

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 July 1983

relating to a proceeding under Article 86 of the EEC Treaty (IV/30.698 — ECS/
AKZO : interim measures)

(Only the English text is authentic)

(83/462/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation No 17 of 6
February 1962: First Regulation implementing
Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by
the Act of Accession of Greece, and in particular
Articles 3 and 16 thereof,

Having regard to the applications of Engineering and
Chemical Supplies (Epsom and Gloucester) Ltd, the
first dated 15 June 1982 under Article 3 of Regulation
No 17 alleging an infringement of Article 86 of the
Treaty by AKZO Chemie UK Ltd and other under-
takings of the AKZO group, and the second dated 13
May 1983 requesting the Commission to adopt
interim measures,

Having regard to the Commission Decision of 8 June
1983 to open a proceeding in this case,

Having given AKZO Chemie UK Ltd the opportunity
to make known its views on the objections raised by
the Commission, in accordance with Article 19 (1) of
Regulation No 17 and with Commission Regulation
No 99/63/EEC of 25 July 1963 on the hearings
provided for in Article 19 (1) and (2) of Council Regu-
lation No 17 ⁽²⁾,

Having given the Advisory Committee on Restrictive
Practices and Dominant Positions the opportunity to
deliver an opinion,

Whereas :

I. THE FACTS

A. The nature of the Decision

1. This Decision is concerned with interim measures
pending a final decision on the complaint under
Article 3 of Regulation No 17 by Engineering and
Chemical Supplies (Epsom and Gloucester) Ltd
(‘ECS’) against AKZO Chemie UK Ltd (‘AKZO
UK’), AKZO Chemie BV (‘AKZO Chemie’) and
other companies of the AKZO group alleging an
infringement of Article 86 of the EEC Treaty.

B. The undertakings

2. (a) ECS

ECS of Stonehouse, Gloucestershire, is a small
independent producer of benzoyl peroxide, an
organic peroxide used both as a catalyst in plastics
manufacture and as a bleach for the treatment of
flour, as well as of a range of other flour milling
additives including potassium bromate and
vitamin supplements.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

The total turnover of ECS in 1982 was £ 1,7 million (2 087 000 ECU), about ...⁽¹⁾ which was accounted for by sales of flour additives in the United Kingdom and elsewhere.

3. (b) AKZO

AKZO UK is the United Kingdom subsidiary of AKZO Chemie, the chemical products division of the AKZO group whose head office is in the Netherlands; AKZO Chemie and several of its subsidiaries, including AKZO UK, manufacture organic peroxides including benzoyl peroxide. In addition AKZO UK manufactures and markets a wide range of milling additives.

The total turnover of AKZO UK in 1982 was £ 42 868 974 (76 478 000 ECU) of which flour milling additives in 1982 accounted for ...

4. The total worldwide sales of AKZO Chemie in organic peroxides in 1982 was ..., of which benzoyl peroxide accounted for

The total turnover of the AKZO group in 1982 was Fl 14 154 million (5 415 million ECU).

C. The complaint

5. By a formal application dated 15 June 1982 under Article 3 of Regulation No 17 ECS complained to the Commission that the companies of the AKZO group were in breach of Article 86. The essence of the complaint was that following the expansion by ECS of its activities in benzoyl peroxide from the flour milling application to the plastics sector, first in the United Kingdom and then to Germany, senior representatives of AKZO Chemie and AKZO UK had on 3 December 1979 threatened to force ECS from the market by selling below cost unless ECS withdrew from the plastics sector and specifically from exporting to Germany. When ECS had refused AKZO allegedly carried out its threats.
6. On 6 December 1979 ECS had obtained an *ex parte* interim injunction in the High Court of Justice in London restraining AKZO from reducing its selling prices. The action was subsequently settled on AKZO's undertaking (not made public) not to reduce its normal selling prices for

benzoyl peroxide, either generally or in relation to a particular sale, with the intention of eliminating ECS as a competitor. AKZO also agreed to pay ECS's legal costs. The undertaking, which had the force of an injunction, expired in September 1982.

