunds. In 1971/72 it took over control of the Lebaudy-Sommier undertaking which also took part in the group of French and Belgian producers exporting to Italy.

*Eridania* was the undertaking around which the group of Italian importers organized itself in order to control sales in Italy of sugar produced in the other Member States of the EEC. It was this undertaking which sought and worked out the delivery agreements with suppliers in France and Belgium and South Germany. By the concerted organization of those deliveries Eridania has been able to maintain, and even strengthen its position on the Italian market.

The *Società Italiana per l'Industria degli Zuccheri*, of which the Gruppo Padano has recently taken control, has always participated in the activity of the group of Italian importers and has often profited from the results obtained in the tendering procedures, thanks to tenders submitted on the basis of the understanding with the suppliers' group.

The *Cavarzere-Produzioni Industriali*, which together with the *Società Generale di Zuccherifici* which recently absorbed *le Zuccherificio e Raffineria di Pontelongo* forms one single group (Gruppo Padano), has also always taken part in the activities of the

group of Italian importers and benefited from the results obtained by the group in the tendering procedures for importing sugar into Italy.

The *Romana Zuccheri* and the *Zuccherificio del Volano* have always been connected, especially as regards marketing policy, and they have recently come under the control of AIE. These undertakings have always been in agreement with the activity of the importers' group, and AIE as well as the *Zuccherificia del Volano* have also profited from the results obtained in the tendering procedures although to a lesser extent than the abovementioned undertakings (the *Romana Zuccheri* has only occasionally taken part in the tendering procedures and for marginal quantities).

SADAM is in the same position as AIE or the *Zuccherificia del Volano* as regards its participation in the tendering procedures of the Cassa Conguaglio Zuccheri.

SU is the most important Dutch producer, and as such is concerned and takes part to a greater extent in the control of imports to the Netherlands in cooperation with the principal potential suppliers, RT and Pfeifer-Langen.

The same applies essentially to CSM. However a smaller fine should be imposed on it than on SU, because its share of the market is smaller and it has exerted less influence on the national market.

*Pfeifer and Langen*, by its production and its influence within the SZV, is the most important undertaking in the Western area of Germany. It has played a decisive part in ensuring that a substantial part of the sugar imports into its sales territory since the marketing year 1968/69 would be placed under its control, thanks to the cooperation with the RT, either by buying from its foreign competitors a large share of its unsatisfied requirements, or by concertation with RT whereby RT refrains from making any competing offers in its sales territory apart from the deliveries from producer to producer. Furthermore, Pfeifer and Langen has taken part during the last two marketing years in the concerted practice between producers relating to direct deliveries of sugar to Dutch producers.

SZ AG is one of the most important producers in the Community and exerts a dominant influence in the SZV. It only participated in the suppliers group exporting to Italy during one marketing year

(1969/70), but it subsequently continued in agreement with the Italian producers to export sugar to Italy, principally by means of deliveries from producer to producer. On the other hand, it has bought increasing quantities of sugar from Sucre-Union and Béghin, and in this way has considerably weakened the competition which might have resulted from the free sale of these quantities of sugar in southern Germany.

The activity of SZV must also be judged in the context described above. It has been made responsible for marketing sugar of the SZ AG and of its other members in the southern part of Germany.

There is no need to determine a fine for *Sucre-Union*. Although this undertaking did participate in the Belgian and French suppliers' group exporting to Italy, in the agreement on direct deliveries to German competitors, and in the concertation on tendering procedures for refunds for exports to third countries, it has nevertheless been the only one always to play the part of an outsider as far as this was possible, and also to make, in addition to direct sales to foreign competitors, quite large sales to dealers and processing undertakings in the market of destination. The same applies to the undertaking *Lebaudy-SUC*, which has only played a limited part because of its modest position on the market and its economic dependence on the Générale Sucrière, and has carried out to a fairly large extent intra-Community deliveries. The participation of the Italian undertakings *Romana Zuccheri*, *Société générale de Sucreries* (ex-Pontelongo) and *Zuccherificio di Sermede* in the practices of the group of importers and suppliers on the Italian market has been only occasional and quantitatively very limited, and there is consequently no reason to impose fines on them. The imposition of a fine on *Franken* does not seem justified either, since the role of this undertaking in the southern German sales area was not important and it only followed the example of SZ AG as regards direct sales to foreign competitors. Likewise there is no need to impose a fine on WZV. It appears sufficient to require the said undertakings to bring the infringements to an end without imposing other sanctions.

Taking into account all the factors mentioned above the Commission considers it appropriate to fix the fines provided for in Article 3 of this Decision.