ECS alleged that AKZO has nevertheless acted in breach of the undertakings by continuing its policy of predatory and/or discriminatory pricing.

D. The investigation

7. On 15 and 16 December 1982 officials of the Commission carried out investigations under Article 14 (3) of Regulation No 17 simultaneously and without prior warning at AKZO UK and AKZO Chemie and obtained documentary evidence relating to the alleged infringement.

E. The application for interim measures

3. By an application dated 13 May 1983 ECS requested the Commission to adopt interim measures requiring AKZO to refrain from the alleged unlawful pricing and commercial practices pending a final decision under Article 86. The basis of ECS's application was that the infringement of Article 86 had continued even after the Commission's investigations in December 1982 and that unless interim relief were granted ECS might be compelled to cease trading. A statement of objections was addressed to AKZO UK on 8 June 1983. On 23 June 1983 AKZO UK was given the opportunity to expand orally on its written submission, and on 4 July 1983 the Advisory Committee on Restrictive Practices and Dominant Positions gave its opinion.

F. Facts in issue

(a) *The position of the parties in the relevant markets*

9. In the EEC organic peroxides market as a whole, AKZO Chemie is the leading producer with a total market share according to its own estimates in internal management documents of variously 46 % and 50 %. Its market share in Europe in 1982 was equal to that of the next four producers together and it claims to have more widespread production and marketing activities in the sector than any other producer. (...). In comparison, AKZO estimates ECS's market share for organic peroxides in Europe at 1 %.

⁽¹⁾ Pursuant to Article 21 (2) of Regulation No 17 business secrets are not published in the Official Journal.

10. In the United Kingdom sub-market for benzoyl peroxide for flour milling AKZO estimated its 1982 market share at 52 %, compared with ECS's 35 % and only 13 % for the remaining producer, which AKZO considered to have lost most of its market share.

11. AKZO's market share in the United Kingdom flour milling additives market as a whole is difficult to ascertain precisely at this stage as it has provided for the purpose of these proceedings figures which differ considerably from those shown in its own internal documents. Thus in late 1982 AKZO UK valued its annual sales of flour additives in the United Kingdom at almost 200 tonnes (some 40 %) more than it stated in estimates provided during the present proceedings. AKZO claimed in its reply to the statement of objections and during the hearing that there were five relevant product markets — benzoyl peroxide 20 %, benzoyl peroxide 16 %, potassium bromate 10 %, potassium bromate 6 % and vitamin mixes. It produced estimates which were intended to show that in almost all these partial markets its sales in the United Kingdom were even less than ECS's. In fact these estimates, besides overstating ECS's sales, omitted to take account of the fact that the flour additives market involves other products and concentrations of the same products of which AKZO sells a considerable tonnage. AKZO has the largest market share in benzoyl peroxide bleach, the main product, and since customers generally buy a range of requirements from their supplier its share of the potassium bromate sub-market is believed to be of a similar order. In the United Kingdom flour additives market considered as a whole (i.e. including all concentrations of the relevant products, vitamin mixes and other products including amylases) AKZO UK appears to have the largest market share. Its overall market share may be somewhat less than its share of the benzoyl peroxide sub-market because it has abandoned the sale of vitamin mixes on a large scale, but its share of the sub-market for benzoyl peroxide and potassium bromate is considered to be more important for the purposes of the present Decision.

(b) *The flour additives market in the United Kingdom*

12. On the customer side the customers for benzoyl peroxide and other flour milling additives can be classified into three main groups: the three major

flour producers, RHM, Spillers and Allied Mills, of roughly equal size and accounting for 85 % of demand; next the large independents, of which there are about a dozen, totalling 10 %, and thirdly a number of small independent mills taking the remaining 5 %.

Customers tend to take the whole range of their milling additive requirements particularly of benzoyl peroxide and potassium bromate as part of a package of products from the same supplier or suppliers.

13. The only suppliers of benzoyl peroxide and potassium bromate for flour milling are AKZO UK, ECS and Diaflex, a producer which has had close commercial links with AKZO UK. AKZO UK supplies the total requirements of one of the three major flour producers and the second is supplied by AKZO and Diaflex in the proportion of 2 : 1. ECS supplies most of the needs of the third major producer, Allied Mills, but AKZO UK has gained the business of at least one individual mill in the Allied group. AKZO offers only a small tonnage of vitamin mix, a product in which ECS supplies one-third of the UK market requirement. There are a number of other suppliers of vitamin mixes but their influence on the flour milling additives market as a whole is minimal as they do not supply benzoyl peroxide or potassium bromate.

(c) *AKZO's pricing and commercial practices*

(i) *Intention to eliminate ECS*

14. In the proceedings in the High Court in London in 1980 a senior representative of AKZO UK acting on behalf of both AKZO UK and AKZO Chemie denied in evidence that any threats had been made to ECS or that there was any intention to eliminate it as a competitor and claimed that it was not AKZO policy to go down to cost price or below.

In a memorandum dated 7 December 1979 however (apparently prepared before AKZO was aware that the *ex parte* injunction had been obtained by ECS) another AKZO UK executive described the meeting between ECS and AKZO of 3 December and noted that it had been confirmed to the managing director of ECS that 'aggressive commercial action would be taken on the milling side unless he refrained from selling

his products to the plastics industry'. It states that he was given one week to accept AKZO's demand, failing which a detailed plan was to be activated not only to bring about a general fall in market prices but to capture all ECS's customers by means of sales substantially below cost.

15. If ECS did not acquiesce, AKZO UK planned to approach ECS's sole large customer and offer benzoyl peroxide and other additives at prices which, if the whole business of that customer was obtained, would involve an estimated loss to AKZO UK in 1980 of £ 36 000.

Contact was also to be taken with the large independent customers of ECS (six were specifically named) and a package deal was to be offered on the basis that they took their total requirements from AKZO UK, which would also involve a loss of several thousand pounds. Similar measures were to be taken to obtain the whole of ECS's business with the small independent mills.

The prices which AKZO UK charges to its own major customers were also to be lowered considerably, although not to the levels at which quotations were to be made to Allied, apparently as part of an overall plan to bring down the price in the United Kingdom.

Detailed costings and a special budget for 1980 were prepared showing exactly how much this operation would cause AKZO UK to lose by selling below cost.

This document was not produced to the High Court but was discovered at AKZO UK by Commission officials on 15 December 1982.

16. Other management documents found at the AKZO Chemie head office (annual reports for organic peroxide sector for 1980 and 1981 and a report by AKZO UK on sales of milling additives 1979-1982) in the Netherlands showed that after the proceedings in the High Court AKZO's policy of eliminating ECS as a competitor continued.

AKZO was particularly concerned by ECS's expansion into the plastics application in Germany and feared that it might extend its range to other organic peroxides. A report made in 1982 approved the adoption towards ECS of a policy which had proved successful in eliminating another competitor, namely to compete against it

as violently as possible wherever it appeared in the market.

In late 1982 AKZO UK reported to its parent company in the Netherlands that ECS had lost a considerable part of its business as a result of the fall in prices brought about by AKZO and predicted that as pressure was maintained by AKZO more customers would break away from ECS.

(ii) AKZO's prices

17. Details of costings supplied by AKZO UK in response to requests for information under Article 11 of Regulation No 17 show that since 1980 it has been selling a considerable part of its production of flour milling products at a loss even though it was the sole or major supplier of the customer concerned and price was not in any event a critical factor for such customers.
18. AKZO UK has since 1980 lowered the prices at which it supplies the two major milling groups which were its own traditional customers by some 20 to 30 %, even before account is taken of inflation, which it estimated at 10 % per year: as part of its original plan to eliminate ECS from the market it had intended not only to offer to ECS customers at below cost price but also substantially to reduce its prices to its own major customers so as to bring down price levels, generally. While AKZO UK claimed that it was merely aligning on competitive offers, the prices which it applied to these customers from 1981 to the present were in fact virtually the same as those which it had planned to introduce in December 1979.