3. This Decision is enforceable, in accordance with Article 192 of the EEC Treaty.



HAS ADOPTED THIS DECISION:

*Article 1*

(1) It is found that the following infringements of Article 85 (1) of the Treaty establishing the European Economic Community have been committed:

1. Eridania, Società di Zuccherifici, Cavarzere-Produzioni Industriali, Società Italiana per l'Industria degli Zuccheri, Romana Zuccheri, Zuccherificio del Volano, Agricola Industriale Emiliana (AIE), SADAM, Zuccherificio di Sermide, on the one hand, and Sucres & Denrées, Béghin, Sucre-Union, Say, Générale Sucrière, Lebaudy-SUC, Raffinerie Tirlemontoise and Süddeutsche Zucker AG, on the other, have committed, since the end of the marketing year 1968/69 infringements of Article 85 (1) by engaging in a concerted practice having as its object and effect the control of deliveries of sugar on the Italian market and consequently the protection of that market.
2. Suiker Unie and the Centrale Suiker Maatschappij, on the one hand, and the Raffinerie Tirlemontoise and Pfeifer and Langen, on the other, have since the marketing year 1968/1969 (Pfeifer and Langen only since the marketing year 1970/71) committed infringements of Article 85 (1) by engaging in a concerted practice having as its object and effect the control of sugar deliveries on the Dutch market from Belgium and the Western part of Germany and consequently the protection of that market.
3. Pfeifer and Langen, on the one hand, and the Raffinerie Tirlemontoise, on the other, have committed for marketing years 1968/69 onwards infringements of Article 85 (1) by engaging in a concerted practice having as its object and effect control of deliveries of Belgian sugar on the market of the Western part of Germany and consequently protection of that market.
4. Süddeutsche Zucker AG and Franken, on the one hand, and Béghin and Sucre-Union, on the other, have from the marketing year 1970/71 onwards committed infringements of Article 85 (1) by engaging in a concerted practice which had as its object and effect control of deliveries of French sugar on the market of the Southern part of Germany and consequently protection of that market.

(2) It is found that the following measures which have been judged in the context of the abovementioned practices, constitute in themselves infringements of Article 86 or Article 85 (1) of the Treaty:

1. The Raffinerie Tirlemontoise has from the marketing year 1968/69 onwards committed an infringement of Article 86 by exercising economic pressure on Belgian exporters to oblige them to restrict their exports;
2. Suiker Unie and Centrale Suiker Maatschappij during the marketing year 1969/70 committed infringements of Article 86 by exerting economic pressure on Dutch importers to oblige them to restrict their imports;
3. Südzucker Verkaufs GmbH have from the marketing year 1968/69 onwards committed infringements of Article 86 by preventing its agents from re-selling sugar from other sources and by tying its clients through granting fidelity rebates;
4. The Westdeutsche Zuckervertriebsgesellschaft and Pfeifer and Langen have from the marketing year 1968/69 onwards committed infringements of Article 85 (1) by concluding agreements with their agents which restrict their opportunities for importing and exporting within the Community.

(3) It is found that the Raffinerie Tirlemontoise, Say, Béghin, Générale Sucrière, Lebaudy-SUC, Sucre-Union and Sucres & Denrées have committed in 1970 infringements of Article 85 (1) by concerting together on the amount of refunds to be requested as well as the quantities to be offered in the tendering procedures for refunds for exports to non-member countries.

*Article 2*

The abovementioned undertakings are required to put an end immediately to the infringements found as aforesaid.

*Article 3*

1. The following fines are imposed:
  - (a) on the Raffinerie Tirlemontoise, a fine of 1 500 000 (one million five hundred thousand) units of account, that is Bfrs 75 000 000 (seventy-five million);
  - (b) on Sucres & Denrées, a fine of 1 000 000 (one million) units of account, that is FF 5 554 190 (five million five hundred and fifty-four thousand, one hundred and ninety);
  - (c) on the Société des Raffineries et Sucreries Say, a fine of 500 000 (five hundred thousand) units of account, that is FF 2 777 095 (two million seven hundred and seventy-seven thousand and ninety-five);