In respect of ECS's sole major customer, AKZO first attempted to obtain the business of its central buying agent by offering its own standard branded products at the same price as ECS had earlier quoted to the two other major mills in response to an enquiry for a special cheap mix.

When it made no progress with the central purchasing agency AKZO then offered to supply small tonnage orders to individual mills in the Allied group at prices below its costs.

With regard to the independent mills being supplied by ECS, between 1980 and 1983, AKZO UK approached those which it had named in the report of the meeting of 3 December and offered the products to them at below-cost prices some 20

to 40 % less than those at which it supplied its own comparably-placed independent customers. While normally not including vitamin mixes in the product range offered to its own customers AKZO also offered this product at considerably below cost as part of a package to mills supplied by ECS. By means of these offers, it eventually succeeded by the beginning of 1983 in obtaining the business of a number of these customers.

(d) *Effect on ECS*

19. As a result of the low prices offered to its customers by AKZO ECS has lost a substantial part of the business of the independent mills and while retaining most of the business of its single major customer has only done so by reducing its prices to match those quoted by AKZO.

ECS has provided evidence to the Commission showing that both the sustained low level of prices forced on it since 1980 and the loss of business as a result of AKZO's actions have had a serious effect upon its profitability and liquidity and that if it is compelled to lower its prices further or loses any more customers there is a real and substantial risk that it will have to cease trading.

(e) *AKZO's arguments*

AKZO advanced the argument that it was at least questionable whether it had a dominant position for the purposes of Article 86: its shares in the five product markets which it claimed were relevant were not sufficient in themselves to create a presumption of dominance particularly in vitamin mixes. It did not however dispute the relevance to the question of the existence of a possible dominant position of the other elements referred to by the Commission, including its wide product range, the considerable financial resources of the AKZO group and the nature of the conduct towards ECS.

20. AKZO also claimed that whether or not it had abused a dominant position in the past was irrelevant in an interim measures case, the only question in this respect being the competitive conduct which the Commission expected from it at the present and in the future. AKZO contended that there was no necessity to adopt interim measures as it had removed any perceived need for interven-

tion by the Commission on the day before the hearing by raising those of its prices which were below cost at least to break-even levels.

21. It was further argued that its pricing behaviour was not predatory but was a result of competitive conditions in an oligopolistic market where each producer took turns to initiate aggressive price reductions. According to AKZO, ECS had itself triggered the downward trend in prices by lowering its prices in March 1980.

II. LEGAL ASSESSMENT

A. Conditions for the ordering of interim measures

22. A decision requiring the termination of an infringement of EEC competition rules may, as stated by the Court of Justice of the European Communities in its judgment in Case 792/72 R Camera Care, 'be preceded by any preliminary measures which ... appear necessary (to the Commission) at any given moment'. Interim measures may therefore be adopted prior to the taking of a final decision ordering the termination of an infringement under Articles 85 or 86.
23. The conditions to be met in a case such as the present for the granting of interim measures are :
- the establishment by sufficiently clear evidence of a likelihood of infringement,
 - the likelihood of serious and irreparable harm to the applicant unless measures are ordered,
 - proven urgency.
24. The interim measure must further be restricted to the measures necessary for ensuring the effectiveness of any final decision. They may comprise an order to perform some act or to desist from some act provided each measure is indispensable and restricted to what is necessary in the particular situation.

In considering the terms of any order which it may make the Commission will also have regard to the balance between the likely harm to the applicant if it does not act and the effect upon the alleged infringer of any order as well as the interests of third parties which may be affected.

B. Application of these principles to the present case*1. Sufficient evidence of infringement**(a) Article 86*

25. Under Article 86 any abuse by one or more undertakings of a dominant position within the common market or a substantial part of it is prohibited as incompatible with the common market in so far as it may affect trade between Member States of the EEC.

(b) Dominant Position

26. The Commission's current investigations will extend to the whole of the EEC organic peroxide market but at the present time it is not necessary to determine whether the relevant market is that of organic peroxides, benzoyl peroxide, or the flour additives market: in each of these the AKZO group's position is such as to justify a preliminary finding of dominance. Nor is it necessary to define whether the relevant geographical area is the EEC as a whole or the United Kingdom since the territory of that Member State can be said to constitute a substantial part of the common market.

27. In relation to the organic peroxides and benzoyl peroxide market in the EEC as a whole and in the individual Member States concerned, AKZO's high market share and the low shares of the other producers would of itself create a sufficient presumption of a dominant position for the purposes of a decision ordering interim measures. With regard to the more limited United Kingdom flour additives market, the evidence shows that while AKZO UK may not have an overwhelmingly large market share in quantitative terms, it does have the economic power to exercise a significant influence on the market including the ability both to determine price levels and to eliminate a smaller competitor.

28. In reaching this preliminary conclusion the Commission takes into account the financial resources of the AKZO group, the respective size and commercial power of AKZO, ECS and Diaflex, and the nature and effectiveness of the course of conduct that AKZO was able to adopt towards ECS.

29. The Commission does not consider that the minor market share of AKZO UK in the sub-market for vitamin mixes affects the overall position since there is evidence that the offer at low prices of this product could be the deciding factor in obtaining a customer's total requirements.

(c) Abuse of a dominant position

30. Discriminatory pricing (making selective price reductions to the customers of a competitor) and predatory pricing (pricing goods at excessively low levels) by a dominant firm with the object of eliminating smaller competitors may constitute an infringement of Article 86 if the other requirements of that Article are met. Point (a) of the second paragraph of Article 86 provides that an abuse of a dominant position may in particular consist in directly or indirectly imposing unfair prices or trading conditions. The charging of unfairly low selling prices in order to drive out a smaller supplier or to offer it the choice between liquidation or acquisition by the dominant undertaking would fall within the terms of that provision, as well as the general prohibition of Article 86. In the present case AKZO's own documentation shows a deliberate intention of evicting ECS from the market. There is sufficient evidence to show for the purposes of interim measures that AKZO UK, with the knowledge and approval of its parent company AKZO Chemie, adopted a policy of predatory and discriminatory pricing and originally planned to do so in December 1979 because ECS had expanded into the plastics sector in the United Kingdom and Germany. In this respect, the Commission cannot accept AKZO's argument that in reducing its prices it was simply responding to competition from other suppliers. The documentary evidence obtained indicates that the price reductions were referable to a plan to eliminate ECS from the market.

31. Nor is it correct, as AKZO has claimed, that ECS itself took the initiative to bring down price levels by substantially lowering its own prices. In early 1980, following the granting of the injunction by the High Court, ECS was invited to quote by one of AKZO's major customers and offered to that customer at its then prevailing list price for bulk business. At the time AKZO's price to that customer was higher but in the event ECS did not obtain any of the business and for the past two and a half years ECS has not offered to supply either of AKZO's major customers. The evidence shows that following that offer by ECS in March 1980, AKZO retaliated by making selectively low price offers to ECS's customers which were frequently below its own costs. Since under the terms of the undertaking it was arguable that AKZO could align on competitive offers, it sought to justify some of its specific price reductions to ECS's customers, whether large or small, by reference to the lowest prices quoted by ECS to other potential customers although these had been

made in special circumstances for larger offtakes or different qualities. AKZO also maintained these prices or even lowered them during the period from 1980 to date. AKZO has not even sought to justify some of its other low price offers, particularly those to independent mills supplied by ECS, as being an alignment.

(d) Effect on trade between Member States

32. AKZO's allegedly abusive pricing and commercial practices in the United Kingdom flour milling market were originally prompted at the end of 1979 by ECS's exports to the German market, which AKZO feared might increase in volume. The elimination of ECS as a competitor would thus have both a direct and a potential effect upon the pattern of trade between Member States.