- (d) on the Société F. Béghin SA, a fine of 700 000 (seven hundred thousand) units of account, that is FF 3 887 933 (three million eight hundred and eighty-seven thousand nine hundred and thirty-three);
- (e) on Générale Sucrière SA, a fine of 400 000 (four hundred thousand) units of account, that is FF 2 221 676 (two million two hundred and twenty-one thousand six hundred and seventy-six);
- (f) on Eridania Zucchenfio Nazionali SpA, a fine of 1 000 000 (one million) units of account, that is Lit 625 000 000 (six hundred and twenty-five million);
- (g) on Società Italiana per l'Industria degli Zuccheri SpA, a fine of 300 000 (three hundred thousand) units of account, that is Lit 187 500 000 (one hundred and eighty-seven million five hundred thousand);
- (h) on Cavarzere-Produzioni Industriali, a fine of 200 000 (two hundred thousand) units of account, that is Lit 125 000 000 (one hundred and twenty-five million);
- (i) on Agricola Industriale Emiliana (AIE) SpA, a fine of 100 000 (one hundred thousand) units of account, that is Lit 62 500 000 (sixty-two million five hundred thousand);
- (j) on Zuccherificio del Volano SpA, a fine of 100 000 (one hundred thousand) units of account, that is Lit 62 500 000 (sixty-two million five hundred thousand);
- (k) on SADAM SpA, a fine of 100 000 (one hundred thousand) units of account, that is Lit 62 500 000 (sixty-two million five hundred thousand);
- (l) on Cooperative Vereniging Suiker Unie UA, a fine of 800 000 (eight hundred thousand) units of account, that is 2 896 000 (two million eight hundred and ninety-six thousand) Dutch guilders;
- (m) on Centrale Suiker Maatschappij NV, a fine of 600 000 (six hundred thousand) units of account, that is FL 2 172 000 (two million one hundred and seventy-two thousand);
- (n) on Pfeifer and Langen, a fine of 800 000 (eight hundred thousand) units of account, that is DM 2 928 000 (two million nine hundred and twenty-eight thousand);
- (o) on Süddeutsche Zucker AG, a fine of 700 000 (seven hundred thousand) units of account, that is DM 2 562 000 (two million five hundred and sixty-two thousand);

- (p) on Südzucker Verkauf GmbH, a fine of 200 000 (two hundred thousand) units of account, that is DM 732 000 (seven hundred and thirty-two thousand);

2. This Decision is enforceable in accordance with Article 192 of the EEC Treaty as regards the undertakings on which a fine has been imposed.

#### Article 4

This Decision is addressed to the following undertakings:

- Raffinerie Tirlemontoise SA  
182, Avenue de Tervueren  
1040 Brussels
- NV Centrale Suiker Maatschappij NV  
Herengracht 493  
NL Amsterdam-C
- Cooperatieve Vereniging Suiker Unie UA  
Bompjes 55  
NL Rotterdam
- Westdeutsche Zuckervertriebsgesellschaft mbH & Co KG  
D 5 Cologne 1  
Rothgerberbach 5
- Pfeifer & Langen  
D 5 Cologne 1  
Postfach 190108
- Südzucker Verkauf GmbH  
D 637 Oberursel  
Hohemarktstraße 152
- Süddeutsche Zucker AG  
D 68 Mannheim 1  
Maximilianstraße 10, Postfach 2066
- Zuckerfabrik Franken GmbH  
D 8703 Ochsenfurt  
Marktbreitenstraße 72, Postfach 21
- Sucre-Union SA  
14, rue de Bassano  
F 75 Paris (16<sup>e</sup>)

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|---|---|
| — Société des Raffineries et Sucreries Say<br>18, rue Vaneau<br>F 75 Paris (7 <sup>e</sup> )            | — Cavarzere-Produzioni Industriali<br>Via San Fermo, 39<br>I Padua                  |
| — Société F. Béghin SA<br>F 59 Thumeries  | — Società Italiana per l'Industria degli Zuccheri SpA<br>Via Corsica, 19<br>I Genoa |
| — Générale Sucrière SA<br>25, avenue Franklin D. Roosevelt<br>F 75 Paris (8 <sup>e</sup> )              | — Romana Zuccheri SpA<br>Via XX Settembre, 29/4<br>I Genoa                          |
| — Société Nouvelle de Raffinerie Lebaudy-Sommier SA<br>122, avenue de Neuilly<br>F 75 Neuilly sur Seine | — Zuccherificio del Volano SpA<br>Via XX Settembre, 29/4<br>I Genoa                 |
| — Groupement d'Intérêt Economique Lebaudy-SUC<br>336, rue Saint-Honoré<br>F 75 Paris                    | — Agricola Industriale Emiliana (AIE) SpA<br>Via Indipendenza, 67<br>I Bologna      |
| — Sucres & Denrées SA<br>55, avenue Kléber<br>F 75 Paris (16 <sup>e</sup> )                             | — SADAM SpA<br>Piazza Galileo, 6<br>I Bologna                                       |
| — Eridania Zuccherifici Nazionali SpA<br>Corso Podestà, 2<br>I 16128 Genoa                              | — Zuccherificio di Sermide SpA<br>Via Polleri, 3<br>I Genoa                         |
| — Società Generale di Zuccherifici (Société Générale de Sucreries)<br>8, rue Montoyer<br>1040 Brussels  |   |

Done at Brussels, 2 January 1973.

*For the Commission*

*The President*

S. L. MANSHOLT