2. *Likelihood of irreparable harm*

33. On the basis of the evidence obtained there is reason to suppose that unless restrained AKZO will continue its efforts to eliminate ECS as a competitor. As AKZO itself surmised its conduct in bringing about considerable falls in price levels and taking substantial business from ECS had led to sustained pressure on ECS's margins and has seriously affected its financial position. An eventual finding in the main decision that AKZO had abused its dominant position under Article 86 would be ineffective if ECS had meanwhile been compelled to cease trading.

3. *Urgency*

34. The particular urgency in the present case arises from the fact that even after the Commission's investigation in December 1982 AKZO UK has continued to offer selectively low prices to ECS customers as a result of which ECS has had to reduce its prices further.

The present financial state, commercial structure and customer base of ECS are such that if it loses any more business to AKZO, or is obliged to continue selling at unreasonably low prices so as to retain its customers, there is a grave likelihood of its being compelled to cease trading. This would result in AKZO obtaining a near-monopoly in the supply of benzoyl peroxide and other flour

additives in a substantial part of the common market, as well as eliminating a small but potentially strong competitor in the larger plastics sector.

4. *Necessity for an order and periodic penalty payment*

35. The Commission does not accept that by raising, on the day prior to the hearing, those of its prices which it admitted were being made below cost AKZO has removed the necessity for making an order. AKZO has offered no assurances as to its future conduct and in any event has taken no steps to alter its discriminatory pricing policy as between its own traditional customers and those of ECS.

Since the High Court order has now expired, and having regard to the behaviour of AKZO in the past, in particular the evidence it gave in the High Court proceedings, the Commission considers that it is necessary to ensure compliance with EEC competition rules by imposing obligations upon AKZO UK.

5. *The terms of the order*

36. The measures to be adopted must be of a temporary nature, designed to restore the status quo and restricted to what is required in the situation in question. In making any order the Commission must have regard to the effect of the order on the parties involved.

In the present case the Commission considers that it is reasonable that the status quo prior to the date when threats were first made to ECS should be substantially restored, with allowance being made for increases in AKZO's production costs since then. The Commission therefore is prohibiting AKZO from offering or charging, to buyers in the United Kingdom of any of the products, prices below the sum of AKZO UK's production costs for May 1983 as supplied to the Commission, the latest available freight costs (1982 rates), and an absolute (not a percentage) gross profit in pounds sterling equal to the absolute gross profit in pounds sterling stated to have been obtained by AKZO UK on the same product before 3 December 1979 from the relevant customer or category of customers. Since it is impracticable in

an interim measures decision to determine the exact level at which AKZO's prices become unlawful, this Decision does not imply any such determination, and the minimum prices so imposed include or may include a contribution to overheads and an element of gross profit.

The Commission does not consider that an order in the form which it proposes to make will adversely affect the legitimate interest of AKZO UK. Nor, having regard both to AKZO's claim made during the hearing that the cost of flour additives formed only a minute percentage of the total production costs of the flour producers and to the harmful effects in the long term of a possible monopoly unless interim measures are taken, does the Commission consider that an order addressed to AKZO in the terms hereinafter set out will have an adverse effect on buyers.

37. This Decision will apply only until the adoption of any definitive decision relating to the alleged abuse of a dominant position by AKZO or until the case is otherwise finally disposed of. In addition, the Commission will, if circumstances so require, on the application of AKZO UK or of ECS or on its own initiative, alter the minimum prices specified in this Decision or any other terms of this Decision, in particular to take into account any proved change in AKZO UK's production costs.
38. The Commission is also prohibiting AKZO from offering or supplying any of the products to any buyer in the United Kingdom at prices or on terms different from those offered or given to other comparable buyers from AKZO, having regard to the categories described at paragraph 12 above and the treatment given to those customers in 1979.

The Decision should also contain a provision to prevent any evasion by indirect means or through another undertaking.

AKZO will be allowed to offer or supply below the minimum prices determined as above only in respect of a particular customer and only if it is necessary to do so in good faith to meet (but not to undercut) a lower price shown to be offered by a supplier ready and able to supply to that customer.

The minimum prices at which (subject to meeting competition as above) AKZO may supply or offer the products are set out in the Annex to this Decision.

The fact that the Commission's order requires AKZO UK to return to the profit margins obtaining during 1979 will not necessarily preclude an

eventual examination in the main proceedings of the compatibility with Article 86 of AKZO's pricing prior to 3 December 1979.

In addition to any periodic penalty payment which might be imposed for any infringement of this Decision, if any infringement of this Decision were to occur which was found to constitute an infringement of Article 86, the Commission would have the power to impose a fine under Article 15 (2) of Regulation No 17 in respect of the latter infringement.

HAS ADOPTED THIS DECISION:

Article 1

AKZO Chemie UK Ltd is prohibited, with effect from the notification of this Decision, from offering or supplying Benzoyl Peroxide 16 and 20 % (Novadelox), Potassium Bromate 6 and 10 % (Glutex), and vitamin enrichment mix (Nutramin) (hereinafter referred to as 'the said products') to any flour milling undertaking in the United Kingdom or any company associated with such an undertaking at prices below those set out in the Annex.

Article 2

AKZO Chemie UK Ltd is prohibited from offering or supplying any of the said products to any flour milling undertaking in the United Kingdom at prices or on terms different from those offered or given by AKZO Chemie UK Ltd to other comparable buyers.

Article 3

AKZO Chemie UK Ltd is prohibited from taking any measure, including the granting of any terms of credit or conditions of supply or otherwise, for any of the said products or for any other product or service, whether itself or through any other company, which directly or indirectly causes or is likely to cause the effective delivered price of any of the said products to any flour milling undertaking in the United Kingdom to be below the price set out in the Annex.

Article 4

Notwithstanding anything in Articles 1 to 3, AKZO Chemie UK Ltd may offer or supply the said products at prices below those set out in the Annex only to a particular flour milling undertaking and only if it is necessary in good faith to do so to meet (but not to undercut) a lower price shown to be offered by another supplier ready and able to supply the same product to that undertaking.

Article 5

AKZO Chemie UK Ltd shall supply the Commission, on or before the 15th day of August 1983 and thereafter by the 15th day of each month, a copy of every offer, order, invoice and credit note and other equivalent document in respect of any offer or sale of any of the said products to any buyer in the United Kingdom issued in the preceding month.

Article 6

A periodic penalty payment of 1 000 ECU shall be payable for each day on which any failure to comply with any requirement of this Decision persists.

Article 7

The Commission may, during the period of validity of this Decision, on the application of AKZO Chemie UK Ltd or Engineering and Chemical Supplies

(Epsom and Gloucester) Ltd, or of its own initiative, at any time amend as it thinks appropriate any of the terms of this Decision.

Article 8

Subject to Article 7, this Decision shall apply until the adoption of any Decision concluding the Commission proceeding in this case.

Article 9

This Decision is addressed to AKZO Chemie Ltd 1-5 Queens Road, UK-Hersham, Surrey.

Done at Brussels, 29 July 1983.

For the Commission

Frans ANDRIESEN

Member of the Commission

ANNEX

(Prices in pounds sterling per tonne including transport)

	Glutex 6 %	Glutex 10 %	Novadelox 16 %	Novadelox 20 %	Nutramin
RHM	488	455	587 ⁽¹⁾	728	855
Spillers	488	455	587 ⁽²⁾	728	855
Allied ⁽³⁾	488	556	696	750	855
Independents	488	556	696	750	855

⁽¹⁾ Where AKZO does not at present supply a particular product or concentration to the customer concerned, the price applicable to any possible offer will be that set for comparable customers.

⁽²⁾ As Spillers purchases ex works in 10-tonne lots, a reduction for collection in bulk may be made of £ 50 per tonne.

⁽³⁾ For orders from individual mills. If AKZO quotes for a substantial proportion (25 % or above) of the total annual requirement of the Allied group for benzoyl peroxide and potassium bromate it may do so on the terms and at the prices applicable to RHM and Spillers.

In calculating the price of any mixture containing any of the said products AKZO shall apply *pro rata* the above prices.